

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 5
SUNDAY, NOVEMBER 1, 1998

November Agenda, ARRS	985
Regulation Review Procedure	990

REPRINT:

Kentucky Higher Education Assistance Authority	991
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NOTICES OF INTENT:

Office of State Treasurer	992
Revenue Cabinet	993
Board of Pharmacy	994
Board of Medical Licensure	995
Board of Nursing	997
Board of Alcohol and Drug Counselors	998
Department of Fish and Wildlife Resources	998
Petroleum Storage Tank Environmental Assurance Fund	999
Justice Cabinet - Department of Corrections	999
Transportation Cabinet	1000
Department of Education	1000
Education Professional Standards Board	1001
School Facilities Construction Commission	1003
Labor Cabinet - OSH Review Commission	1004
Department of Mines and Minerals	1005
Department of Insurance	1009
Department of Financial Institutions	1009
Cabinet for Health Services	1010

EMERGENCIES:

Office of State Treasurer	1015
Department of Fish and Wildlife Resources	1019
Department of Education	1021
School Facilities Construction Commission	1022
Cabinet for Health Services	1025

AS AMENDED:

Board of Dentistry	1029
Board of Embalmers and Funeral Directors	1030
Board of Nursing	1030
Department of Fish and Wildlife Resources	1035
Justice Cabinet - Parole Board	1037
Justice Cabinet - Department of Corrections	1038
Transportation Cabinet	1038
Department of Education	1045
Education Professional Standards Board	1046
Department of Alcoholic Beverage Control	1048
Department of Insurance	1048
Cabinet for Health Services	1051

AMENDED AFTER HEARING:

NREPC - Water	1061
Cabinets for Health Services, and Families and Children	1071

PROPOSED AMENDMENTS RECEIVED THROUGH NOON,

OCTOBER 15, 1998:

Executive Branch Executive Commission	1086
UK - Agricultural Experiment Station	1087
Registry of Election Finance	1092
Office of the Attorney General	1093
Department of Fish and Wildlife Resources	1095
Petroleum Storage Tank Environmental Assurance Fund	1097
Justice Cabinet - Criminal Justice Training	1130
Department of Education	1137
Education Professional Standards Board	1144
Commission on Deaf and Hard of Hearing	1146
Labor Cabinet - OSHA	1151
Labor Cabinet - Workers' Claims	1176
Department of Financial Institutions	1182
Department of Housing, Buildings and Construction	1186
Cabinets for Health Services, and Families and Children	1216

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, OCTOBER 15, 1998:

Executive Branch Ethics Commission	1259
Office of the Secretary of State	1259
Board of Elections	1260
Office of the Attorney General	1263
Board of Nursing Home Administrators	1268
Commission on Military Affairs	1269
Department of Fish and Wildlife Resources	1271
Petroleum Storage Tank Environmental Assurance Fund	1272
Justice Cabinet - State Police	1276
Justice Cabinet - Criminal Justice Training	1278
Department of Education	1279
Education Professional Standards Board	1283
Department of Education	1284
Labor Cabinet - Workers' Claims	1285
Department of Insurance	1286
Department of Financial Institutions	1289
Cabinet for Health Services	1291
October 13, 1998 Minutes of the ARRS	1302
Other Committee Reports	1312

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates	E2
KRS Index	E8
Subject Index	E15

MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on November 10, 1998, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 985-989 of this Administrative Register.

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

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VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

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

**GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission**

Ethics Commission

- 9 KAR 1:010. Statement of financial disclosure.
- 9 KAR 1:015. Preadministrative proceedings.
- 9 KAR 1:030. Administrative proceedings.
- 9 KAR 1:050. Approval of outside employment of a public servant.

**KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services**

KHEAA Grant Programs

- 11 KAR 5:130. Student application.

Teacher Scholarship Loan Program

- 11 KAR 8:030. Teacher scholarships.

**AGRICULTURAL EXPERIMENT STATION
University of Kentucky
Division of Regulatory Services**

Commercial Feeds

- 12 KAR 2:031. Directions and precautionary statements for feed with additives.
- 12 KAR 2:046. Poisonous or deleterious substances.
- 12 KAR 2:051. Manufacturing conditions.
- 12 KAR 2:056. List of manufacturers.
- 12 KAR 2:061. Registration.
- 12 KAR 2:066. Suitability.

Pet Food

- 12 KAR 3:022. Guarantees.
- 12 KAR 3:027. Ingredients.
- 12 KAR 3:037. Additives.

OFFICE OF THE SECRETARY OF STATE

Kentucky Lien Information System

- 30 KAR 4:010E. Implementation of Kentucky Lien Information System. (Deferred from October)

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 (Deferred from October)

- 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. (Deferred from October)

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

Selective Excise Tax; Motor Vehicle Usage

- 103 KAR 44:060E. Motor vehicle usage tax valuation. (Deferred from October)

**FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems**

General Rules

- 105 KAR 1:230 & E. Reemployment after retirement.

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

Purchasing

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

Property

- 200 KAR 6:060 & E. Lease of new construction.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

GENERAL GOVERNMENT CABINET

Board of Pharmacy

- 201 KAR 2:015. Continuing education.
- 201 KAR 2:030. License transfer.
- 201 KAR 2:040. Registration of interns.
- 201 KAR 2:050. Licenses and permits; fees.

Board of Licensure for Nursing Home Administrators (Deferred from October)

- 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 Medical Licensure

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

Board of Certification of Alcohol and Drug Counselors

- 201 KAR 35:030. Code of ethics.
- 201 KAR 35:040. Continuing education requirements.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

Game (Deferred from October)

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

Water Patrol

- 301 KAR 6:005E. Boat registration fees. (Deferred from October)

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. (Public Hearing in September)
- 401 KAR 5:009 & E. Permits for swine feeding operations. (Public Hearing in September)

Division for Air Quality

General Standards of Performance

- 401 KAR 63:021. Existing sources emitting toxic air pollutants. (Public Hearing in September)
- 401 KAR 63:024. Repeal of 401 KAR 63:022. (Public Hearing in September)

JUSTICE CABINET
Department of Corrections

Kentucky Parole Board

- 501 KAR 1:030 & E. Determining parole eligibility. (Deferred from October)

Class D Felons

- 501 KAR 2:070 & E. Work release. (Deferred from October)

Office of the Secretary

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

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 (Deferred from October)

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

Department of Juvenile Justice

Child Welfare

- 505 KAR 1:040. Policies and procedures manual.

TRANSPORTATION CABINET
Department of Vehicle Regulation

Division of Motor Carriers

- 601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles. (Amended After Hearing) (Deferred from October)

Department of Highways

Mass Transportation

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

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

Office of District Support Services

702 KAR 7:125E. Pupil attendance. (Deferred from October)
Education Professional Standards Board

Board

704 KAR 20:700. Standards for admission to teacher education.
704 KAR 20:720E. Professional certificate for exceptional work experience, limited to secondary education. (Deferred from October)
Board of Education
Department of Education
Office of Special Instructional Services

Instructional Programs

705 KAR 4:240E. School to careers. (Deferred from October)
Commission on the Deaf and Hard of Hearing

Interpreter Referral Services

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

FINANCE AND ADMINISTRATION CABINET
School Facilities Construction Commission

Education Technology Funding Program

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

MOREHEAD STATE UNIVERSITY

Board of Regents

755 KAR 1:070. Affiliated corporations.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation

Administration

781 KAR 1:070. Fees for service.

Department for Employment Services
Division of Unemployment Insurance

Unemployment Insurance

787 KAR 1:200 & E. Maximum weekly benefit rate.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Board of Tax Appeals

Tax Appeals

802 KAR 1:010. Rules of practice and procedure. (Amended After Hearing) (Deferred from October)

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.

Department of Workers' Claims

Workers' Claims

803 KAR 25:089. Workers' Compensation medical fee schedule for physicians.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Life Insurance and Annuity Contracts

806 KAR 15:040E. Licensing, reporting, and general requirements for viatical settlement providers and brokers. (Deferred from October)

Health Insurance Contracts

806 KAR 17:160 & E. Creditable coverage for health insurance.
806 KAR 17:170E. Genetic testing. (Deferred from October)

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

- 806 KAR 17:180 & E. Standard health benefit plan and comparison format.
806 KAR 17:190E. Guaranteed Acceptance Program requirements. (Deferred from October)
806 KAR 17:200E. Severity codes for high-cost conditions. (Deferred from October)
806 KAR 17:210E. Reporting requirements for the Kentucky Guaranteed Acceptance Program. (Deferred from October)
806 KAR 17:220 & E. Approval criteria and requirements for reentry into the Kentucky health insurance market.

Public Service Commission

Utilities

- 807 KAR 5:063. Filing requirements and procedures for proposals to construct antenna towers for cellular telecommunications services or personal communications services.

CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation

Long-term Care

- 900 KAR 2:031. Repeal of 900 KAR 2:030.

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. (Amended After Hearing)

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.

Division of Adult and Child Health

Controlled Substances

- 902 KAR 55:010. Licensing of manufacturers and wholesalers. (Deferred from October)
902 KAR 55:030. Schedule IV substances. (Deferred from October)
902 KAR 55:045. Exempt prescription products. (Deferred from October)
902 KAR 55:105. Requirements for controlled substance prescription blanks. (Amended After Hearing)
902 KAR 55:110. Monitoring system for prescription controlled substances.
902 KAR 55:115. Drug possession by hospice or home health agency. (Not Amended After Hearing) (Deferred from October)

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

Public Assistance

- 904 KAR 2:001. Definitions. (Deferred from October)
904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).
904 KAR 2:018 & E. Transportation services for Kentucky Works.
904 KAR 2:020. Child Support Program. (Deferred from October)
904 KAR 2:116E. Home Energy Assistance Program.
904 KAR 2:370E. Technical requirements for Kentucky Works.
904 KAR 2:380 & E. Child Support Program application process. (Deferred from October)
904 KAR 2:390. Child Support Program paternity establishment. (Deferred from October)
904 KAR 2:400. Establishment, review, and modification of child support and medical support orders. (Deferred from October)
904 KAR 2:410. Child support collection and distribution. (Deferred from October)
904 KAR 2:490 & E. Welfare to Work Grant Program.

Technical Requirements

- 904 KAR 3:025. Technical requirements.
904 KAR 3:042. Food Stamp Employment and Training Program.

Department for Community-based Services

Child Welfare

- 905 KAR 1:320. Fair hearing.

Day Care

- 905 KAR 2:141. Repeal of 905 KAR 2:140. (Deferred from October)
905 KAR 2:160 & E. Child day care assistance program. (Amended After Hearing)

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis

Medicaid Services

- 907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from September) (Deferral Requested)
907 KAR 1:026 & E. Dental services. (Deferred from October)
907 KAR 1:034. Early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.
907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.
907 KAR 1:626 & E. Reimbursement of dental services. (Deferred from October)
907 KAR 1:635E. Conditions of coverage for the Kentucky Hospital Care Program (KHCP).
907 KAR 1:755E. Preadmission Screening and Resident Review Program.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Payment and Services

907 KAR 3:065E. Nonemergency medical transportation waiver services and payments. (Deferred from August)
Department for Mental Health and Mental Retardation Services

Substance Abuse

908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260. (Deferred from July)

908 KAR 1:340. Narcotic Treatment Programs.

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. (Public Hearing in September)

908 KAR 2:130. Kentucky Early Intervention Program Assessment and Service Planning. (Public Hearing in September)

908 KAR 2:140. Kentucky Early Intervention Program primary service coordination and assistive technology. (Public Hearing in

September)

908 KAR 2:160. Kentucky Early Intervention Program covered services. (Public Hearing in September)

908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program services. (Public Hearing in September)

908 KAR 2:210 & E. Domestic violence offender treatment certification standards. (Amended After Hearing)

VOLUME 25, NUMBER 5 – NOVEMBER 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.

REPRINT

COMPILER'S NOTE: The following administrative regulation, 11 KAR 12:060, is being reprinted to show the correct version of the regulation as amended by the promulgating agency and the Administrative Regulation Review Subcommittee on September 8, 1998. As originally published, Section 1(2) was inadvertently struck-through and bracketed; this subsection should be retained in the administrative regulation and not deleted.

**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(1)] 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
APPROVED BY AGENCY: May 15, 1998
FILED WITH LRC: July 14, 1998 at 2 p.m.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

OFFICE OF THE KENTUCKY STATE TREASURER

October 15, 1998

- (1) **20 KAR 1:040.** Unclaimed properties; claims.
- (2) The Kentucky State Treasurer 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 November 24, 1998 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601.
- (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 November 24, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: John Kennedy Hamilton, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.
- (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 State Treasurer at the Office of the Kentucky State Treasurer at the address 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 procedures for rightful owners to claim unclaimed property and for holders to verify rightful ownership KRS 393.280 and 1998 General Assembly Regular Session Senate Bill 339.
 - (b) The administrative regulation the Kentucky State Treasurer intends to amend will set forth the procedures determining by either the Office of the State Treasurer or by a holder of unclaimed property the rightful owner of such property.
 - (c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate that allows for some holders of unclaimed property to release such property to the rightful owner.
 - (d) The benefit expected from this administrative regulation is a more efficient and fair procedure for returning unclaimed property to its rightful owner.
 - (e) The regulation will be implemented by the Kentucky State Treasurer, by affected holders of unclaimed property and claimants of unclaimed property. These parties will implement this regulation by merely adhering to the procedures contained within the regulation.

October 15, 1998

- (1) **20 KAR 1:070.** Unclaimed property; administrative hearing; appeals process.
- (2) The Kentucky State Treasurer 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 November 24, 1998 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601.
- (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 November 24, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: John Kennedy Hamilton, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.
- (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 State Treasurer at the Office of the Kentucky State Treasurer at the address 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 hearing procedures and appeal for unclaimed property is KRS 393.280, Chapter 13B and 1998 GA SB 339.
 - (b) The administrative regulation the Kentucky State Treasurer intends to amend will bring the administrative hearing process into compliance with KRS Chapter 13B.
 - (c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate governing administrative hearings for claimants of unclaimed property.
 - (d) The benefit expected from this administrative regulation is a more efficient and fair administrative hearing procedure.
 - (e) The regulation will be implemented by the Kentucky State Treasurer. The Kentucky State Treasurer will implement this regulation by merely adhering to the procedures contained within the regulation.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

October 15, 1998

- (1) **20 KAR 1:080.** Reports to be filed by holders of unclaimed property.
- (2) The Kentucky State Treasurer 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 November 24, 1998 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, 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 November 24, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: John Kennedy Hamilton, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.
- (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 State Treasurer at the Office of the Kentucky State Treasurer at the address 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 hearing procedures and appeal for unclaimed property is KRS 393.110 and 393.280.
 - (b) The administrative regulation the Kentucky State Treasurer proposes to promulgate will set out the requirements for the reports to be filed by holders of unclaimed property.
 - (c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate governing reports filed by holders of unclaimed property.
 - (d) The benefit expected from this administrative regulation is a more efficient and fair reporting procedure.
 - (e) The regulation will be implemented by the Kentucky State Treasurer. The Kentucky State Treasurer will implement this regulation by merely adhering to the procedures contained within the regulation and notifying affected holders.

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

October 2, 1998

- (1) **103 KAR 1:050 - Forms manual.**
- (2) The Revenue Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998 at 10 a.m. at 200 Fair Oaks Lane, Third Floor, Training Room A, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: Edward A. Mattingly, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone Number (502) 564-6843, Facsimile Number (502) 564-9565, E-mail: emattingly@mail.state.ky.us.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Revenue Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative forms is KRS 131.130.
 - (b) The administrative regulation that the Revenue Cabinet intends to promulgate will establish the form and procedures required for the implementation of KRS 131.130(3).
 - (c) The necessity and function of the proposed administrative regulation is as follows: This regulation is specifically required by KRS 131.130(3) which authorizes the Revenue Cabinet to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.
 - (d) The benefits expected from the administrative regulation are:
 1. Incorporation by reference of all forms prescribed by the Revenue Cabinet pursuant to KRS Chapter 13A.
 2. Accumulation in one source and location of all forms prescribed by the Revenue Cabinet.
 3. Periodic updating of regulation referencing prescribed forms.
 - (e) The administrative regulation will be implemented as follows: The Revenue Cabinet will maintain the Forms Manual in the Department of Law. The Department of Law will be responsible for periodic updating of the regulation and manual.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

BOARD OF PHARMACY

October 7, 1998.

(1) **201 KAR 2:165.** Transfer of prescription information.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:165 relating to the requirements for the transfer of prescription information between pharmacists.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1998 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, 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 November 25, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, voice: (502) 573-1580; fax (502) 573-1582.

(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 Board of Pharmacy 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 transfer of prescription drug order information is found at KRS 315.191(1)(a)(f).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the number of times that a pharmacist may transfer prescription drug order information.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 217.215 and 315.191(1)(a)(f) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which prescription drug orders are transferred.

(d) The benefit expected from the amendment to the administrative regulation is a greater certainty that the public will not be adversely impacted by an overly restrictive administrative regulation relating to the number of times that a prescription order may be transferred between pharmacists.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the number of times that a prescription drug order may be transferred between pharmacists.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than November 12, 1998.

October 7, 1998.

(1) **201 KAR 2:185,** Prescription drug refills.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:185 relating to the requirements for prescription drug refills.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1998 at 9:30 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, 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 November 25, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, voice: (502) 573-1580; fax (502) 573-1582.

(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 Board of Pharmacy 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 prescription drug refills is found at KRS 315.191(1)(a)(f).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the maximum length of time for which a prescription may be refilled.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 217.215 and 315.191(1)(a)(f) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which prescription drug orders are refilled.

(d) The benefit expected from the amendment to the administrative regulation is a greater certainty and length of time within which the public may obtain a prescription refill for a legend drug.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the maximum length of time within which a refill authorization of "as needed" or "prn" may occur.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than November 12, 1998.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

KENTUCKY BOARD OF MEDICAL LICENSURE

October 12, 1998

- (1) Regulation number and title: **201 KAR 9:084**. Fee schedule.
- (2) The Kentucky Board of Medical Licensure intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, November 25, 1998, at 10 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 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 10 days prior to November 25, 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: C. Lloyd Vest, II, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing;" or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Medical Licensure at the address above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565.
 - (b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:084, Fee schedule. It will effect certified physician assistants in the Commonwealth of Kentucky and is necessary for the board's housekeeping purposes.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To defray administrative costs associated with the specific actions and to provide uniformity in the fee schedule.
 - (d) The benefits expected from administrative regulation are: To defray administrative costs associated with the specific actions and to provide uniformity in the fee schedule.
 - (e) The administrative regulation will be implemented as follows: By the board's staff upon the biennial renewal of certifications or upon the late filing of applications.

October 12, 1998

- (1) Regulation number and title: **201 KAR 9:175**. Physician assistants; certification and supervision.
- (2) The Kentucky Board of Medical Licensure intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, November 25, 1998, at 10 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 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 10 days prior to November 25, 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: C. Lloyd Vest, II, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing;" or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Medical Licensure at the address above.
- (7) Information relating to the proposed amendments:
 - (a) The statutory authority for the amendment of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565.
 - (b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:175, Physician assistants; certification and supervision. It will effect certified physician assistants in the Commonwealth of Kentucky and is necessary for the board's housekeeping purposes.
 - (c) The necessity and function of the proposed administrative regulation is as follows: Eliminate duplicative regulations after recent statutory amendments and to regulate the prescribing of legend drugs by physician assistants.
 - (d) The benefits expected from administrative regulation are: Eliminate duplicative regulations after recent statutory amendments and to regulate the prescribing of legend drugs by physician assistants.
 - (e) The administrative regulation will be implemented as follows: Elimination of duplicative sections and appropriate allocation of prescribing responsibilities by the supervising physician.

September 24, 1998

- (1) Regulation Number and Title: **201 KAR 9:310**. Continuing medical education.
- (2) The Kentucky Board of Medical Licensure intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, November 23, 1998, at 10 a.m. at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
 1. It is requested in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to November 23, 1998, the public hearing shall be canceled.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: C. Lloyd Vest, II, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.

(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 Kentucky Board of Medical Licensure at the address above.

(7) Information relating to the proposed amendments:

(a) The statutory authority for the amendment of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565, 311.601, 194.540, and 164.925.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:310, Continuing medical education. It will effect physicians who are licensed to practice medicine in the Commonwealth of Kentucky and is necessary for the board's housekeeping purposes.

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

1. Fulfills the requirement of KRS 194.540 that physicians practicing primary care receive appropriate training on domestic violence issues;
2. Provides the board with the authority to suspend licensees until they comply with the board's audit requirements; and
3. Provides the board with the authority to impose fines upon and require compliance by licensees who inaccurately certify that they have completed the CME requirements; the board will have authority to suspend these licensees if they fail to comply.

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

1. Uniformity in enforcement of the continuing medical education requirements;
2. Compliance with statutory directives relating to continuing medical education.

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

1. Action by the board and its staff;
2. Education courses approved by the Subcommittee on Domestic Violence.

October 5, 1998

(1) Regulation number and title: **201 KAR 9:330**. Determination of death by a paramedic.

(2) The Kentucky Board of Medical Licensure 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 Tuesday, November 24, 1998, at 10 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

1. It is requested, in writing, by at least 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 10 days prior to November 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna L. Delahanty, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.654 and 311.660.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will permit paramedics with specialized training to pronounce persons dead.

(c) The necessity and function of the proposed administrative regulation is as follows: Provides a protocol for determination of death by paramedics.

(d) The benefits expected from administrative regulation are: It will broaden the allowable medical responsibilities of paramedics.

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

October 5, 1998

(1) Regulation number and title: **201 KAR 9:335**. Discontinuance of resuscitation by a paramedic.

(2) The Kentucky Board of Medical Licensure 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 Tuesday, November 24, 1998, at 10 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

1. It is requested, in writing, by at least 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 10 days prior to November 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna L. Delahanty, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.

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

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

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

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

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.654 and 311.660.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will permit paramedics with specialized training to discontinue resuscitation under certain clearly established conditions.

(c) The necessity and function of the proposed administrative regulation is as follows: Provides a protocol for discontinuation of resuscitation efforts.

(d) The benefits expected from administrative regulation are: Clarifies conditions under which resuscitation may be discontinued.

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

October 5, 1998

(1) Regulation number and title: **201 KAR 9:340**. Training of paramedics in determination of death and discontinuance of resuscitation.

(2) The Kentucky Board of Medical Licensure 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 Tuesday, November 24, 1998, at 10 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

1. It is requested, in writing, by at least 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 10 days prior to November 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Donna L. Delahanty, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.654 and 311.660.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will set out the training necessary for paramedics to determine death and discontinue resuscitation.

(c) The necessity and function of the proposed administrative regulation is as follows: Specifies and implements the training program.

(d) The benefits expected from administrative regulation are: Establishes training standards for all paramedics who will determine death and discontinue resuscitation.

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

GENERAL GOVERNMENT CABINET Board of Nursing

October 2, 1998

(1) **201 KAR 20:420**. Determination of death and preservation of evidence by registered nurses in prehospital, emergency settings.

(2) The Board of Nursing intends to promulgate the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998 at 2 p.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, 40222.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to November 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: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, fax (502) 329-8206.

(b) On a request for public hearing, a person should 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 general counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board intends to promulgate is a new regulation. It is required by HB 285 enacted by the 1998 GA. It sets the protocol for determination of death and preservation of evidence by registered nurses in prehospital, emergency settings.

(c) The necessity and function of the proposed administrative regulation is as follows: To fulfill the requirements of HB 285.

(d) The benefits expected from the administrative regulation are: To provide a protocol for registered nurses in prehospital, emergency settings to determine the death of a patient.

(e) The administrative regulation will be implemented as follows: It will be implemented through the regular administrative processes of the agency.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

KENTUCKY BOARD OF CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

October 13, 1998

- (1) **201 KAR 35:050.** Certification requirements.
- (2) The Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 1:30 p.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification of Alcohol and Drug Counselors 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 certification requirements is KRS 309.0813(1) and 309.083.
- (b) The administrative regulation that the board intends to promulgate will establish the requirements for certification not specified in KRS 309.083.
- (c) The necessity, conformity, and function of the proposed administrative regulation is as follows: KRS 309.083 provides that an applicant for certification shall meet several criteria in order to become certified as an alcohol and drug counselor. This administrative regulation clarifies the criteria that are required by 309.083 to be set by the board.
- (d) The benefits expected from administrative regulation are: Persons applying for certification will know more about the requirements for certification.
- (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

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

August 21, 1998

- (1) Regulation number and title: **301 KAR 2:226.** Youth waterfowl hunting season.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to November 23, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, FAX (502) 564-6508.
- (b) On the request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation an administrative regulation governing waterfowl hunting is KRS 150.025(1), 150.340, 150.600.
- (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish a one-day waterfowl season open only to juveniles under the age of sixteen (16) who are accompanied by an adult.
- (c) The necessity and function of the proposed administrative regulation is to open a special day for youth waterfowl hunting. Such a day of hunting is now permitted under the federal hunting frameworks issued by the U. S. Fish and Wildlife Service.
- (d) The benefits expected from the administrative regulation are increased recreational opportunities.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

**PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank Environmental Assurance Fund**

October 8, 1998

(1) **415 KAR 1:140.** Laboratory certification. The subject matter of the proposed administrative regulation is the requirements and procedures for certification of laboratories that contract to perform analytical testing related to the underground storage tank program.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 24, 1998, at 3 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leewood Drive, Frankfort, Kentucky in the second floor conference room.

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

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

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to November 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leewood Drive, Frankfort, Kentucky 40601, phone (502) 564-5981, fax (502) 564-0094.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to certification of laboratories is found in KRS 224.60-130.

(b) The administrative regulation that the fund intends to promulgate is 415 KAR 1:140. The regulation will conform to the statutory changes resulting from HB 282 (1998), and set the requirements for laboratories to be certified to perform analytical testing that is reimbursable by the fund.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The proposed regulation will conform to the statutory requirement in HB 282 (1998), and set the requirements for laboratories to be certified to perform analytical testing that is reimbursable by the fund.

(d) The benefit expected from the administrative regulation is to require laboratories to follow certain quality control procedures to have their services reimbursed by the fund.

(e) The regulation will be implemented, as required in KRS 224.60-130, after April 1, 1999.

**JUSTICE CABINET
Department of Corrections**

October 13, 1998

(1) Regulation number and title: **501 KAR 6:999**, Department of Corrections secured policies and procedures.

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

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

(4) Information relating to these proposed administrative regulations:

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

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

1. Restricted Areas (BCC 09-02-01) shall be amended to comply with actual practice.
2. Radio Escorted Yard Movement During Daylight Savings Time (BCC 09-02-04) shall be deleted as this procedure is no longer applicable to actual practice.
3. Construction Crew Entry, Exit and Regulations (BCC 09-04-01) shall be added as a secured policy and amended to reflect a new practice for the entry and exit of construction crews.
4. Complex Entry and Exit (BCC 09-04-02) shall be amended to comply with actual practice.
5. Transportation to Courts (BCC 09-06-02) shall be amended not to use restraints as punishment; include the authorization of applying restraints.
6. Drug Abuse and Intoxicants Testing (BCC 09-07-01) shall be amended to include inmates returning from furlough shall be tested; change in the title of attachment A and the instructions; the addition of two (2) officers present when taking urine samples.
7. Population Counts and Count Documentation (BCC 09-09-01) shall be amended to reflect the new procedure of implementing the daily count.
8. Search Policy and Disposition of Contraband (BCC 09-15-01) shall be amended to delete an ACA reference; change title of strip search log; delete any reference of CPP 9.8.
9. Security Activity Logs (BCC 09-16-01) shall be amended to comply with actual practice.
10. Institutional Supervisor Inspections (BCC 09-17-01) shall be amended to reflect the referenced standards throughout the policy.

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

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

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

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

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

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

TRANSPORTATION CABINET

October 15, 1998

(1) **603 KAR 5:230**, Relating to the extended weight coal and coal by-products haul road system.

(2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation governing the road segments to be included in the extended weight coal and coal by-products haul road system, the weight limits on the bridges on the system, and the annual update of the eligible road segments.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Tuesday, November 24, 1998 at 1:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should contact Charles Harman at: phone (502) 564-7650, fax (502) 564-5238, e-mail: charman@mail.kytc.state.ky.us. A written request should be mailed to, 501 High Street, 10th Floor, State Office Bldg., Frankfort, Kentucky 40622.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the extended weight coal and coal by-products haul system is KRS 177.977, 177.9771, and 189.230.

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

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 177.9771(2) requires the Secretary of Transportation to certify those public highways which meet certain criteria as the "extended weight coal and coal by-products haul road system". KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the weight limits prescribed in KRS 177.9771. This administrative regulation identifies the extended weight coal and coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be damaged, and prescribes the maximum weight for each of these bridges. Also KRS 177.9771(9) requires the Secretary of Transportation to meet with local governing bodies and to consider their concerns before adding or deleting from the system. This proposed amendment to the administrative regulation addresses resolutions received by the cabinet during the preceding year, the amount of coal transported over public roads in Kentucky during the calendar year of 1997, and the cooperative highway maintenance/rehabilitation agreements entered into with the Transportation Cabinet. As a result of this proposed change, there will be roads, road segments, and bridges added to and deleted from the extended weight coal and coal by-products haul road system.

(d) The benefit(s) expected from the administrative regulation is the annual update to the extended weight coal haul road system.

(e) The administrative regulation will be implemented in accordance with KRS Chapter 13A.

(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 10 days prior to the public comment hearing date.

KENTUCKY BOARD OF EDUCATION

October 8, 1998

(1) **702 KAR 6:100**, Appeal procedures for school and community nutrition programs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 30, 1998, the public hearing will be canceled.

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

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

- (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 Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to school food service programs is KRS 156.160.
- (b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 702 KAR 6:100.
- (c) The necessity, function, and conformity of the proposed administrative regulation is KRS Chapter 13A; 13A.120(6); 42 USC 1769(c); 17766(e); 7 CFR 210.18(q); 226.6(k).
- (d) The benefit expected from the administrative regulation is comply with federal mandates to give program sponsors an opportunity for a legally binding review of adverse actions.
- (e) The administrative regulation will be implemented as follows: Actions which may be appealed and the appeals procedures will be outlined in 702 KAR 6:100.

October 8, 1998

- (1) **704 KAR 3:480**, Early reading incentive grants.
- (2) The Kentucky Board of Education intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 30, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone: (502) 564-4474, fax: (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of a new administrative regulation relating to 704 KAR 3:480 is KRS 156.070 and 1998 Ky. Acts ch. 580.
- (b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 704 KAR 3:480.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to establish an application process and the criteria for funding the early reading incentive grants.
- (d) The benefits expected for the administrative regulations are funding to schools to support teachers in research-based practices to improve the reading skills of students in the primary program.
- (e) The administrative regulation will be implemented as follows: Applications for funding will be released and projects selected and implemented according to the guidelines in law and regulations.

October 8, 1998

- (1) **707 KAR 1:270**, Special Education Mentor Program.
- (2) The Kentucky Board of Education intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (c) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 30, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone: (502) 564-4474; fax: (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the compliance with state and federal special education program requirements is KRS 157.224.
- (b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 707 KAR 1:270.
- (c) The necessity, function, and conformity of the proposed administrative regulation is compliance with the requirements of HB 519, KRS

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

157.224.

(d) The benefits expected from this proposed administrative regulation are providing additional assistance to school districts through the special education mentor program.

(e) The administrative regulations will be implemented as follows: Copies of the documents generated will be disseminated to all Kentucky school district superintendents, and directors of special education, State Advisory Panel for Exceptional Children, advocacy and parents' groups and others as appropriate.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board**

September 1998

(1) **704 KAR 20:015**, Rank I classification.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

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

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

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

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

(7) Information relating to the proposed administrative regulation. A new Section 5 will be added to require attendance at an orientation meeting prior to submission of the application for Plan IV option for rank classification.

(a) The statutory authority for the promulgation of an administrative regulation relating to the advancement in rank classification is KRS 157.390 and 161.095.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:015.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 157.390 authorizes the State Board of Education to adopt an administrative regulation to determine the salary rank of a certified teacher and to determine the equivalent qualification for the salary rank. KAR 704 3:470 vests the authority in the Education Professional Standards Board to establish the standards and procedures for the classification of teachers in rank for purposes of the state teacher salary schedule. KRS 161.095 authorizes the Education Professional Standards Board to establish procedures to maintain his certificate by successfully completing meaningful continuing education. This administrative regulation defines approved graduate work for the Rank I classification and defines equivalent and continuing education programs for Rank I.

(d) The benefits expected from administrative regulation are: The applicant will be able to gain a better understanding of the Plan IV option for rank classification prior to paying the \$400 application fee.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all teachers, school district personnel, and teacher preparation programs as soon as the amendment is effective.

Date September 1998

(1) **704 KAR 20:022**, Continuing education alternative to planned fifth-year program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

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

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

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

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

(7) Information relating to the proposed administrative regulation. A new section 5 will be added to require attendance at an orientation meeting prior to submission of the application for Plan IV option for rank classification.

(a) The statutory authority for the promulgation of an administrative regulation relating to the advancement in rank classification is KRS 157.390 and 161.095.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate is 704 KAR 20:022.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.095 requires the Education Professional Standards Board, with the advice of the State Board of Education, to establish an administrative regulation identifying procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the procedures for a continuing education alternative to the planned fifth-year program for certificate renewal.

(d) The benefits expected from administrative regulation are: The amendment to this regulation will allow the applicant to gain a better understanding of the expectations of this continuing education alternative to the planned fifth-year program.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all teacher, school district personnel, and teacher preparation programs as soon as the regulation is effective.

Date September 1998

(1) **704 KAR 20:084**, Interdisciplinary early childhood education, birth to primary.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan Leib, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, fax (502) 573-1610.

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

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

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

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

(7) Information relating to the proposed administrative regulation. In Section 2(a), the NTE Core Battery will be deleted as a requirement for Birth-primary Teacher Certification.

(a) The statutory authority for the promulgation of an administrative regulation relating to teacher certification is KRS 161.028, KRS. 161.020, and 161.030.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:084.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualifications for his respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires a teacher education institution to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary; the teacher standards; and the standards for approval of a program leading to this certificate.

(d) The benefits expected from administrative regulation are: Applicants who are applying for the Birth-primary Certification will no longer be required to successfully complete a basic skills test. They complete a basic skills test prior to being admitted to a Teacher Preparation Program.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all teachers, school district personnel, and teacher preparation programs as soon as the amendment is effective. This test will be removed from the brochure that lists all of the teacher assessment requirements for certification.

FINANCE AND ADMINISTRATION CABINET School Facilities Construction Commission

September 23, 1998

(1) **750 KAR 1:010**. Commission procedures.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 11 a.m. in Room 267, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission, Room 267, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-5582, FAX (502) 564-2653.

(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.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 157.617 and 157.622.

(b) The proposed regulation will describe the procedures to be used in implementing Senate Bill 309 in order to allocate savings from refinancings in which the School Facilities Construction Commission was a participant.

(c) The necessity and function of the proposed administrative regulation is as follows: The School Facilities Construction Commission was established for the purpose of assisting local school districts to meet the school construction needs of the state. The General Assembly has appropriated funds for administrative support and debt service to allow the commission to implement its program. This administrative regulation describes the procedures the School Facilities Construction Commission will utilize in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings.

(d) The benefit expected from this proposed administrative regulation is as follows: The public school districts in the state will realize the benefits of refinancing bond issues, in which they and the SFCC were participants, immediately by having local money dedicated to debt service payments made available for use by the district to service new debt.

(e) This administrative regulation will be implemented by providing copies to appropriate personnel in the Kentucky Department of Education and to the 176 superintendents of the public school districts in Kentucky. In addition, the Executive Director of the School Facilities Construction Commission will work with the investment banker community within the state, who are instrumental in conducting bonds sales for school districts, to see that they have a clear understanding of the regulations and to insure that debt services schedules constructed on bond financings follow the procedures set forth in the regulations.

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

October 9, 1998

(1) **803 KAR 50:010.** Hearings; procedure; disposition.

(2) The Kentucky Occupational Safety and Health Review Commission intends to amend the regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 1 p.m., at the offices of the KOSH Review Commission, #4 Millcreek Park, Millville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: Sue Ramsey, Assistant Director, KOSH Review Commission, #4 Millcreek Park, Millville Road, Frankfort, Kentucky 40601; Phone (502) 573-6892, Fax (502) 573-4619.

(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 KOSH Review Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health hearings, procedure and disposition is KRS 338.071 and 338.081.

(b) The administrative regulation that the KOSH Review Commission intends to promulgate will amend 803 KAR 50:010, Hearings; procedure; disposition.

(c) The administrative regulation the review commission intends to amend will add provisions for hearing and proper disposition of occupational safety and health discrimination contests, disposition of exhibits, remand of a case to a hearing officer when appropriate, sanctions which may be imposed upon a party or intervenor for violation of a procedure or order, and authority for publication of selected decisions. Further, the amendment will change the date upon which a hearing officer's decision will become final, from 40 days after issuance to 50 days after issuance and will provide that a decision and order of the review commission will become final 35 days after issuance rather than upon the date of issuance. The amendment will also delete the provision for three days mailing time.

(d) The benefits expected from this amendment to administrative regulation are:

1. Provides procedures governing occupational safety and health discrimination contests. In 1992, through enactment of KRS 338.121(3)(b), the authority for hearing and disposition of occupational safety and health discrimination contests was conveyed from Franklin Circuit Court to the KOSH Review Commission; however, the review commission's administrative regulation has not been amended to reflect this additional mandate. This amendment establishes procedures for these cases.

2. Provides for disposition of evidentiary exhibits. This amendment will allow parties to a case to request the return of an exhibit after conclusion of the case and will allow destruction of exhibits of a nonhistorical nature.

3. Increases by 10 days the date upon which a hearing officer's recommended order becomes a final order of the review commission. This provision will allow a more adequate period of time for consideration of petitions for discretionary review or for the commission to decide whether the hearing officer's recommended order should be called for further review.

4. Provides 35 days from issue of the commission's decision and order to allow a party or intervenor 10 days to request reconsideration, 10 days for an opposing party to respond and 15 days for the commission to rule upon the request.

5. Provides that the commission may remand a case to a hearing officer in appropriate circumstances. This amendment will allow the review commission to assure that sufficient facts exist in the record upon which to base a fair disposition of the case and to assure the record is complete for appeal to a higher court.

6. Provides specific sanctions for violation of procedures or orders of the review commission by a party or intervenor. This provision will assure fairness to the parties, will result in more orderly disposition of cases before the review commission and will discourage the filing of contests for purpose of delay.

VOLUME 25, NUMBER 5 -- NOVEMBER 1, 1998

7. Provides for publication of selected decisions. This provision will help to assure fairness to the parties through authorization for publication of Kentucky occupational safety and health case law.
8. Clarification and simplification of language and elimination of redundancy. Conforms with the requirements of KRS Chapter 13A and will have the positive effect of making the commission's administrative regulations more understandable to a layperson.
9. Because the administrative regulation contains language stating that service is accomplished upon date of mailing, the provision for 3 days mailing time for responsive pleadings is superfluous and will be eliminated.
- (e) The administrative regulation will be implemented as follows: Through normal operating procedures.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals

October 13, 1998

- (1) Regulation number and title: **805 KAR 7:010**. Definitions.
- (2) The Department of Mines and Minerals intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.
- (b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:010, as follows: The 1996 and 1998 General Assembly amended Kentucky's mine safety laws substantially. This proposed amendment defines new and amended terminology now found in KRS Chapter 351 and terminology used by the Department of Mines and Minerals.
- (c) The necessity and function of the proposed administrative regulation is: The proposed amended regulation will conform the definitions to the recent changes in KRS Chapter 351. Also, the proposed regulation more clearly and accurately describes the persons and conduct covered by KRS Chapter 351.
- (d) The benefits expected from administrative regulation are: The proposed amendment assures conformity with recent amendments to KRS Chapter 351. Also, these revisions clarify the categories of miner training and the requirements for certification.
- (e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

- (1) Regulation Number and Title: **805 KAR 7:020**. Training and certification of inexperienced miners.
- (2) The Department of Mines and Minerals intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.
- (b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:020, as follows: The proposed amended regulation adds areas in which inexperienced miners are to be trained, identifies the new procedure for obtaining

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

certification to be a coal miner, and identifies the Mining Board as the entity which oversees and controls the certification and training programs.

(c) The necessity and function of the proposed administrative regulation is: The 1996 and 1998 General Assembly amended Kentucky's mine safety laws substantially. This proposed amended regulation conforms inexperienced miner training to the amended KRS Chapter 351 and the goals set out therein.

(d) The benefits expected from administrative regulation are: The proposed amended regulation enhances the quality and breadth of inexperienced miner training. This amendment makes more effective the training and education received by miners, thereby effecting a safer workplace.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

(1) Regulation number and title: **805 KAR 7:030**. Annual retraining.

(2) The Department of Mines and Minerals intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:030, as follows: The proposed amended regulation identifies the Mining Board as the entity which oversees the annual retraining of coal miners and sets out the new requirements and method of verification concerning annual retraining.

(c) The necessity and function of the proposed administrative regulation is: The 1996 and 1998 General Assembly amended Kentucky's mine safety laws substantially. This proposed amendment conforms the regulation governing annual training to the amended KRS Chapter 351 and the goals set out therein.

(d) The benefits expected from administrative regulation are: The proposed amended regulation enhances the quality of the annual training received by miners. This amendment makes more effective the training and education received by experienced miners, thereby effecting a safer workplace.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

(1) Regulation number and title: **805 KAR 7:040**. Training of newly employed miners.

(2) The Department of Mines and Minerals intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:040, as follows:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

The proposed amended regulation identifies the Mining Board as the entity which oversees the training of newly employed miners. Also, the amendment adds areas of training for newly employed miners and specifies who can give that training.

(c) The necessity and function of the proposed administrative regulation is: This proposed amendment conforms the training of newly hired miners to the requirements of KRS Chapter 351 as recently amended.

(d) The benefits expected from administrative regulation are: The proposed amended regulation improves the quality of the training received by newly hired miners. This amendment makes more effective the training and education received by experienced miners, thereby effecting a safer workplace.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

(1) Regulation number and title: **805 KAR 7:050**. Training of miners for new work assignments.

(2) The Department of Mines and Minerals intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:050, as follows: The proposed amended regulation identifies the Mining Board as the entity which oversees the training of miners for new work assignments. Furthermore, it revises the areas of required training for new work assignments and establishes procedure for verification of that training.

(c) The necessity and function of the proposed administrative regulation is: This proposed amended regulation conforms the training of miners for new work assignments to the requirements of KRS Chapter 351 as recently amended.

(d) The benefits expected from administrative regulation are: The proposed amended regulation improves the quality and breadth of training received by miners when they change work assignments. This amendment makes the training and education received by miners more effective and tends to make the workplace safer.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

(1) Regulation number and title: **805 KAR 7:060**. Training of miners for new work assignments.

(2) The Department of Mines and Minerals intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:060, as follows: The proposed amended regulation identifies the Mining Board as the entity with the authority to approve programs for the training of inexperienced coal miners. It authorizes the Department of Mines and Minerals to monitor such programs and sets out the procedure for obtaining

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

permission to establish such programs.

(c) The necessity and function of the proposed administrative regulation is: This proposed amended regulation conforms the oversight and establishment of miner training programs to the requirements of KRS Chapter 351 as recently amended.

(d) The benefits expected from administrative regulation are: The proposed amended regulation will make coal mines safer workplaces by assuring thorough and competent miner training programs.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

(1) Regulation number and title: **805 KAR 7:070**. Training of miners for new work assignments.

(2) The Department of Mines and Minerals intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.

(b) The administrative regulation that the Department of Mines and Minerals intends to promulgate amends 805 KAR 7:070, as follows: The proposed amended regulation sets out the requirements for maintaining records of miner training by the licensee. It abolishes the requirements concerning monthly reports regarding miner training.

(c) The necessity and function of the proposed administrative regulation is: This proposed amended regulation conforms training record maintenance to KRS Chapter 351 as recently amended and relieves licensees and the Department of Mines and Minerals of unnecessary and burdensome paperwork.

(d) The benefits expected from administrative regulation are: The proposed amended regulation simplifies the requirements with regard to miner training records, while still enabling the Department of Mines and Minerals to monitor compliance with the miner training laws.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

October 13, 1998

(1) Regulation number and title: **805 KAR 7:090**. Hazard training.

(2) The Department of Mines and Minerals intends to propose the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 1 p.m., (ET), in the Conference Room at 2624 Research Park Drive, Lexington, Kentucky 40511.

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

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

2. A minimum of 5 persons, or the administrative body or association, 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 is not received from the required number of people at least 10 days prior to November 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephan L. Taylor, General Counsel, Department of Mines and Minerals, Post Office Box 14080, Lexington, Kentucky 40512-4080, telephone (606) 246-2026, or facsimile the request to (606) 246-2038.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Mines and Minerals 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 miner training, education and certification is KRS 351.106.

(b) The summary of the administrative regulation that the Department of Mines and Minerals intends to promulgate as 805 KAR 7:090 is as follows: The proposed regulation sets out the required training for noncoal miners or persons not regularly exposed to the hazards of coal mines before such persons are allowed into coal extraction or production areas of a mine. It also sets out requirements concerning documentation of such training.

(c) The necessity and function of the proposed administrative regulation is: Visitors and other persons who have rare occasion to be at a

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

coal mine need a certain amount of training in order to make their visit as safe as possible.

(d) The benefits expected from administrative regulation are: The proposed regulation will save people from injury and death.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Department of Mines and Minerals, Division of Training and Education, through authorized classes, and the Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

October 2, 1998

(1) **806 KAR 18:080**, Association uniform data collection.

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

(3) A public hearing to receive written and oral comments on the proposed administrative regulation has been scheduled for November 23, 1998, at 2 p.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602. Phone - (502) 564-6032. Fax - (502) 564-1456.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is KRS 304.2-110(1).

(b) The administrative regulation that the department intends to promulgate will amend 806 KAR 18:080, Association uniform data collection. The amendment will require associations to report the number of members enrolled in nonself-insured and self-insured plans. In addition, the amendment will require the association to provide a statement regarding eligibility, degree of control by insurer, makeup of membership, and health insurance decision-making. Lastly, the amendment will also require associations that offer self-insured health benefit plans to file a financial statement with the department on an annual basis.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment to 806 KAR 18:080 is necessary in order for the department to collect data regarding the number of nonself-insured and self-insured health benefit plan members enrolled by associations. In addition, this amendment is necessary for the department to determine the financial status of associations that offer self-insured health benefit plans.

(d) The benefits expected from the administrative regulation are as follows: The proposed amendment to 806 KAR 18:080 will assist the department in gathering additional data regarding the associations that offer health benefit plans. In addition, this amendment will provide a means by which the department can review the financial stability of associations that offer self-insured health benefit plans.

(e) The administrative regulation will be implemented as follows: In addition to the other items currently required by 806 KAR 18:080, associations will be required to report additional information to the department including the number of members enrolled in either a nonself-insured or a self-insured health benefit plan. This report will remain due on a quarterly basis. In addition, associations that provide a self-insured health benefit plan will be required to file a financial statement with the department on an annual basis. The department will be responsible for reviewing the reports and the financial statements submitted by the associations pursuant to this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions

October 8, 1998

(1) New regulation: **808 KAR 1:140**, Examination fees.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Phone (502) 573-3390, Fax (502) 573-8787.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

- (a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 287.480(1)(b), 288.610(2), 289.730(2), 290.100(1), 291.430(3), 292.330(12)(d), 294.170(5), 366.023, and 368.090(2).
- (b) The proposed administrative regulation will not amend an existing regulation. It will set forth examination fees for the financial institutions licensed by the department.
- (c) The necessity and function of the proposed administrative regulation is as follows: The statutes administered by the department provide that financial institutions shall pay a fee to the department for examinations. A regulation is necessary to set forth the amount of the fee.
- (d) The benefits expected from the proposed administrative regulation are: The fees for examinations will be set forth in a regulation.
- (e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

October 5, 1998

- (1) New regulation: **808 KAR 12:011**, Repeal of 808 KAR 12:010.
- (2) The Department of Financial Institutions intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 - 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 - 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Phone (502) 573-3390, Fax (502) 573-8787.
- (b) On a request for a public hearing, a person shall state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that person who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Person who wish to file this request may obtain a request form from the Department of Financial Institutions at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 294.140(1).
 - (b) The proposed administrative regulation will repeal 808 KAR 12:010. The provisions of 808 KAR 12:010 are contained in the governing statute. Therefore, the regulation is unnecessary.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To repeal an unnecessary administrative regulation.
 - (d) The benefits expected from the proposed administrative regulation are: It will conform the department's regulations to the governing law.
 - (e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

**CABINET FOR HEALTH SERVICES
Office of Inspector General**

October 5, 1998

- (1) **902 KAR 20:160** - Chemical dependency treatment services and facility specifications.
- (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 November 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 November 30, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 - 1. "I agree to attend the public hearing."; or
 - 2. "I will not attend the public hearing."
- (a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.
 - (b) The cabinet intends to amend Section 3(10)(c) to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.
 - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of chemical dependency treatment programs.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(d) The benefits expected from these proposed amendments are that they will permit clinical personnel to perform tasks within the limits of their statutory scope of practice.

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

October 5, 1998

(1) **902 KAR 20:240** - Comprehensive physical rehabilitation hospital services.

(2) The Office of Inspector General intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 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 November 30, 1998, the public hearing will be canceled.

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

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105.

(b) The cabinet intends to amend Section 4(1)(a) and (9)(i)5 to recognize that clinical personnel may prescribe medication and diets within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of comprehensive physical rehabilitation hospitals.

(d) The benefits expected from these proposed amendments are that they will permit clinical personnel to perform tasks within the limits of their statutory scope of practice.

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

Department for Public Health Division of Adult and Child Health

October 15, 1998

(1) **902 KAR 22:040** - Charitable health care providers.

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

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

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

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

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

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of the administrative regulation relating to 902 KAR 22:040 are HB 128 of the 1998 GA, and KRS 304.40-075.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the registration of charitable health care providers.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: HB 128 mandates that charitable health

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

care providers be registered with the Cabinet for Health Services and that access to such care is encouraged within the Commonwealth of Kentucky.

(d) The benefit expected from the administrative regulation: To encourage the provision of charitable health care services particularly to those residing in rural areas and inner cities within the Commonwealth of Kentucky.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health will be responsible for the registration of charitable health care providers and the notification of health professional shortage areas. Also, the division will coordinate with the Department of Insurance who will ensure payment to these providers for their medical liability insurance.

Office of Inspector General

October 5, 1998

(1) **906 KAR 1:130** - Administrative subpoenas guidelines.

(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 November 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 November 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: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulations relating to programs and responsibilities of the cabinet is KRS 194.050(1).

(b) The cabinet intends to promulgate 906 KAR 1:130 to incorporate by reference administrative subpoenas guidelines used by the Office of Inspector General.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To establish guidelines for the issuance of administrative subpoenas authorized by 1998 Ky. Acts ch. 203, section 1.

(d) The benefits expected from the proposed administrative regulation are that the employees of the Office of Inspector General will follow guidelines in requesting and using administrative subpoenas.

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

Department for Medicaid Services

October 15, 1998

(1) **907 KAR 1:013**, Payments for inpatient hospital 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 November 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 November 30, 1998, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for inpatient hospital services are HB

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

785, 1998 Ky. Acts ch. 426, sec. 4(3), KRS 194.050 and 205.640.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will comply with provisions of HB 785 of the 1998 GA and to clarify the method by which outpatient costs for a hospital are determined.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

(d) The benefits expected from administrative regulation are: Compliance with provisions of HB 785 of the 1998 GA, removal of obsolete policy regarding nondisproportionate share hospitals, and clarification of the method by which outpatient costs for a hospital are determined.

(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.

October 15, 1998

(1) **907 KAR 1:060**, Medical transportation.

(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 November 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 November 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: Hiren B. Desai, 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 medical transportation is KRS 194.050 and 1998 Ky. Acts 426 sec. 4(3).

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:060 to revise and clarify definitions, to make formatting and drafting amendments in order to comply with KRS Chapter 13A, and to make minor clarifications to current policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to the service of transportation for access to medical 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: To revise and clarify licensure requirements and restrictions to comply with appropriate licensing agency requirements.

(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.

October 15, 1998

(1) **907 KAR 1:061**, Payments for medical transportation.

(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 November 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 November 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: Hiren B. Desai, 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).

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for medical transportation are KRS 194.050 and 1998 Ky. Acts 426 sec. 4(3).

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:061 to revise and clarify definitions, revise and clarify licensure requirements and restrictions to comply with appropriate licensing agency requirements and the requirements of the Department of Insurance, revise and update the Medicaid Transportation Services Manual for emergency services, revise and update payment methodology, to make drafting and formatting changes in order to comply with KRS Chapter 13A, and make minor clarifications to current policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services for medical transportation services.

(d) The benefits expected from administrative regulation are: Clarify policy related to licensure requirements and payment.

(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
20 KAR 1:040E

This emergency administrative regulation amends the current administrative regulation to allow for holders of unclaimed property to remit such property to the rightful owner. 1998 GA SB 339 changed the current law and required the immediate amendment of this administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 20 KAR 1:040 will be filed with the Regulations Compiler on October 15, 1998.

PAUL E. PATTON, Governor
JOHN KENNEDY HAMILTON, Kentucky State Treasurer

KENTUCKY STATE TREASURER

20 KAR 1:040E. Unclaimed properties; claims.

RELATES TO: KRS 393.010, 393.040, 393.110, 393.140, 393.150

STATUTORY AUTHORITY: KRS 393.130, 393.280

EFFECTIVE: October 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 393.130 allows the holder of unclaimed property or the Department of Unclaimed Property, Office of the Kentucky State Treasurer to turn that property over to a claimant upon proper proof. This administrative regulation defines what proof is proper and governs how that proof shall be made. This administrative regulation also governs regulation of finders of unclaimed property. [This administrative regulation relates to the claims process for unclaimed property, which owners and heirs shall follow; and the proof necessary for authorization of a claim refund.]

Section 1. Claims for unclaimed property held in an interest-bearing demand, savings or time deposit shall be filed in writing with the holder of the unclaimed property who maintains the interest-bearing account containing the unclaimed property. Claims for unclaimed property not held in an interest-bearing demand, savings or time deposit, shall be filed in writing with either the department or with the holder who remitted the unclaimed property to the department. All other claims for unclaimed property shall be made in writing filed with the department. [Claims for unclaimed property or the proceeds from the sale of unclaimed property shall be filed with the department. Upon receipt of the initial claims inquiry from a person having an interest in the property, the department shall send the required claim forms to be completed by the claimant; and request necessary documentation as proof of ownership.]

(1) Documentation to prove ownership shall consist of a driver's license or other picture identification, a document proving Social Security number; and, one (1) or more of the following:

- (a) Copy of birth certificate;
- (b) Copy of will;
- (c) Copy of probate distribution;
- (d) Copy of marriage certificate;
- (e) Copy of divorce decree;
- (f) Copy of documentation providing a connection with the reported address or business for the year cited as the "Date of Last Transaction" in the holder's report;
- (g) Copy of letters testamentary;
- (h) Copy of guardianship or trust agreement;
- (i) Notarized affidavit executed by an individual other than the claimant having knowledge of, and in support of, a claim when requested information or documentation is not available;
- (j) Signature verification cards of financial institutions;
- (k) Family or church records; and personal correspondence;
- (l) Newspaper articles, including marriage announcements and

birth or obituary notices;

(m) Other documentation which may be used in support of the claim include an income tax return, adoption records, court records, CD's, state dated checks, or other public or business records;

(2) In addition to items set out above, minimum requirements needed to establish ownership for various types of property shall be:

(a) Checking accounts: a check (blank or canceled) showing the account number for that bank, or a statement on that account which contains the account number;

(b) Savings account: a copy of the passbook showing the account number or correspondence referencing the account number;

(c) Safe deposit box: a copy of the safe deposit box rental receipt or correspondence referencing that rental;

(d) Wages: copies of W-2 forms, tax records or correspondence relating to that employment;

(e) Stocks or dividends: copies of a stock certificate of the business entity reported, correspondence relating to the stock certificate or a statement from the broker showing purchase or sale of that stock;

(f) Bearer bonds and certificates of deposit: a copy of the record of purchase;

(g) Insurance: a copy of the policy, or correspondence relating to that policy by policy number;

(h) Court funds: a copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, and appearance bond);

(i) Vendor checks: copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment; or a statement that the funds are still considered to be due and owing on the account;

(j) Claims by heirs of listed owners: if the claim is based on hardship, one (1) or more of the following documents shall be required: final decree of probate; death certificate; or an affidavit of "Proof of Death and Heirship" executed by a person disinterested in the claim may be acceptable when the decedent's estate was not probated;

(k) Cashier's checks shall be claimed by the payee as the owner unless the purchaser submits sufficient documentation to prove a superior claim;

(3) Claims by finders or agents of listed owner. The claim shall be based on a notarized contract with the owner or heir of the owner. The department shall contact the owner or claimant to make sure that the owner or the claimant is aware of the full amount of unclaimed property involved. The finder or agent shall provide the department:

(a) A notarized copy of the contract showing names, current address, and Social Security number or Federal Employer Identification numbers of all parties to the contract; and

(b) A notarized affidavit from the owner or heir of the owner for the executive or power to act on his behalf. The affidavit shall also stipulate that the finder or agent has explained to the owner or claimant the state law on unclaimed properties and that any unclaimed properties due to the owner or claimant can be claimed without a fee, free and simple;

(4) Stock certificates received through safe deposit boxes or directly from a holder will be released to the rightful owner by one (1) of the following methods:

(a) Stock certificate in the owner's name;

(b) Stock certificate in the name of the department with an affidavit ready for transfer to the owner;

(c) Payment of money received for the certificate if the certificate has been redeemed by the issuer or has been sold in accordance with state law; or

(d) Obsolete stock certificates in the original owner's name will be transferred directly to the owner. If the original owner is deceased, the lawful heirs must determine disposition.]

Section 2. Upon receipt of a claim for unclaimed property, a determination shall be made concerning whether or not there is

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

proper proof that the claimant is entitled to the claimed property. Proper proof shall consist of the following:

(1) Documentation to prove ownership shall consist of a driver's license or other picture identification, a document proving Social Security number; and, one (1) or more of the following as is needed to establish that the claimant is entitled to the unclaimed property:

(a) Copy of birth certificate;

(b) Copy of death certificate and copy of probate distribution or an order of the court appointing an administrator to an estate or a copy of an order from the court dispensing with administration or a small estate affidavit;

(c) Copy of marriage certificate;

(d) Copy of divorce decree;

(e) Signature verification cards of financial institutions;

(f) Copy of guardianship or trust agreement;

(g) In the event that the claimant can show that none of the above documentation is available or not applicable, the claimant may use other documentation in support of the claim including, but not limited to, the following: an income tax return, adoption records, court records, Certificates of Deposit, stale dated checks, public or business records, copy of documentation providing a connection with the reported address or business for the year cited as the "Date of Last Transaction" in the holder's report, newspaper articles (including marriage announcements and birth or obituary notices), family or church records, personal correspondence or a notarized affidavit executed by an individual other than the claimant having knowledge of a claim.

(2) In addition to items set out above, minimum requirements needed to establish ownership for various types of property valuing over \$300 shall be:

(a) Checking accounts: a check showing the account number for that bank, or a statement on that account which contains the account number;

(b) Savings account: a copy of the passbook showing the account number or correspondence referencing the account number;

(c) Safe deposit box: a copy of the safe deposit box rental receipt or correspondence referencing that rental;

(d) Wages: copies of W-2 forms, tax records or correspondence relating to that employment;

(e) Stocks or dividends: copies of a stock certificate of the business entity reported, correspondence relating to the stock certificate or a statement from the broker showing purchase or sale of that stock;

(f) Bearer bonds: If the department holds original bonds, then a copy of the bonds or information that establishes relationship to the bonds. If the department held the original bonds but sold them pursuant to KRS, then the claimant may use any evidence which establishes ownership of the bonds including copies of the bonds or lists of serial numbers and a relationship to the holder;

(g) Certificates of deposit: a copy of the certificate of deposit or a record of purchase;

(h) Insurance: a copy of the policy, or correspondence relating to that policy;

(i) Court funds: a copy of the court decree or court order for the case that was the source of the funds. (i.e., probate, condemnation, quiet title, divorce, child support, and appearance bond);

(j) Vendor checks: copies of accounts receivable billing, invoices, bills of lading or correspondence with the holder reporting and remitting the funds that show a business relationship for each payment, or a statement that the funds are still considered to be due and owing on the account;

(k) Claims by heirs of listed owners: final decree of probate, in the event of an intestate estate, an order of the court dispensing with administration or a court order appointing an administrator to the estate and a letter from the administrator of the estate allowing the release of the property from the estate;

(l) Cashier's checks shall be claimed by the payee as the owner unless the purchaser submits sufficient documentation to prove a superior claim.

(3) Claims by finders or agents of listed owner. The claim shall be based on a notarized contract with the owner or heir of the owner. The department may contact the owner or claimant to make sure that the owner or the claimant is aware of the full amount of unclaimed property involved. The finder or agent shall provide the

department;

(a) A notarized copy of the contract showing names, current address, and Social Security number or Federal Employer Identification numbers of all parties to the contract; and

(b) A notarized affidavit from the owner or heir of the owner for the executive or power to act on his behalf. The affidavit shall also stipulate that the finder or agent has explained to the owner or claimant the state law on unclaimed properties and that any unclaimed properties due to the owner or claimant can be claimed without a fee, free and simple; and

(c) Any documentation that the owner or claimant of the unclaimed property would have to exhibit in order to show proper proof of entitlement to the unclaimed property.

(4) Stock certificates received through safe deposit boxes or directly from a holder will be released to the rightful owner by one (1) of the following methods:

(a) Stock certificate in the owner's name;

(b) Stock certificate in the name of the department with an affidavit ready for transfer to the owner;

(c) Payment of money received for the certificate if the certificate has been redeemed by the issuer or has been sold in accordance with state law; or

(d) Obsolete stock certificates in the original owner's name will be transferred directly to the owner. If the original owner is deceased, the lawful heirs must determine disposition. [Payment of claims shall be authorized upon review of documentation submitted by claimant and approval by four designated department employees. Payment shall be made:

(1) In the name of, and mailed to, the established owner; or

(2) To the executor, executrix, administrator, administratrix of the estate or personal representative; the court appointed guardian; or to an heir for distribution to other heirs, if any.]

Section 3. If the claim for unclaimed property is made to a holder and not to the department, that holder shall inquire in writing to the department concerning whether there have been any other competing claims for that property. The department shall respond to the holder in writing within ten (10) business days of receipt of the inquiry indicating whether or not any other claims have been paid out of the property at issue or whether there are any competing claims. If there are any other competing claims or if other claims have been paid out of the property at issue, the holder shall not pay the claimant and the holder shall notify the claimant in writing of their right to request a hearing with the department.

Section 4. If claimant submits a claim for unclaimed property to a holder, and the holder determines that the claimant is entitled to the property and that there have been no other competing claims paid out of the same property, then the holder may pay the claimant. If the property was not held in an interest-bearing demand, savings or time deposit, and if the property has already been turned over to the department along with the holder's annual report on unclaimed property, then the holder may be reimbursed by the department for any claim paid only if:

(1) The holder submits written confirmation from the department that the department was contacted prior to the payment of the claim to determine if there were any conflicting claims or if there were any prior paid claims on the property; and

(2) The holder submits an affidavit declaring what proof was used to determine that the claimant was entitled to the property as required by Section 2 of this administrative regulation, and attaching to the affidavit copies of the proof relied on; and

(3) The holder submits proof that payment was made to the claimant.

JOHN KENNEDY HAMILTON, Kentucky State Treasurer

ROBERT S. JONES, Assistant Attorney General

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Robert S. Jones

(1) Type and number of entities affected: All holders of un-

claimed property will be affected by this regulation.

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

(a) Cost of living and employment in the geographical area in which the emergency amended 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 emergency amended administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

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

1. First year following implementation: For business and entities that may hold unclaimed property, there may a slight increase in paperwork and administrative time caused by the implementation of SB 339 for the first year and all following years. SB 339 allows claimants of unclaimed property to seek such property from the holder, not just the department who was the sole entity who returned unclaimed property under the previous law.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

1. First year: Some operational costs of the department will be increased; other costs will be decreased. There will be some costs associated with the implementation of this bill and the education of the public and the holders. Although there will be decreased department costs in that we will not be handling all property claims since claimants can approach the holders in certain instances, we will have increased administrative costs in maintaining records on interest-bearing accounts and on distributions of unclaimed property by the holder. Other than implementation costs as discussed, these costs will continue throughout the life of the regulation.

(a) Direct and indirect costs or savings:

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: See above.

(4) Assessment of anticipated effect on state and local revenues: Unable to anticipate effect on state revenues. Increased compliance with remittance of unclaimed property through reporting may increase the amount of unclaimed property received by the state.

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

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: Potential slight increased costs for holder of unclaimed property, no cost associated with the general public.

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of the public's interest in their unclaimed property.

(8) Assessment of expected benefits: Expected benefits would be to return more unclaimed property to its rightful owner in a way that is more efficient.

(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: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this emergency administrative regulation relate to any

aspect of a local government, including any service provided by that local government? No, unless the local government is a holder of unclaimed property.

2. State, what unit, part or division of local government this administrative regulation will affect. None, unless any unit, part or division of local government is considered the holder of unclaimed property.

3. State the aspect or service of a local government to which this administrative regulation relates. None

4. Estimate the effect this emergency administrative regulation will have 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

STATEMENT OF EMERGENCY 20 KAR 1:070E

This emergency administrative regulation amends the current administrative regulation to bring the hearing process in compliance with KRS Chapter 13B. 1998 GA SB 339 changed the current law and required the immediate amendment of this administrative regulation when it allowed for holders to distribute unclaimed property. It is necessary that individuals affected by this new process understand their rights to an administrative hearing. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 20 KAR 1:070 will be filed with the Regulations Compiler on October 15, 1998.

PAUL E. PATTON, Governor

JOHN KENNEDY HAMILTON, Kentucky State Treasurer

KENTUCKY STATE TREASURER

20 KAR 1:070E. Unclaimed property; administrative hearing, appeals process.

RELATES TO: KRS Chapter 13B, 393.010, 393.160

STATUTORY AUTHORITY: KRS 393.280

EFFECTIVE: October 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation governs the appeals and administrative hearings process when a decision regarding unclaimed property adversely affects a person and brings the current appeal process into compliance with KRS Chapter 13B. [This administrative regulation sets out the appeals and administrative hearings process when a department decision regarding unclaimed property adversely affects a person.]

Section 1. Any person adversely affected by a decision of a holder of unclaimed property regarding that property may request the department may to review the holder's decision and make a determination regarding the claim. [appeal the decision and request an administrative hearing.]

Section 2. Any claimant of unclaimed property whose claim is denied by the department may appeal the denial and request in writing an administrative hearing within thirty (30) days of the receipt of the denial.

(1) Upon receipt of a written request for an administrative hearing, the department shall [immediately] set the date, time, and place of the hearing and shall forthwith notify the person by regular U.S. mail. [The date set for the hearing shall be within thirty (30) days from the date the written request was received, unless otherwise agreed by the parties.]

(2) The Treasurer may [shall] appoint a hearing officer to conduct the hearing.

(3) Administrative hearings conducted pursuant to this section will be held in accordance with KRS Chapter 13B.

(4) If the hearing is conducted by an appointed hearing officer, the hearing officer shall submit the findings of fact, conclusions of law and recommended order to the Treasurer within sixty (60) days

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

after the conclusion of the hearing. The Treasurer shall make a determination and enter a final order. If the hearing is conducted by the Treasurer, the Treasurer within sixty (60) days after the conclusion of the hearing shall enter the findings of fact, conclusions of law and final order.

(5) Any final order issued by the Treasurer may be appealed to the Franklin Circuit Court within sixty (60) days after issuance. [The hearing officer shall make findings of fact, conclusions of law, and enter a final order.]

JOHN KENNEDY HAMILTON, Kentucky State Treasurer
ROBERT S. JONES, Assistant Attorney General
APPROVED BY AGENCY: October 15, 1998
FILED WITH LRC: October 15, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Robert S. Jones

(1) Type and number of entities affected: All claimants of unclaimed property and in particular the department.

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

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

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

1. First year following implementation: This regulation merely brings the current regulation into compliance with state law. There are no additional costs associated with this regulation.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

1. First year: This regulation merely brings the current regulation into compliance with state law. There are no additional costs associated with this regulation.

(a) Direct and indirect costs or savings:

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: See above.

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods: reasons why alternatives were rejected: This alternative was required to bring the current regulation into compliance with KRS Chapter 13B.

(8) Assessment of expected benefits: More fair and expedient administrative hearing process.

(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: 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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State, what unit, part or division of local government this administrative regulation will affect. None

3. State the aspect or service of a local government to which this administrative regulation relates. None

4. Estimate the effect this emergency administrative regulation will have 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

STATEMENT OF EMERGENCY

20 KAR 1:080E

This emergency administrative regulation governs the reports to be filed by holders of unclaimed property. 1998 GA SB 339 amended KRS 393.110 and required the immediate promulgation of this administrative regulation in that it is necessary to set up the reporting procedures before the statutorily mandated reporting deadlines. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 20 KAR 1:080 will be filed with the Regulations Compiler on October 15, 1998.

PAUL E. PATTON, Governor

JOHN KENNEDY HAMILTON, Kentucky State Treasurer

KENTUCKY STATE TREASURER

20 KAR 1:080E. Reports to be filed by holders of unclaimed property.

RELATES TO: KRS 393.110

STATUTORY AUTHORITY: KRS 393.110, 393.280

EFFECTIVE: October 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 393.110 mandates that the holder of unclaimed property annually makes certain reports to the State Treasurer concerning such property. This administrative regulation governs those reports, directing what must be included in the report and the filing of the report.

Section 1. Reports Filed by All Holders of Unclaimed Property that are Not Financial Organizations. All holders of any unclaimed property that are not financial organizations or banking organizations shall annually file with the Kentucky State Treasurer a report on such property. This report shall be made on Form 400A and shall be filed in the main office of the State Treasurer no later than the close of business on November 1st of each year.

Section 2. Remittance of Unclaimed Property. All holders of unclaimed property that is not property held in an interest-bearing demand, savings, or time deposit, shall annually turn over to the State Treasurer such property. The property shall be turned over to the State Treasurer by the close of business on the first day of November at the main office of the State Treasurer. If it is not feasible to turn such property over to the State Treasurer at the main office, the holder of such property shall contact the State Treasurer prior to November 1st and make other arrangements for the remittance of the property.

Section 3. Holders of Unclaimed Property that are Financial Organizations or Banking Organizations. All holders of unclaimed property that are financial organizations or banking organizations shall annually file with the State Treasurer a report on such property. The report shall be made on Form 400B. The report shall be filed at the main office of the State Treasurer no later than the close of business, November 1st each year.

Section 4. Reports on Property Held in Interest Bearing Account. When the holder of unclaimed property is required to place that property in an interest bearing account, the holder shall submit to the State Treasurer the following reports:

(1) Statements on the interest-bearing account holding unclaimed property. Such statements shall be the kind normally issued on interest-bearing accounts and shall be filed with the office of State Treasurer according to the holder's normal course of business but no less than quarterly. The statements shall include the value of the unclaimed property and the amount of interest paid on the account. The statements shall be filed at the main office of the State Treasurer.

(2) Reports on any amount paid out of an account holding unclaimed property. A report shall be filed within ten (10) business days by any holder paying any amount out of such account. The report shall include the name, Social Security number and the address of the property owner, the amount paid, the portion of the amount that represents interest paid and the portion that represents the original amount of unclaimed property, the date that the property was presumed abandoned, if not paid to the owner to whom the amount was paid, proof of payment, an itemization of any fees or expenses charged against the account and an affidavit indicating:

(a) What specific proof was used in determining that the person that received the amount/payment was the rightful claimant; and
(b) That the procedures for paying a claim for unclaimed property as outlined in 20 KAR 1:040 were followed.

(3) This report shall be filed at the main office of the State Treasurer.

Section 5. Incorporation by Reference. (1) The following are incorporated by reference:

(a) Form 400A, "1998 Unclaimed Property Report/Remit Form" (Nonfinancial Institutions) 1998;

(b) Form 400B, "1998 Unclaimed Property Report/Remit Form" (Financial Institutions) 1998;

(2) These forms may be inspected, copied or obtained at the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky, 40601, Monday through Friday from 8 a.m. through 4 p.m., est.

JOHN KENNEDY HAMILTON, State Treasurer
ROBERT S. JONES, Assistant Attorney General
APPROVED BY AGENCY: October 15, 1998
FILED WITH LRC: October 15, 1998 at noon

REGULATORY IMPACT ANALYSIS

Contact person: Robert S. Jones

(1) Type and number of entities affected: All holders of unclaimed property will be affected by this regulation.

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

(a) Cost of living and employment in the geographical area in which the emergency 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 emergency administrative regulation will be implemented, to the extent available from the public comments received: No public comments received; potential fiscal impact will be minimal.

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

1. First year following implementation: There will be costs of holders of affected unclaimed property in reporting. Similar reports are already required, therefore there should not be significant additional costs. In addition, holders of unclaimed property that was held in an interest-bearing demand, savings or time deposit shall also have to file a report on the account holding such property. This regulation was drafted in such a way as to allow the holder to use a report that they would use in the normal course of business.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

1. First year: Some operational costs of the department will be increased handling these reports and in tracking these required accounts. There will be some costs associated with the implementa-

tion of this bill and the education of the public and the affected holders. Other than implementation costs as discussed, these costs will continue throughout the life of the regulation.

(a) Direct and indirect costs or savings:

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: See above.

(4) Assessment of anticipated effect on state and local revenues: Unable to anticipate effect on state revenues.

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

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

(a) Geographical area in which emergency administrative regulation will be implemented: Implemented statewide, same as below.

(b) Kentucky: Potential slight increased costs for holder of unclaimed property, no cost associated with the general public.

(7) Assessment of alternative methods: reasons why alternatives were rejected: This was the only alternative possible as required by the wording of the statute and would allow for maximum protection of the public's interest in their unclaimed property.

(8) Assessment of expected benefits: Expected benefits would be to return more unclaimed property to its rightful owner in a way that is more efficient.

(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: This regulation is required to implement SB 339.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this emergency administrative regulation relate to any aspect of a local government, including any service provided by that local government? No, unless the local government is a holder of affected unclaimed property.

2. State, what unit, part or division of local government this administrative regulation will affect. None, unless any unit, part or division of local government is considered the holder of affected unclaimed property.

3. State the aspect or service of a local government to which this administrative regulation relates. None

4. Estimate the effect this emergency administrative regulation will have 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

STATEMENT OF EMERGENCY 301 KAR 2:226E

This emergency administrative regulation establishes a "youth waterfowl" hunting day when only juveniles under the age of sixteen (16) may hunt waterfowl. Waterfowl hunting season frameworks are established annually by the United States Fish and Wildlife Service. Under federal law, states which wish to establish waterfowl hunting seasons must do so within these federal frameworks. Development of the federal regulations involves consideration of harvest and population data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regula-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

tions are promulgated less than six (6) weeks before the opening dates of the hunting season. An ordinary administrative regulation cannot be adopted in the short time between final promulgation of federal regulations and the scheduled opening of state waterfowl hunting seasons, necessitating the promulgation of an emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for 301 KAR 2:226 was filed with the Regulations Compiler on September 23, 1998.

PAUL E. PATTON, Governor
C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:226E. Youth waterfowl hunting season.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 CFR Parts 20, 21
STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21
EFFECTIVE: September 23, 1998
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements. This administrative regulation establishes a special waterfowl hunting day for young hunters.

Section 1. Definitions. (1) "Adult" means a person who has reached his 18th birthday.

(2) "Waterfowl" means the species of duck, coot, merganser and goose for which an open season in Kentucky has been established by 301 KAR 2:221.

(3) "Youth" means a person who has not reached his 16th birthday.

Section 2. A youth:

(1) May hunt waterfowl on the second Saturday of October if he is accompanied by an adult.

(2) Shall obey the provisions of 301 KAR 2:221 and 301 KAR 2:222.

Section 3. An adult accompanying a youth who is waterfowl hunting:

(1) Shall:

(a) Remain in a position to take immediate control of the youth's firearm;

(b) Not hunt waterfowl;

(c) Not be required to possess a hunting license or waterfowl permit if he is not hunting.

(2) May hunt other species except waterfowl for which there is an open season.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: September 23, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: The number of young people who will participate in youth waterfowl hunts is unknown. Approximately 20,000 young people buy junior hunting licenses annually. All would be eligible for this hunt.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the cost of doing business.

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

1. First year following implementation: Participants in the youth waterfowl hunt established by this administrative regulation are required by statute to possess a junior hunting license and must comply with existing waterfowl regulations governing shooting hours, limits and methods of taking.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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: This administrative regulation should have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

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

(a) Geographical area in which administrative regulation will be implemented: The youth waterfowl hunt should cause a slight increase in economic activity near popular waterfowl hunting areas due to buying shells and equipment, travel and other hunting-related expenditures.

(b) Kentucky: On a statewide level, the increased economic activity will probably be indiscernible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Federal waterfowl frameworks permit a youth waterfowl season. The alternative of not taking advantage of this hunt was rejected because it would mean a loss of recreational opportunity.

(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: No detrimental effect.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, Federal Register, Vol. 63, No. 167/Friday, August 28, 1998.

2. State compliance standards. State seasons and bag limits are within the federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. The federal waterfowl framework allows states to establish one day of youth waterfowl hunting on either a Saturday, Sunday, or holiday.

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

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

STATEMENT OF EMERGENCY
704 KAR 3:480E

This emergency administrative regulation, as approved by the Kentucky Board of Education, provides direction to implement the Early Reading Incentive Grant Program initiated by the 1998 General Assembly in 1998 Ky. Acts ch. 580. This administrative regulation establishes the application process, the criteria for grant awards, and the responsibility of local schools and school districts in implementing the program. This emergency administrative regulation is necessary to enable distribution of early reading incentive grant awards to local school districts for the 1998-1999 school year, consistent with the 1998 General Assembly appropriation of 1997-98 carry-over funds for this purpose. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed concurrently with the Legislative Research Commission.

PAUL PATTON, Governor
HELEN MOUNTJOY, Chairperson

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Learning Programs Development

704 KAR 3:480E. Early reading incentive grants.

RELATES TO: 1998 Ky. Acts ch. 580

STATUTORY AUTHORITY: KRS 156.070, 1998 Ky. Acts ch. 580

EFFECTIVE: October 14, 1998

NECESSITY, FUNCTION, and CONFORMITY: KRS 156.160 authorizes the Kentucky Board of Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance. 1998 Ky. Acts ch. 580 establishes the Early Reading Incentive Grant Program and authorizes that administrative regulations be promulgated to establish the grant application process and selection criteria. This administrative regulation sets for the eligible grant applicants, application content and criteria, including matching funds requirements.

Section 1. Definitions. (1) "Model" means an instructional approach which:

- (a) Is based on reliable, replicable research;
 - (b) Includes a balance of instructional strategies that support the attainment of reading and phonics skills contained in 704 KAR 3:303, the Kentucky Program of Studies; and
 - (c) Includes skills that lead to reading success.
- (2) "Qualified student" means one (1) who:
- (a) Is enrolled in public school;
 - (b) Is in the primary program as defined under KRS 158.030;

and

- (c) Is currently reading at low levels or exhibits characteristics that are predictive of reading problems.

Section 2. Purpose of Program. A grant provided through the Early Reading Incentive Grant Program may be used to supplement a school's program, individually or in partnership with other entities. However, a grant shall not be used to supplant funding for existing instructional activities.

Section 3. Selection of Grants. (1) A public school that enrolls primary students, including the Kentucky School for the Blind and the Kentucky School for the Deaf, shall be eligible to apply for a grant.

(2) A school council or, if none exists, a school, may apply for grants individually or jointly with another school.

(3) A grant application shall only be advanced by a school.

(4) A grant application shall not override an individual school council's policy authority over instructional practices to meet identified reading needs pursuant to KRS 160.345.

(5) A grant application shall be based on selection of a model that meets identified reading needs.

(6) A grant application shall indicate the fiscal agent. The fiscal agent for the Kentucky Schools for the Blind or Deaf shall be the Kentucky Department of Education.

(7) Funds shall be made available to eligible applicants through a Request for Proposal (RFP) process. The contents of each RFP notice shall be subject to approval by the Early Reading Incentive Grant Steering Committee.

(8) To be eligible for funding, an application shall include the contents required in 1998 Ky. Acts ch. 580, sec. 1(3)(a)-(f) and specify matching funds that will be allocated to directly support the implementation of the model.

(9) A grant application shall be subject to approval by the principal and superintendent to ensure that the grant application includes adequate resources to implement the model.

(10) Matching funds shall include funds allocated by or under the discretion of the school council, or if none exists, by the local board of education.

(11) Matching funds may be identified from other state, federal, local or nonpublic sources, within the uses and conditions set forth by the source of those funds.

(12) The criteria for selection of applications for funding shall include the following:

- (a) Effectiveness of the school process for identifying needs and qualified students;
- (b) Extent and level of need;
- (c) Effectiveness of the model in meeting the needs identified;
- (d) Level of commitment;
- (e) Capacity to implement the model;
- (f) Quality of the plan to evaluate results; and
- (g) Efficiency and effectiveness of the budget, including use of proposed grant funds and matching funds.

(13) After consideration of the criteria established in subsection (9) of this section, geographic distribution may be considered.

(14) The Department of Education shall make available materials to assist schools in the preparation of a grant application.

(15) Review of applications shall be conducted by a panel which includes persons knowledgeable of 704 KAR 3:303, the Kentucky Program of Studies, and early reading instruction, and at least one (1) person who is currently teaching primary students.

Section 4. Grant Allocations and Requirements. (1) The award size or range of grants shall be determined by the Early Reading Incentive Grant Steering Committee. The maximum time period for use of grant funds shall be twenty-seven (27) months.

(2) In determining the amount of grant award, the following shall be considered:

- (a) The cost of proposed activities needed to implement the model selected;
 - (b) The need for and amount of other funds to support activities related to the model; and
 - (c) The number of students being served.
- (3) Grant funds shall be limited to direct costs required to implement the model.

(4) Monitoring of awarded grants shall include at least the following:

- (a) Fiscal reports submitted to the Department of Education;
- (b) Program evaluation reports on the implementation of the model; and
- (c) Documentation of the model's impact on the reading of qualified students served.

(5) Prior to submitting each annual report to the Interim Joint Committee on Education as required by 1998 Ky. Acts ch. 580, sec. 1(6), the Department of Education shall, in consultation with the Early Reading Incentive Grant Steering Committee, report to the Kentucky Board of Education regarding grant activities and the use of grant funds.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 14, 1998 at 2 p.m.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

REGULATORY IMPACT ANALYSIS

Agency Contact: Debbie Schumacher

(1) Type and number of entities affected: 176 school districts, 828 elementary schools.

(2) Direct and indirect costs or saving to those affected: None

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

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

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

1. First year following implementation: Grants are supplemental funds to schools to support improved reading instruction in the primary program.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Administrative costs for soliciting and selecting competitive applications and providing fiscal oversight to recipients.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Part of cost to administer new grant program.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: Supplementary funds to the schools selected.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 Ky. Acts ch. 580 and KRS Chapter 13A require that this be accomplished by administrative regulation.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect:

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. The administrative regulation applies equally to all public schools choosing to apply for Early Reading Incentive Grants.

STATEMENT OF EMERGENCY

750 KAR 1:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation, 750 KAR 1:010E, should be enacted on an emergency basis in order to describe the procedures that will be used to implement the amendment to KRS 157.622 passed by Senate Bill 309 which provides for the School Facilities Construction Commission (SFCC) to allocate all refinancing savings to the local school district. This administrative regulation is needed on an emergency basis because the statute is retroactive. It provides for the SFCC to allocate all refinancing savings beginning July 1, 1997 to be dedicated to the local school district. From July 1, 1997 to July 1, 1998, there were eighty (80) separate refinancings completed by the SFCC. Each of these must have completely new debt service schedules completed. Furthermore, each of these bond issues has already

had, or will have within the next sixty (60) days, a payment due on the bonds. In addition, there are local school districts preparing to sell new bond issues that need to use the savings that have been generated to which they are now entitled. Because of these facts, it is incumbent upon the SFCC to move as expeditiously as possible to implement this statute. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

DR. ROBERT TARVIN, Executive Director

FINANCE AND ADMINISTRATION CABINET School Facilities Construction Commission

750 KAR 1:010E. Commission procedures.

RELATES TO: KRS Chapter 157

STATUTORY AUTHORITY: KRS 157.617, 157.622

NECESSITY, FUNCTION, AND CONFORMITY: The School Facilities Construction Commission was established for the purpose of assisting local school districts to meet the school construction needs of the state. The General Assembly has appropriated funds for administrative support and debt service to allow the commission to implement its program. This administrative regulation describes the procedures the School Facilities Construction Commission will utilize in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school districts, determining allowable expenditure of funds, [and] cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project, and allocating savings from refinancings. ~~(This amendment redistributes the maximum amount of fees authorized by the commission to be paid to financial advisors for services performed for commission and local school board bond issues, and corrects the name of the commission referenced in the administrative regulation to comply with statutory language contained in KRS 157.617.)~~

Section 1. Definitions. (1) "Level repayment schedule" is one in which the combined annual amount of principal and interest payments for each issue of bonds remains relatively constant over the life of the issue.

(2) "Maximum annual repayment amount" is the maximum aggregate total of SFCC annual payments for all bonds issued for a particular school district in which the SFCC has participated. If a bond series has been refunded, the original issue and debt schedule shall be the one used in making this computation.

(3) "Offer of assistance" is the amount available for a school district from a current biennium along with any allocation available from a prior period which has not expired according to KRS 157.622(5) and (7).

(4) "Total interest" is the first gross interest payment of the debt service for the SFCC portion of the schedule.

(5) "Daily interest" is the total interest divided by the number of days in the first coupon.

Section 2. Eligibility. (1) The School Facilities Construction Commission shall use the statement of need and available local revenue as certified by the State Board for Elementary and Secondary Education in determining the rate of participation of each school district in any given biennium. Eligibility for participation as established in KRS 157.620(1) shall be certified by the State Board for Elementary and Secondary Education.

(2) A school district retaining capital outlay funds in its current expense general fund under the provisions of KRS 157.420 in the year preceding the biennium in which funds are available or during the biennium shall be ineligible to participate in the SFCC Program during such funding period.

Section 3. Rate of Participation. The rate of participation of each "eligible district", as defined by KRS 157.615, shall be determined by dividing the unmet needs of such respective district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium. In the event there are insufficient funds budgeted in the first year of the biennium to fund all

the requests, bond sales will be scheduled in the order in which the School Facilities Construction Commission receives requests for approval of bond sales. All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the School Facilities Construction Commission, the Executive Director of the School Facilities Construction Commission shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance. These requirements shall include the amount of local revenue to be expended as certified by the State Board for Elementary and Secondary Education, the priority order of facilities to be built as certified by the State Board for Elementary and Secondary Education, and the sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

Section 5. Acceptance of Offer of Assistance. [(1)] Within thirty (30) days of receipt of the offer of assistance, the local board of education shall notify the School Facilities Construction Commission of acceptance or rejection of the offer of assistance. The local district response shall indicate the amount of the offer it plans to commit to construction or renovation immediately and/or the amount it wishes to count as cumulative credit [hold-in-its-escrow-account]. A district not responding within thirty (30) days shall be declared ineligible and the offer of assistance withdrawn and redistributed to the eligible recipients. In extenuating circumstances and upon written request within the original thirty (30) day period, a single thirty (30) day extension may be granted by the Executive Director of the School Facilities Construction Commission.

~~[(2) Within ninety (90) days of the offer of assistance the local district shall provide the School Facilities Construction Commission with a copy of the project BG-1 form approved by the Department of Education.~~

~~[(3) Within 120 days of the offer of assistance the local district shall provide the School Facilities Construction Commission with an executed deed, Title Opinion, and Certificate of Title Insurance for the project site. If the site acquisition process is in litigation, an extension may be granted by the School Facilities Construction Commission upon written request of the local board of education. Under no circumstances will the extension go beyond the biennium in which the offer was made.]~~

Section 6. Review of Building Plans. The review and approval of building plans shall be the responsibility of the Kentucky Department of Education.

Section 7. Allowable Expenditures of Funds. All funds available from "available local revenue", as defined by KRS 157.615, shall be expended before funds generated by bond sales authorized by the SFCC are expended. All funds available for a project shall be expended for the purpose of major renovation and/or construction of the identified project except that the balance of funds remaining after the completion of the project may be expended on the next project on the approved facilities plan of the respective districts. Such cost may include site acquisition, providing architectural and engineering services, financial and legal services, and equipment. The site acquisition cost shall be limited to the lesser of the actual cost of acquiring a site or the fair market value of the site as determined by qualified appraisal obtained by the School Facilities Construction Commission and charged to the project account. In no case shall School Facilities Construction Commission funds or funds from the restricted account be used to purchase a site greater than that required by state board administrative regulations for construction of the approved project. In no case shall School Facilities Construction Commission funds or funds from the restricted account be used to reimburse the local board of education for a site acquired before enactment of KRS 157.611. Construction costs may include the cost of fixed equipment and movable equipment, but may not include the cost of supplies as defined by "Kentucky School Financial Accounting System" Instruction Manual.

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the School Facilities Construction Commission shall determine whether the local school district

will issue the bonds or the SFCC will issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and instrumentality of the board of education. ~~[the local fiscal court or municipal government. Such a request shall be submitted to the commission at the time the local school district accepts the offer of assistance.]~~

(2) If the commission grants permission to issue bonds at the local level, the procedures for issuing the bonds shall be as follows:

(a) The local board of education shall obtain the services of a financial advisor;

(b) The contract with the financial advisor shall be submitted to the School Facilities Construction Commission for final approval after signature by the local school district and the financial advisor;

(c) The local board of education shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet eligibility criteria provided by the School Facilities Construction Commission.

(3) In situations where the size of the bond issues is small (less than \$500,000) or there is no local participation in the repayment, the School Facilities Construction Commission may determine that it is in the best interests of the School Facilities Construction Commission and the local school board for the School Facilities Construction Commission to manage the bond sale procedures. In cases where this determination is made, the following shall apply:

(a) The bonds will be sold in the name of the School Facilities Construction Commission;

(b) The School Facilities Construction Commission shall obtain the services of a financial advisor;

(c) At the discretion of the School Facilities Construction Commission, multiple projects may be combined into single bond issues. These will generally be limited to small projects and projects where the respective construction bid dates are contemporaneous;

(d) The School Facilities Construction Commission shall obtain the services of a trustee, paying agent, and registrar. Such institution shall meet the eligibility criteria provided by the School Facilities Construction Commission.

(4) The following procedures shall be followed by all participating districts in construction of SFCC debt service schedules:

(a) The School Facilities Construction Commission's portion of the bond sale shall be limited to a twenty (20) year issue, with level repayment schedule. The maximum annual repayment amount shall not exceed the offer of assistance from the School Facilities Construction Commission;

1. The debt service schedule shall always have twenty (20) years of payments based on six (6) month intervals or forty (40) payments. If the payments begin so that only one (1) payment is made in the first fiscal year of the schedule, payments may extend over twenty-one (21) fiscal years; however, in such cases the amounts of the first and last payments combined shall not exceed the amount of one (1) annual payment.

2. Annual payments shall be based on a fiscal year. The fiscal year of the SFCC shall be the same as used by state government, beginning on July 1 and ending the following June 30. All schedules shall be prepared in such a way that annual amounts based on a fiscal year are presented in a clear, easy-to-read format while each interest and principal payment is both segregated and totaled by payment period.

(b) The local school district's portion of the bond sale shall be structured to meet the unique financial needs of the district. Debt service on the bonds issued shall include the minimum amount required for eligibility to participate in the program as certified by the State Board for Elementary and Secondary Education. The minimum term of the local bond issue to meet eligibility criteria shall be twenty (20) years. At the discretion of the local board of education, the bond issue may include a local contribution to debt service in excess of the minimum required, and the length of the local portion of the repayment schedule may exceed twenty (20) years;

(c) Interest collected and accrued on funds derived from the bond sale shall be allocated to the debt service schedules of the school district and the School Facilities Construction Commission in the same proportions as its respective participation in the bond issue;

1. For allocation purposes, each month is calculated as thirty (30) days.

2. The accrued interest allocated to the SFCC is calculated by multiplying the number of days times the "daily interest" as defined in

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 1 of this administrative regulation.

3. The number of days is calculated from the issue date of the bonds to the day the bonds are delivered, excluding the day of settlement.

4. For a typical six (6) month coupon, the number of days would be 180. For a longer coupon (i.e., seven (7) months) the divisor would be 210 days.

5. If local payments are involved in the bond issue, this same method shall be used to allocate the accrued interest available to the local district.

(d) The proceeds of the bond sale shall be continually invested until expended on the project or until the project is completed. Any remaining proceeds or investment income received after completion of the project shall be applied to the debt service. Credit against the district's and the commission's debt service schedule shall be applied in the same percentage as the participation in the bond issue or, if permitted by the bond resolution or indenture, excess funds may be applied to an approved project next in order priority;

(e) A certificate of project completion shall be filed with the School Facilities Construction Commission by the local school district. The certification shall summarize the application of the bond proceeds, investment earnings, and any remaining funds from either source. The certificate shall also verify the use of cash contribution as may be required for eligibility by the local school district;

(f) Fees paid to a financial advisor shall be in accordance with the following fee schedule. Fees exceeding this schedule shall be paid by the local board of education.

Maximum Fee Schedule
Services and Expenses of Fiscal Agent
7,500 shall be permitted as a minimum fee on any amount of bonds issued; otherwise,
\$11 per \$1,000 on the first \$1 million;
\$10 per \$1,000 on the second million; and
\$4 per \$1,000 all over \$2 million.

Fee is based upon the amount of bonds actually issued.

Fee to include attorney fees, printing of bonds and official statements, advertising the bond issue, travel of the fiscal agent, and other normal expenses related to the bond closing.

Fee not to include title search or rating service.

Section 9. Cumulative Credit. Any eligible district which fails in any budget period to receive an allocation of state funds sufficient to fund the first priority project on the approved facilities plan of the district may request the approval of the School Facilities Construction Commission to accumulate credit subject to the availability of funds, for its unused state allocation for a period not to exceed four (4) years. Districts which receive funds in excess of those required to complete the first project may apply those funds to the next priority project on their approved facilities plan. In the event there are insufficient funds to complete the next project, those funds may accumulate as previously outlined. All fund credit accumulated in this manner shall be forfeited at any time that the local district fails to meet the eligibility criteria.

Section 10. Refinancing Savings. Savings that occur as the result of a refinancing in which the School Facilities Construction Commission was a participant shall be divided as follows and in the following order or priority:

(1) Where the commission's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service can be maintained on behalf of the commission, it shall be maintained at the same annual amount; therefore, lowering the local district's account for annual debt service payments by the amount of the total savings on the refinancing. Consequently, the bonding capacity of the local district shall be increased allowing the district to pursue its next facility priority. Any accrued interest shall be deemed a part of the total savings.

(2) On refinancings which already have incurred debt service payment(s), the amount of annual savings that accrued to the commission shall be rolled forward and added to the commission's last payment(s) of the commission's share of the debt service, thereby

insuring that the total savings over the life of the bond issue accrues to the account of the local district.

(3) Where the commission's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the commission is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative credit with the SFCC. These credits shall have no expiration time period for their use.

DR. ROBERT E. TARVIN, Executive Director

ANGELA ROBINSON, Attorney

APPROVED BY AGENCY: September 21, 1998

FILED WITH LRC: September 23, 1998 at 2 p.m.

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, 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: Will permit schools to have immediate use of debt service payments to use on future debt.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or 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: Change will implement KRS 157.622(7) as amended by Senate Bill 309 which was passed during the 1998 General Session of the Legislature.

(11) TIERING: Is tiering applied? No. Procedures for allocating savings from refinancings are the same for all districts.

STATEMENT OF EMERGENCY
907 KAR 1:013E

This emergency administrative regulation is being promulgated to comply with provisions of HB 785 of the 1998 GA and to clarify the method by which outpatient costs for a hospital are determined. This action must be taken on an emergency basis to ensure that hospitals with less than 200 acute care beds are provided with all available federal funds. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of indigent Kentuckians because these hospitals would not be able to afford to provide indigent care to all eligible persons who go to them for medical care. 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 1:013E. Payments for hospital inpatient services.

RELATES TO: KRS 205.520, 205.565, 205.640, 1996 Ky. Acts ch. 380, Part I, GB, 51, 5

STATUTORY AUTHORITY: KRS 194.050, 205.640, 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4, 1998 Ky. Acts ch. 426, sec. 4(3) [EO-96-862]

EFFECTIVE: September 29, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining the amount payable by the Medicaid Program for a hospital inpatient service.

Section 1. Definitions. (1) "Acute care hospital" means a hospital licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Charity care" means a service provided to a recipient by a provider without expectation on the part of the provider to receive payment, but shall not include bad debt.

(5) "Cost basis" means the total allowable Medicaid inpatient cost incurred by the provider in the base year.

(6) "Department" means the Department for Medicaid Services or its agent.

(7) "Disproportionate share hospital" (DSH) means a hospital that:

(a) Meets the criteria established in 42 USC 1396r-4(d); and

(b) 1. Meets the criteria established in 42 USC 1396r-4(b); or

2. Has a Medicaid utilization of one (1) percent or higher.

(8) "DRI" means Data Resources, Incorporated.

(9) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the universal rate year.

(10) "Indigent care" means hospital charges attributable to Medicaid recipients in excess of fourteen (14) covered days and to individuals eligible for the Kentucky Hospital Care Program. [days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of service provided to an individual eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days;] with eligibility determined in accordance with criteria established in 907

KAR 1:635[; and which are uninsured or unreimbursed by another source].

(11) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Pediatric teaching hospital" is defined in KRS 205.565.

(13) "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

(a) Anesthesiology;

(b) Cardiology;

(c) Electroencephalography;

(d) Pathology;

(e) Radiology; and

(f) Psychiatry in a psychiatric hospital.

(14) "Psychiatric hospital" means a hospital which meets the minimum licensure requirements established in 902 KAR 20:180.

(15) "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements established in 902 KAR 20:240.

(16) "State university teaching hospital" means:

(a) A hospital which is owned or operated by a Kentucky state supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program or rotation agreement.

(17) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

(18) "Type I hospital status" means an in-state disproportionate share hospital with 100 beds or less that participates in the Medicaid Program.

(19) "Type II hospital status" means an in-state disproportionate share hospital with 101 beds or more that participates in the Medicaid Program, except for a hospital that meets the criteria established in this administrative regulation for a Type III or Type IV status hospital.

(20) "Type III hospital status" means an in-state disproportionate share state university teaching hospital, owned and operated by either the University of Kentucky or the University of Louisville medical school, that has requested a Type III status which has been approved by the Department for Medicaid Services.

(21) "Type IV hospital status" means an in-state disproportionate share hospital participating in the Medicaid Program that is a state owned psychiatric hospital.

(22) "Type V hospital status" means an out-of-state disproportionate share hospital participating in the Medicaid Program.

(23) "Universal rate year" means the twelve (12) month period under the prospective payment system, beginning July 1 of each year for which payment rates are established for a hospital regardless of the hospital's fiscal year end.

(24) "Upper payment limit" means the maximum amount the Medicaid program shall pay for an inpatient day of care with the maximum varying based on specified circumstances as follows:

(a) Utilization factors;

(b) Teaching hospital status; and

(c) Age of patient.

(25) "Weighted median" means the cost per diem associated with the median point of cumulative inpatient days calculated by arraying cost per diems within a specified peer group from lowest to highest.

Section 2. Acute Care Hospital, Rehabilitation Hospital and Psychiatric Hospital Inpatient Services. The Department for Medicaid Services shall pay for inpatient hospital services provided to an eligible Medicaid recipient through the use of a rate that is reasonable and adequate to meet the cost that is required to be incurred by an efficiently and economically operated hospital to provide a service in conformity with applicable state and federal laws, regulations, and quality and safety standards.

Section 3. Use of a Prospective Rate. (1) A hospital shall be paid using a prospective payment rate based on allowable Medicaid inpa-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

tient costs and Medicaid inpatient days.

(a) The prospective rate shall include both routine and ancillary costs.

(b) If a base year is selected for setting a rate, that base year shall not change.

(c) The prospective rate shall not be subject to retroactive adjustment, except for a facility with a rate based on unaudited data. This facility shall have its rate appropriately revised for the rate year when the audited cost report for the base year becomes available to the department.

(d) Total prospective payments shall not exceed the total customary charges in the prospective year.

(2) An overpayment shall be recouped by:

(a) Payment from the provider for the amount of the overpayment; or

(b) The withholding of the overpayment amount from a future payment due the provider.

Section 4. Use of a Universal Rate Year. (1) A universal rate year shall be set for a facility with the universal rate year established as July 1 through June 30 of each year to coincide with the state fiscal year.

(2) A hospital shall not be required to change its fiscal years to conform with a universal rate years.

Section 5. Trending of a Cost Report. The following policies shall be used for the trending of a cost report:

(1) An allowable Medicaid cost, excluding capital cost, as shown in a cost report on file in the department, both audited and unaudited, shall be trended to the beginning of the rate year to update a hospital's Medicaid cost.

(2) The trending factor to be used shall be the inflation factor prepared by DRI for the period being trended.

Section 6. Indexing for Inflation. (1) After an allowable cost has been trended to the beginning of the rate year, an indexing factor shall be applied to project inflationary cost in the universal rate year.

(2) The indexing factor to be used shall be the inflation factor prepared by DRI for the universal rate year.

Section 7. Peer Grouping. For rate setting purposes, a hospital shall be grouped with other hospitals in accordance with the following provisions:

(1) The peer grouping shall be based on the number of beds licensed, as of May 1 preceding the universal rate year, which provide Medicaid covered services and shall meet minimum licensure requirements in accordance with 902 KAR 20:009, 902 KAR 20:006, 902 KAR 20:170, 902 KAR 20:180, 902 KAR 20:230 and 902 KAR 20:240.

(2) The peer groupings shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more.

(3) A Type III hospital shall not be included in the array for a facility with 401 beds or more, but shall be subject to the upper limit for a facility with 401 beds or more.

(4) A psychiatric hospital shall not be peer grouped but shall be in a separate array of psychiatric hospitals.

(5) A rehabilitation hospital and an acute care hospital that is restricted to providing rehabilitation services shall not be:

(a) Peer grouped;

(b) Arrayed; or

(c) Subject to the operating cost upper limit.

Section 8. Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if one (1) of the following minimum occupancy factors are not met:

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; or

(2) A seventy-five (75) percent occupancy factor shall apply to a hospital with 101 or more beds.

Section 9. Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding major movable equipment, shall be sixty-five (65) percent of

the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance shall not be applicable with regard to a psychiatric hospital.

Section 10. Upper limits and payment principles shall apply to a hospital, with additional limitations for a disproportionate share hospital established in Section 11 of this administrative regulation, as follows:

(1) An acute care hospital with 101 beds or more shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in each peer group.

(2) An acute care hospital with 100 beds or less shall have the upper limit on all costs (except Medicaid capital costs and professional component costs) established at 110 percent of the weighted median per diem for a hospital in its peer group.

(3) A state university teaching hospital shall have an upper limit on all costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem for a hospital in its peer group;

(4) A psychiatric hospital:

(a) Shall have an upper limit established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital in the array;

(b) Designated by the department as a primary referral and services resource for a child in the custody of the Cabinet for Families and Children shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; and

(c) May have the projected cost adjusted for usual cost of living increases using the DRI Index.

(5) Except as provided in subsection (10) of this section the following principles shall apply:

(a) The most recent Medicaid cost report available as of May 1 of each year preceding the universal rate year shall be used for rate setting.

(b) If a desk review or audit of the most current cost report is completed after May 1, but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.

(c) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.

1. Except as provided in subparagraph 2 of this paragraph, the manual shall govern the Medicaid reimbursement for a hospital inpatient service.

2. If a reimbursement issue or area is not specified in the manual, the department shall apply Medicare standards and principles, excluding the Medicare inpatient routine nursing salary differential.

(6) After being set, the arrays and upper limits shall not be altered due to a revision or correction of data.

(7) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

(8) A provider tax shall be considered an allowable cost. The portion attributable to Medicaid utilization shall be included in the per diem rate.

(9) Except as provided in subsection (10) of this section, the following controls shall be applied to the per diem rate increases for an acute care hospital excluding a hospital restricted to rehabilitative services:

(a) Allowable rate growth from the prior rate year to the new rate year shall be limited to not more than one and one-half (1 1/2) times the DRI inflation amount for the same time period;

(b) Limits shall be applied to the capital and operating cost per diem components;

(c) Rate growth beyond the allowable amounts shall be considered an unallowable cost for rate setting purposes; and

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(10) For the rate period beginning July 1, 1997, the rate shall be the rate in effect for January 1, 1996 with the following modifications:

(a) The operating and professional components of the rate shall be indexed forward for the 1998 rate period using the inflation factor

prepared by DRI for the same period;

(b) There shall be an add on to the rate, computed as fifteen (15) percent of the amount between the lesser of:

1. The operating cost per diem or the maximum operating per diem, whichever is less; or
2. The operating per diem as limited by the rate of increase control (one and one-half (1 1/2) times the DRI); and

(c) The capital component shall not be indexed. The capital component of the rate shall be the amount computed for capital cost in the 1996 individual hospital rate notice, excluding the application of the rate of increase control (one and one-half (1 1/2) times the DRI).

(11) For a medically necessary hospital inpatient service provided for an exceptionally high cost or long length of stay, the payment rate shall be set at 110 percent of the per diem payment rate, without regard to length of stay or number of admissions of the infant. Exceptionally high cost or long length of stay shall be, in a nondisproportionate share hospital, those cost and days of stay for a child under age one (1) that:

(a) For a newborn, is thirty (30) days from the date of discharge for the mother; or

(b) For another child, is after thirty (30) days from the date of admission.

Section 11. The following upper limits and payment principles shall apply to a disproportionate share hospital:

(1) An acute care hospital with Medicaid utilization of twenty (20) percent or higher, or a hospital having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 120 percent of the weighted median per diem cost for a hospital in that peer grouping.

(2) A state university teaching hospital, having Medicaid utilization of twenty (20) percent or higher, or having twenty-five (25) percent or more nursery days resulting from Medicaid covered deliveries as compared to the total number of paid Medicaid days, shall have an upper limit set at 126 percent of the weighted median per diem cost for a hospital of 401 beds and up.

(3) A designated state pediatric teaching hospital meeting the criteria in subsection (2) of this section shall:

(a) Have an upper limit set at 126 percent of the weighted median per diem cost of its appropriate peer group; and

(b) In addition to the hospital's base rate, be paid an amount which is equal to two (2) percent of the base rate for each one (1) percent of Medicaid occupancy but this amount shall not exceed the prospective reasonably determined uncompensated Medicaid cost to the hospital.

(4) Psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher shall have an upper limit set at 115 percent of the weighted median per diem cost for a hospital in the array.

(5) An acute care hospital with 100 beds or less shall have an upper limit set at 110 percent of the weighted median per diem for a hospital in the array.

(6) Another disproportionate share acute care hospital shall have its upper limit set at the weighted median per diem of the cost for a hospital in the peer grouping.

(7) A hospital shall be reimbursed an additional amount equal to 110 percent of a hospital's per diem rate for medically necessary hospital inpatient days of service provided for an exceptionally high cost or long length of stay, without regard to length of stay or number of admissions of the child. Exceptionally high cost or long length of stay shall be, in a disproportionate share hospital, those costs and days of stay for a child under the age of six (6) that:

(a) For a newborn, is thirty (30) days beyond the date of discharge for the mother; or

(b) For another child, is after thirty (30) days from the date of admission.

(8) The disproportionate share hospital payment for the period beginning February 20, 1995 shall be made as follows:

(a) The disproportionate share hospital payment for a Type I and Type II hospital shall include a volume adjustment.

1. The adjustment shall be made by paying for the costs of indigent care [each indigent care day], including the costs of [equivalent days based on] outpatient services [actually] provided, payable at the hospital's Medicaid per diem rate.

2. Total disproportionate share volume adjustment payments to a Type I and Type II hospital for indigent care services provided during the 1998 fiscal year shall not exceed \$91,900,000. If a payment will cause the limit to be exceeded, each hospital's volume adjustment amount shall be adjusted proportionately.

3. Outpatient costs for a hospital [The inpatient equivalent care days for a hospital] shall be determined by dividing the hospital's average Medicaid allowable outpatient payment per visit by the Medicaid allowable inpatient payment per day and multiplying the result by the number of indigent care outpatient visits for the specified period of time.

(b) The disproportionate share hospital payment for a Type III and IV hospital shall be equal to 100 percent of the cost of services to a Medicaid patient, less the amount paid by Medicaid as a usual Medicaid per diem payment, plus the cost of services to an uninsured patient, less any cash payment made by an uninsured patient. Type III status shall be granted to a state university teaching hospital if the hospital agrees as a part of its request for a Type III status to:

1. Forego a local or state government contribution for charity care; and

2. Provide up to 100 percent of the state matching funds necessary to secure federal financial participation for a Medicaid disproportionate share hospital payment to be made during the period of time the hospital is designated as a Type III status hospital.

(c) The disproportionate share hospital payment for a Type V hospital shall be one (1) dollar per Medicaid day plus an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

(9)(a) Effective October 1, 1998, for the purpose of calculating disproportionate share hospital payments, the Medicaid per diem rate for hospitals with less than 200 licensed acute care beds shall be determined by applying each of these hospitals' estimated cost-to-charge ratio to allowable indigent charges.

(b) By July 1 of each year, the department shall calculate the cost-to-charge ratio for each hospital by dividing the hospital's total allowable operating expenses by the hospital's total gross patient charges, using the cost report that was used to set the Medicaid rate beginning July 1 of that fiscal year.

(c) Adjustments shall not be made to the rates except for errors identified by the department when computing the rate.

Section 12. [In accordance with KRS 205.640, except for none-emergency care rendered through a hospital emergency room, an in-state nondisproportionate share hospital shall be compensated in the manner described in Section 11(8)(a) of this administrative regulation for services provided by the hospital to a Medicaid recipient beyond the covered days and to an individual and family with a total annual income and resources up to 100 percent of the federal poverty level.

Section 13. Payment to a Participating Out-of-state Hospital. (1) A participating out-of-state hospital shall be reimbursed for covered inpatient services rendered to an eligible Kentucky Medicaid recipient at the lesser of seventy-five (75) percent of usual and customary charges or the in-state per diem upper limit for a comparable size hospital, plus a provision for capital cost. The capital cost provision shall be computed by using the mean value of the capital cost per diem paid per peer group for an in-state hospital.

(2) A participating out-of-state hospital shall be reimbursed at the lesser of eighty-five (85) percent of usual and customary charges or 110 percent of the in-state per diem upper limit for a comparable size hospital for an exceptionally high cost or long length of stay related to an infant under the age of one (1) in a nondisproportionate share hospital; or a child under age six (6) in disproportionate share hospitals, without regard to length of stay or number of admissions of the infant or child. Exceptionally high cost or long length of stay shall be those cost and days of stay:

(a) In a nondisproportionate share hospital, as defined in Section 10(11) of this administrative regulation; and

(b) In a disproportionate share hospital, as defined in Section 11(7) of this administrative regulation.

(3) Except as provided in subsection (2) of this section, disproportionate status shall be reimbursed in accordance with Section 11(1) and (8)(c) of this administrative regulation.

(4) Professional costs for covered days of stay shall be paid at

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

seventy-five (75) percent of the usual and customary charges of the provider.

Section 13. [14:] Provider Appeal Rights. If appealed, negative action shall be appealed in accordance with 907 KAR 1:671.

Section 14. [15:] Incorporation by Reference. (1) "Medicaid Reimbursement Manual for Hospital Inpatient Services", July 1997 edition, Department of Medicaid Services, 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: September 29, 1998

FILED WITH LRC: September 29, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All hospitals with less than 200 acute care beds.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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 13A requirement.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Although paperwork will need to be revised as a result of the change in distribution methodology for the affected hospitals, no additional paperwork is anticipated.

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

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

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

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

(b) Kentucky: 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: Promulgation of this regulation would ensure that indigent Kentuckians who require medical services from hospitals which contain less than 200 acute care beds would be able to access these services since the affected hospitals would be ensured of receiving reimbursement for the provision of the services.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of indigent Kentuckians because they would not be able to access indigent care from the affected hospitals since they would not be reimbursed for their costs.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: This regulation is considered budget neutral because current information available to the department indicates that the maximum funds allotted for the disproportionate share hospital program will be accessed. Therefore, the changes to this regulation will not affect the amount of funds expended.

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. None

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

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: None

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(As Amended at ARRS, October 13, 1998)

201 KAR 8:140. Continuing education compliance.

RELATES TO: KRS 214.615(1), 313.080(1), (2), 313.305
STATUTORY AUTHORITY: KRS 214.615(2), 313.080,
313.220(1), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.080 and 313.305 requires a dentist or dental hygienist to accumulate continuing education credits as a condition of license renewal. This administrative regulation establishes guidelines and a schedule of points for compliance with the continuing education requirements. [This administrative regulation sets forth guidelines and schedule of points to be accumulated by each [licensed] dentist and dental hygienist for compliance with the continuing education requirement for relicensure.]

Section 1. (1) A dentist renewing his license by December 31, 1998, shall show proof of having accumulated fifteen (15) points of continuing education by submitting at the time of renewal:

- (a) A "continuing education credit record"; and
- (b) Written verification of actual attendance of the courses listed on the credit record.

(2) As a part of the required fifteen (15) points of continuing education, a dentist shall attend and successfully complete a course on acquired immune deficiency syndrome (AIDS) that is approved by the Kentucky Cabinet for Health Services. [Each licensed dentist requesting renewal of license on or before December 31, 1998 shall show evidence which is satisfactory to the Kentucky Board of Dentistry that he has accumulated fifteen (15) points of continuing education. The evidence of fifteen (15) points of continuing education shall be submitted on the "Continuing Education Credit Record" no later than December 31st of each year together with appropriate written verification of actual attendance of such course by the licensee. Included in the fifteen (15) hours of continuing education required by this subsection each licensed dentist requesting renewal of his license shall show evidence which is satisfactory to the Kentucky Board of Dentistry that he has successfully completed a course, approved by the Kentucky Cabinet for Human Resources, pertaining to acquired immunodeficiency syndrome.]

Section 2. (1) Of the fifteen (15) points required by Section 1 of this administrative regulation:

(a) Ten (10) points shall be [scientific] based on the science of dentistry;

(b) [- shall have the prior approval of the board, and one (1) continuing education point shall be approved for each hour of such course.] Five (5) [of the fifteen (15)] points may be professional or business related; and

(c) All points shall [required by Section 1 of this administrative regulation may be professional or business related, and each such source shall also] have the prior approval of the board.

(2) Points rating.

(a) [The following schedule of points rating is hereby adopted:] One (1) continuing education point shall be approved for [attendance at] each hour of a course;

(b) One (1) continuing education point shall be approved for attendance at one (1) of the following types of meetings:

- 1. Local dental meeting;
- 2. Regional and national dental meeting;
- 3. Dental specialty meeting;
- 4. Study club dental meeting;
- 5. Hospital staff meeting; and
- 6. Nursing home meeting. [of the following types of meetings:

local dental meetings, regional and national dental meetings, dental specialty meetings, study club dental meetings, hospital staff meetings, and nursing home meetings.]

(c) Two (2) continuing education points shall be approved for attendance at a:

- 1. State dental meeting; and
- 2. State officers conference. [meetings and officers conferences.]

(3) A [During each two (2) year period, commencing with January 1, 1991, each] licensed dentist shall show proof of successful completion of a course in cardiopulmonary resuscitation **certified by the American Heart Association or American Red Cross.** [-said course to be approved by the Kentucky Board of Dentistry.]

Section 3. Approval of Other Courses. [The Board of Dentistry or] The secretary-treasurer of the board may approve a course, other than those listed in this administrative regulation, if it relates to or advances the practice of dentistry and would be useful to the licensee in his practice. [for continuing education credit such other courses as may be deemed worthy of fulfilling the requirement as related to continuing education.]

Section 4. Minimum CE requirements. Each licensed dentist requesting renewal of license on or after January 1, 2000, and each licensed dental hygienist requesting renewal of license on or after January 1, 1999, shall fulfill all requirements of the three (3) categories listed below:

(1) Category A. A licensee [All licensees] shall take a minimum of a two (2) hour course on HIV and [I] AIDS as required by KRS 214.610 (1) and a BLS (basic life support) course certified by [either] the American Heart Association or the American Red Cross and shall maintain current BLS certification.

(2) Category B. Twenty (20) hours of scientific dental based courses given in a classroom presentation format.

(3) Category C. Ten (10) hours of CE from any of the following:

(a) Scientific-dental based courses given in a classroom presentation format.

(b) Business.

(c) Home study.

(d) Magazine or journal articles.

(e) Computer or video articles.

(f) Nondental health related courses.

Section 5. Schedule of Points. [The following schedule of points is hereby adopted:] (1) A [Each] clock hour of participation in a classroom presentation course shall [will] receive one (1) point.

(2) A [Each] clock hour of participation in a business course shall [will] receive one (1) point; or one (1) business point shall be approved for attendance at each of the following types of meetings:

(a) Local dental meeting [meetings].

(b) Regional dental meeting [meetings].

(c) National dental meeting [meetings].

(d) Dental specialty meeting [meetings].

(e) Study club dental meeting [meetings].

(f) Hospital staff meeting [meetings].

(g) Nursing home meeting [meetings].

(3) Two (2) business points granted for attendance at an annual state meeting [meetings].

Section 6. Procedure for Reporting CE Points. (1) Reporting period shall be every two (2) calendar years (renewal period).

(2) Reporting. A [Each] licensee shall attest to the actual number of CE points earned during the reporting period. [No] Points shall not be carried over to the following reporting period.

(3) Recordkeeping. The original CE records shall be kept by the licensee for a period of five (5) years and presented upon request by the board for audit.

(4) Audit. If selected by the board for audit the licensee shall return to the board the requested proof of CE within fifteen (15) days.

Section 7 Course Approval. (1) A course shall [Courses must] be presented by an approved provider.

(2) A course shall [Courses must] be related to the dental field. If a course is not provided by an approved provider, a CE Approval Form shall [must] be submitted to the Kentucky Board of Dentistry for approval prior to the licensee seeking credit for that CE.

HAROLD M. SMITH, President
MARK BRENGELMAN, Assistant Attorney General
APPROVED BY AGENCY: August 8, 1998
FILED WITH LRC: August 12, 1998 at 2 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Embalmers and Funeral Directors
(As Amended at ARRS, October 13, 1998)

201 KAR 15:030. Fees.

RELATES TO: KRS 316.125(2)(a), 316.130(2), (4), (5), 316.140(2)

STATUTORY AUTHORITY: KRS 316.125(2)(a), 316.130(2), (4), (5), [316.210(1)]; 316.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 316.125(2)(a), [and] 316.130(2), (4), and (5), and 316.140(2) require the board to set out in administrative regulations certain fees. This administrative regulation establishes [The function of this administrative regulation is to set] these fees.

Section 1. The funeral establishment license fee shall be [is] \$100.

Section 2. The embalmer's license renewal fee shall be [is] thirty (30) dollars.

Section 3. The funeral director's license renewal fee shall be [is] thirty (30) dollars.

Section 4. The late fee for a funeral establishment license renewal shall be [is] \$100.

Section 5. The late fee for an embalmer's license renewal or a funeral director's license renewal shall be [is] thirty (30) dollars.

Section 6. The fee for an annual courtesy card shall be [is] seventy-five (75) dollars.

JOHN BARKER, Chairman
JAMES J. GRAWE, Assistant Attorney General
APPROVED BY AGENCY: July 14, 1998
FILED WITH LRC: July 15, 1998 at 2 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, October 13, 1998)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), (2)[- (5)], 314.051[(2)-] (3)

STATUTORY AUTHORITY: KRS 314.041(1), (2), 314.051[(2)-] (3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. [KRS 314.041(5) requires an applicant for licensure as a registered nurse to pay applicable examination fees. KRS 314.051(2) requires an applicant for licensure as a licensed practical nurse to pay applicable examination fees.] KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate

of a Kentucky Program or Other State or Territorial Nursing Program. (1) To be eligible for licensure by examination [for a graduate of a Kentucky program or other state or territorial nursing program;] an applicant shall:

(a) [For a graduate of a Kentucky program of nursing, have the nursing program submit verification on "Certified List of Program of Nursing Graduates" that the applicant has:

1. Completed the program of nursing; and

2. Successfully completed all requirements for a degree, diploma or certificate;

(b) For a graduate of a program of nursing outside Kentucky, submit an official transcript of the nursing program;

(c) Submit:

1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);

2. The licensure application [for licensure] fee as established in 201 KAR 20:240; and

3. One (1) current passport type photograph; [that:

a. Is two (2) inches by three (3) inches;

b. Was taken within the past six (6) months;

c. Is signed and dated by:

(i) The applicant on the front under the facial features; and

(ii) The nurse administrator of the U.S. nursing program, if the applicant graduated from a U.S. nursing program; and

d. Is not a snapshot;

(b) [(d)] Submit a certified copy of the court record of each misdemeanor or felony conviction and [with] a letter of explanation that addresses each conviction;

(c) [(e)] Notify the board [in writing] as soon as a new address is established after submitting the application;

(d) [(f)] Submit a copy of a marriage certificate or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;

(e) When taking the examination, [(g)] abide by and cooperate with security procedures adopted [established] by the board[- when taking the examination];

(f) [(h)] Apply to take and pass the National Council Licensure Examination [or its equivalent as required by Section 3 of this administrative regulation]; and

(g) [(i)] Pay the fees for application for licensure established by 201 KAR 20:240; and

(h) Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150.

(2) An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office. This requirement shall apply to each application [all applications] received by this [the] board after the effective date of this administrative regulation and each application [all applications] pending on the effective date.

(3) The name of the applicant shall appear on the "Certified List of Program of Nursing Graduates" as established in 201 KAR 20:260 or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements. [applicant is declared eligible to take the examination.]

Section 2. Graduates of Foreign Nursing Schools. To be eligible for application for licensure by examination, a graduate of a foreign nursing school shall comply with the provisions of this section.

(1) If licensed in another country, or in a jurisdiction or territory governed by the United States, the applicant shall submit a statement from the licensing authority that the:

(a) Applicant is a licensee in good standing;

(b) License has not been revoked, suspended, or probated; and

(c) Licensee has not been suspended or otherwise disciplined in the licensing country.

(2) An applicant shall submit proof of legal permanent or temporary residency under the laws and regulations of the United States.

(3) An applicant shall meet the requirements of Section 1 of this administrative regulation.

(4) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 3. [Licensing Examination Standards. (1) An applicant shall pass the national council licensure examination or an examination that meets the criteria established by subsection (2) of this section.

(2) An applicant who has taken an examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that the examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;

(d) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content; and

(g) The examination is given under strict security measures;

Section 4. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after:

(a) meeting the requirements of Section 1 of this administrative regulation, [and, if applicable, Section 2 of this administrative regulation; and

(b) Submission of:

1. The application, as required by 201 KAR 20:370, Section 1(1); and

2. The applicable fee;]

(2) The applicant shall not be eligible to take the examination more often than once every ninety-one (91) days, [one (1) time during a three (3) month period.]

Section 4. [5.] Release of Examination Scores. The board shall release examination [numerical] results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.; and

(4) An individual or agency who submits an applicant's or licensee's written authorization for their release.

Section 5. [6.] Incorporation By Reference. (1) "Certified List of Program of Nursing Graduates", (2/96), Kentucky Board of Nursing, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (As Amended at ARRS, October 13, 1998)

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

RELATES TO: KRS 314.101(4) [(3)]

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 20:090 is no longer required because the board will no longer issue temporary work permits to applicants for licensure by examination.

Section 1. **Effective January 1, 1999**, 201 KAR 20:090, Temporary work permit, **shall be** [is hereby] repealed.

[Section 2. The repeal will not affect any new graduates who apply for licensure prior to January 1, 1999.]

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: July 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (As Amended at ARRS, October 13, 1998)

201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 314.031(4), 314.041(4), 314.051(5), 314.101(4)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(4) and 314.051(5) authorize the board to issue a license to practice nursing as a registered nurse or a licensed practical nurse to an applicant who has passed the required examination or its equivalent and who was licensed to practice nursing in another jurisdiction. **KRS 314.101(4) authorizes the board to issue a temporary work permit to a person who has completed the requirements for, applied for, and paid the fee for licensure by examination or endorsement.** This administrative regulation establishes the requirements for licensure by endorsement **and establishes the requirements for a temporary work permit for an applicant [provides a means for applicants] to practice nursing while the application for a license is being processed.**

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, an applicant shall:

(a) [Hold a high school diploma or equivalent;

(b) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure equivalent to Kentucky requirements;

(b) [(c)] Have taken the State Board Test Pool Examination or National Council Licensure Examination or an examination that is consistent with Section 5 of this administrative regulation; [a licensure examination acceptable to the board and shall have achieved a passing score equivalent to the requirements established in 201 KAR 20:070 or as determined by the board for an applicant licensed prior to 1953;]

(c) [(d)] Have and submit a copy of a current active license to practice nursing in another U.S. jurisdiction or territory [Canada];

(d) Complete [(e) Accurately complete and submit] the application form, as required by 201 KAR 20:370, Section 1(1); and necessary information for licensure in Kentucky;

(e) [(f)] Submit one (1) current passport type photograph; [that:

1. Is two (2) inches by three (3) inches;

2. Was taken within the past six (6) months;

3. Is signed and dated by the applicant on the front under the facial features; and

4. Is not a snapshot;]

(f) [(g)] Submit the current fee for a licensure application, as established by 201 KAR 20:240;

(h) Have submitted by the licensing authority verification of licensure as a nurse in the United States jurisdiction of original licensure or the country of original licensure (if not licensed in the United States); including a statement that the license is in good standing and has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to any pending disciplinary action;]

(g) [(h)] Report each disciplinary action taken or pending on a license by another jurisdiction;

(h) [(i)] Submit a certified copy of the court record of each misdemeanor or felony conviction and [official copies of court records of any misdemeanor and felony convictions with] a letter of explanation that addresses each conviction; [and]

(i) Request the U.S. jurisdiction or territory of initial licensure to submit a verification of licensure by examination to the board which shall include the following information:

1. Date of initial licensure;

2. Examination results;

3. Name of the program of nursing completed and date of graduation; and

4. A statement that the applicant's license has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to [any] disciplinary action; and

(1) ~~(f)(k)~~ Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150.

(2) An application shall be [is] valid for a period of six (6) months ~~[one (1) year from date of submission to board]~~. The applicant shall:

(a) Submit a copy of a marriage certificate or court order to change the applicant's name after the original application is filed; and

(b) Notify the board in writing as soon as a new address is established after submitting the application.

(3) After six (6) months ~~[one (1) year from the date of receipt of application]~~, the applicant shall:

(a) Submit a new application;

(b) Submit the current licensure application fee; and

(c) Meet the requirements established in this section.

Section 2. Graduates of Foreign Nursing Schools. (1) A graduate of a foreign nursing school shall:

(a) Meet the requirements established in Section 1 of this administrative regulation; and

(b) Submit an official transcript of the nursing program.

(2) A graduate of a foreign nursing school who is not a citizen of the United States shall submit evidence of legal permanent or temporary residency in the United States.

(3) Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Nursing Practice and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an applicant shall complete fifteen (15) contact hours in continuing education for each year since the last year in which the applicant can demonstrate at least 100 hours of practice.

(2) The requirement established in subsection (1) of this section shall not apply to an applicant who:

(a) Has been licensed for less than five (5) years from the date of initial licensure; or

(b)1. Has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years; and

2. Submits evidence that verifies this practice.

(3) An applicant shall not be required to complete more than 150 contact hours in continuing education, if at least thirty (30) contact hours were earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status.

(4) Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting the requirements established in subsections (1) and (3) of this section.

Section 4. Temporary Work Permit. (1) An applicant for licensure by endorsement who meets the requirements of Section 1(1)(a) through (h) of this administrative regulation shall [may] be issued a temporary work permit.

(2) A temporary work permit shall be valid for a period not to exceed six (6) months.

(3) An individual who practices as a nurse in this state without a current temporary work permit prior to issuance of a current active license shall be considered to be practicing without a license in violation of KRS 314.031 and subject to the penalties listed in KRS Chapter 314.

Section 5. Licensing Examination Standards. An applicant who has taken an examination other than the State Board Test Pool Examination or National Council Licensure Examination subsequent to 1953 shall provide evidence to the board that the examination met the following standards of equivalency:

(1) Accepted psychometric procedures are used in the development of the examination;

(2) The examination is available to the board in the English language;

(3) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;

(4) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;

(5) At least one (1) of the reliability estimates for the examination is 0.80 or higher;

(6) The examination is revised after each administration to insure currency and security of content; and

(7) The examination is given under strict security measures.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, October 13, 1998)**

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

RELATES TO: KRS 61.874(3), 314.041(5), 314.042(3), (6), 314.051(2), 314.071(1), (2), 314.073(7), 314.142(1)(b), 314.161

STATUTORY AUTHORITY: KRS 61.874(3), 314.041(5), 314.042(3), (6) 314.051(2), 314.071(1), (2), 314.073(7), 314.131(1), 314.142(1)(b), 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. KRS 314.041(5), 314.042(3), (6), 314.051(2), 314.071(1), (2), and 314.073(7) require the board to establish fees for licensure, registration, examination, renewal, reinstatement, and continuing education. This administrative regulation establishes those fees.

Section 1. Fees for Licensure or [and] Registration Applications.

(1) The board shall collect a fee for:

(a) An application for licensure;

(b) An application for registration;

(c) Licensure renewal or reinstatement.

(2) The fee for an application shall be:

(a) Licensure as a registered nurse - eighty (80) dollars.

(b) Licensure as a licensed practical nurse - eighty (80) dollars.

(c) Biennial renewal of active license - fifty-five (55) dollars.

(d) Biennial renewal of inactive license - thirty-five (35) dollars.

(e) Reinstatement of license - eighty (80) dollars.

(f) Active to inactive license status - forty (40) dollars.

(g) Inactive to active license status - fifty (50) dollars.

(h) Full verification of [original] licensure, temporary work permit, credential or registration history - twenty-five (25) dollars.

(i) Duplicate license or registration card or letter - twenty (20) dollars.

(j) Registration as an advanced registered nurse practitioner - eighty (80) dollars.

(k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty-five (55) dollars.

(l) Reinstatement of registration as an advanced registered nurse practitioner - eighty (80) dollars.

(3) An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application for approval of a provider of continuing education and for a renewal or reinstatement of the approval shall be:

(1) Initial provider approval - \$200.

(2) Reinstatement of provider approval - \$100.

(3) Biennial renewal of approval - \$100.

(4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service shall be:

(a) ~~[An applicant for licensure who is retaking the examination--~~

forty (40) dollars:

(b) Verification of temporary work permit, licensure, [or] registration, or credential status:

1. If requested in individual nurse format - ten (10) dollars;
2. If requested in list format - one (1) dollar per name with a minimum charge of ten (10) dollars. [letter:

1. One (1) to five (5) verifications - ten (10) dollars;
2. Six (6) to ten (10) verifications - twelve (12) dollars;
3. Eleven (11) to fifteen (15) verifications - fourteen (14) dollars;
4. Sixteen (16) to twenty (20) verifications - fifteen (15) dollars;
5. Twenty-one (21) to fifty (50) verifications - twenty-five (25) dollars;

6. Fifty-one (51) to 100 verifications - forty (40) dollars; and
7. 100 or more verifications - fifty (50) dollars.]

(b) [(e)] Copy of an examination result or transcript - five (5) dollars.

(c) [(d)] Nursing certificate (optional) - thirty (30) dollars.

(2) An applicant for licensure who takes or retakes the licensure examination shall pay:

(a) The current examination fee required by the national council of state boards of nursing; and

(b) Application for licensure fee [and retake fees] pursuant to Section 1 of this administrative regulation [and subsections (1) and (4) of this section].

(3) An applicant [A nurse] shall pay the current examination fee required by the national council of state boards of nursing, and the fees established by the board for application for licensure [and retake], if the nurse:

(a) Is licensed in another state, United States territory, or country;

(b) Submits an application for licensure in Kentucky as a registered nurse, or a licensed practical nurse; and

(c) Is required to take [or retake] the licensure examination.

(4) [An applicant retaking the licensure examination shall submit:

(a) The fee for retake prior to each time the examination is taken; and

(b) A new application and current fees if more than one (1) year has passed since the date the applicant was declared eligible to take the examination initially.

(5) A graduate of a foreign school of nursing shall be responsible for:

(a) Costs incurred to submit credentials translated into English;

(b) [Commission on graduates of foreign nursing schools certificates;

(c)] Immigration documents; and

(c) [(d)] Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. [Except as provided by Section 3(4)(b) of this administrative regulation:] An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office. [which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.]

Section 5. An applicant who meets all requirements for approval, licensure, credential or registration shall be issued the appropriate approval, license, credential or registration without additional fee.

Section 6. Refunds. An overpayment of five (5) dollars or more of a current fee shall be refunded.

Section 7. A partial application fee may be held on record for one (1) year and shall be applied toward the fee to meet the requirements for licensure or registration.

Section 8. A fee properly collected by the board shall not be refunded, except as provided in Section 6 of this administrative regulation.

Section 9. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be fifty (50) dollars.

(2) The credential renewal fee shall be forty (40) dollars.

(3) The credential reinstatement fee shall be fifty (50) dollars.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

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GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, October 13, 1998)

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

RELATES TO: KRS 314.041(1), 314.051(1), 314.111(1), 314.131(2)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(2) requires the board to approve curricula and standards for schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs. [It is necessary that standards be established to assure that programs of nursing prepare graduates for licensure as registered nurses or licensed practical nurses in organized settings where standards are met.]

Section 1. Organization or [and] Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall [must] have:

(1) A governing institution.

(a) The institution which establishes and conducts the program of nursing shall be accredited by the southern association of colleges and schools or the appropriate accrediting body.

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing.

(c) The governing institution shall:

1. Designate a nurse administrator;

2. Establish administrative policies; and

3. Provide financial support, resources, and facilities for the operation of the program of nursing.

(d) The governing institution shall provide an organizational chart which describes the organization of the program of nursing and its relationship to the governing institution.

(2) Administrative policies.

(a) There shall be written administrative policies for the program which are in accord with those of the governing institution and available to the board for review.

(b) The board shall be notified in writing of a change in the appointment of the nurse administrator.

(c) A written plan for the orientation of the faculty to the governing institution and to the program or to the extension program shall be implemented.

(d) There shall be a written contract [contracts] between the governing institution and each agency or institution that provides a learning experience for a student. A contract [other agencies or institutions that provide learning experiences for students. Contracts] shall not be required for an observational experience or field trip. [experiences or field trips.]

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and reviewed annually.

(3) A nurse administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

with the administration of the institution, other divisions or departments within the institution, related facilities and the community.

(b) Participation in the preparation and administration of the program of nursing budget.

(c) Screening and recommendation of candidates for faculty appointment, retention, and promotion.

(d) Development of admission, retention and progression criteria.

(e) Development, implementation, and evaluation of the program of nursing.

(f) Development and implementation of program policies.

(g) Facilitation of continuing academic and professional development for the faculty.

(h) Development and negotiation of contracts with clinical facilities.

(i) Establishment of student/faculty ratio in the clinical practice experience. The criteria to determine the student/faculty ratio shall include:

1. Acuity level of the patient population.
2. Clinical preparation of faculty.
3. Behavioral objectives for students in clinical rotation.
4. Contract with clinical agency.
5. Physical setting for student experience.
6. Patient/client safety.
7. The student/faculty ratio (excluding observational experiences) shall not exceed a maximum of ten (10) to one (1) in the clinical practice experience.

(j) Submission of the "Certified List of Program of Nursing Graduates", as incorporated by reference in 201 KAR 20:070, upon student completion of all requirements for a degree, diploma or certificate.

(4) Provision for a system of records and reports essential to the operation of the program of nursing. The system shall include records of:

- (a) Enrolled and previously enrolled students.
- (b) Program meetings.
- (c) Faculty members.
- (d) Program development, proposals, recommendations, plans and evaluation.
- (5) Official publications which include:
 - (a) Description of the governing institution and program of nursing.
 - (b) Policies on admission, progression, dismissal, graduation and student grievance procedures.
- (c) Description of student services.
- (6) Written personnel policies for the faculty which include:
 - (a) Position descriptions.
 - (b) Faculty rights and responsibilities.
 - (c) Faculty evaluation process.
- (7) Clerical assistance. The number of clerical assistants shall be determined by the number of students and faculty. There shall be secretarial and clerical assistants to meet the needs of the program.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

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**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(As Amended at ARRS, October 13, 1998)**

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

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status; or for advanced

registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination or endorsement, "Application for Licensure";

(b) For RN Renewal, "RN Biennial Licensure Renewal Application";

(c) For LPN Renewal, "LPN Biennial Licensure Renewal Application";

(d) For RN or LPN reinstatement, "Application for Reinstatement";

(e) For RN or LPN change of status:

1. "Application for Change of Licensure Status (Inactive to Active)"; or
2. "Application for Change of Licensure Status (Active to Inactive)";

(f) For registration as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky";

(g) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application"; or

(h) For reinstatement as an advanced registered nurse practitioner, "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified [an official] copy of the [each] court record of each misdemeanor [and/] or felony conviction and [with] a letter of explanation that addresses each conviction;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Not have a disciplinary action pending by the board or an agreed order or decision presently in effect for a violation of KRS Chapter 314;

(6) Have paid all monies due to the board;

(7) Submit a copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;

(8) Submit additional information as required by the board in an administrative regulation;

(9) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Inactive licensure status established by 201 KAR 20:095; or

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056; and

(10) If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(11) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. [Except as provided in 201 KAR 20:070, Section 4(2);]
An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office. [If an application is not completed within one (1) year from the date the application form is filed:

(1) The application filed with the board shall lapse; and

(2) The application fee shall be forfeited.]

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 4. (1) Pursuant to KRS 314.091(1)(b), a conviction of a felony shall be considered as bearing directly on the qualifications or ability of an applicant to practice nursing if the licensee:

(a) Committed the felony within five (5) years of the date of filing the application; and

(b) Was convicted of a felony under:

1. One (1) of the following KRS Chapters:

a. KRS Chapter 189A (driving under the influence);

b. KRS Chapter 218A (controlled substances);

c. KRS Chapter 507 (criminal homicide);

d. KRS Chapter 508 (assault and related offenses);

e. KRS Chapter 509 (kidnapping and related offenses);

f. KRS Chapter 510 (sexual offenses);

g. KRS Chapter 511 (burglary and related offenses);

h. KRS Chapter 512 (criminal damage to property);

i. KRS Chapter 513 (arson and related offenses);

j. KRS Chapter 514 (theft and related offenses);

k. KRS Chapter 515 (robbery);

l. KRS Chapter 516 (forgery and related offenses);

m. KRS Chapter 521 (bribery and corrupt influences);

n. KRS Chapter 523 (perjury and related offenses);

o. KRS Chapter 525 (riot, disorderly conduct and related offenses);

p. KRS Chapter 527 (offenses related to firearms and weapons);

q. KRS Chapter 528 (gambling);

r. KRS Chapter 529 (prostitution offenses);

s. KRS Chapter 531 (pornography); or

t. KRS Chapter 506 (offenses of attempt, conspiracy, or complicity to commit an offense specified in this paragraph); or

2. A comparable law in another jurisdiction.

(2) A notice to deny licensure shall be issued to an applicant who has been convicted of a felony specified in subsection (1) of this section.

(3) An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel to determine if the requirements of KRS 314.091 are met. The request shall be:

(a) In writing; and

(b) Postmarked within thirty (30) days of receipt of the notice.

(4)(a) An applicant for licensure by examination or endorsement shall report a conviction for a crime that is:

1. Specified in subsection (1) of this section for which the applicant was convicted prior to the time period specified in subsection (1) of this section; or

2. Not specified in subsection (1) of this section.

(b) The board shall review a conviction reported pursuant to paragraph (a) of this subsection on an individual basis to see if the requirements of KRS 314.091 are met.

Section 5. Incorporation by Reference. (1) The following items are incorporated by reference:

(a) "Application for Licensure", 3/98, Kentucky Board of Nursing;

(b) "RN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(c) "LPN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(d) "Application for Reinstatement", 1/97, Kentucky Board of Nursing;

(e) "Application for Change of Licensure Status (Inactive to Active)", 3/97, Kentucky Board of Nursing;

(f) "Application for Change of Licensure Status (Active to Inactive)", 2/97, Kentucky Board of Nursing;

(g) "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky", 6/93, Kentucky Board of Nursing;

(h) "ARNP Registration Renewal Application", 3/98, Kentucky Board of Nursing; and

(i) "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner", 3/98, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 30, 1998 at 11 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, October 13, 1998)

301 KAR 5:020. License agent requirements and responsibilities.

RELATES TO: KRS 150.195, 150.990

STATUTORY AUTHORITY: KRS 150.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(4)

authorizes the department to promulgate administrative regulations governing the issuance of licenses. This administrative regulation is necessary to specify requirements for issuing licenses and electronically reporting license sale data and license revenue; to detail the procedures for suspending or revoking license agent status, and to specify the methods for appealing a suspension or revocation of agent status. [This administrative regulation also repeals 301 KAR 3:025, which it replaces.]

Section 1. Issuing Licenses. (1) A license agent [License agents] shall not issue a license [licenses] to a person who does [persons who do] not provide the agent with:

(a) His [Their] date of birth; and

(b) An identification number, which shall be:

1. A driver's license number;

2. A state identification card number;

3. A Social Security number; ~~or~~

4. The number from an identification form printed by the POS device; or

5. If the purchaser is under age sixty-five (65) and buying a senior/disabled license, the number from a disability authorization card issued to the person to whom the license is issued.

(2) A license agent [License agents] shall not issue:

(a) A junior hunting license [licenses] unless the parent or guardian of the license recipient signs the license at the time of purchase.

(b) A [(3) License agents shall not issue] Peabody or Cyprus/AMAX-Robinson Forest user permit to a person who does not sign the liability waiver [permits to persons who do not sign the liability waivers] required by 301 KAR 4:100 or 301 KAR 4:200; or

(c) A senior/disabled license to:

1. A person age sixty-five (65) or over who does not provide proof of age and Kentucky residency; or

2. A person under the age of sixty-five (65) who does not show a disability authorization card issued to the person to whom the license is issued and a second item of personal identification.

Section 2. Agent Commission and Depositing of Funds. (1) The license agent shall retain as a commission:

(a) Forty (40) cents for each Peabody or Cyprus/AMAX-Robinson Forest permit issued pursuant to 301 KAR 4:100 or 301 KAR 4:200.

(b) Twenty-five (25) cents each for other transactions.

(2) A license agent [Agents] shall promptly deposit transaction fees, less the commissions described in subsection (1) of this section, into the bank account [accounts] required by 301 KAR 5:010.

Section 3. Uploading License Sale Information. (1) The department shall provide each license agent a schedule of dates when license sale information will be uploaded from his POS device.

(2) A license agent [License agents] shall:

(a) Connect his POS device [their POS devices] to a telephone line on the date of the scheduled upload;

(b) Leave the POS device connected to the telephone line until the upload has been completed;

(c) Retain the receipts printed with each transaction until after the information about that transaction has been successfully uploaded; and

(d) Telephone the department within twenty-four (24) hours if the amount of funds to be transferred, as reported by the POS device, does not agree with the license agent's records.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 4. Electronic Transfer of Funds to the Department. (1) The department shall provide each license agent a schedule of dates when an electronic fund transfer [transfers] from his bank account will be initiated.

(2) At the close of banking hours on the day of the scheduled electronic fund transfer, a license agent [agents] shall have sufficient funds in his account [their accounts] to cover the amount of the transfer.

Section 5. Voiding Licenses. (1) A license agent [License-agents] may void a license if:

- (a) The license does not print correctly; or
- (b) After the license is printed, the purchaser:
 1. Discovers that he was issued an incorrect license;
 2. Will not pay for the license; or
 3. Otherwise refuses to accept the license.

(2) An agent [Agents] shall retain a voided license [voided-lisenses] and return them to the department as stipulated in Section 6 of this administrative regulation.

Section 6. Materials Retained and Returned to the Department.

(1) A license agent [License-agents] shall retain:

(a) A voided license [Voided-lisenses];

(b) The completed identification form [forms] required by 301 KAR 5:030;

(c) The signed waiver of liability form [forms] required by 301 KAR 4:100 and 301 KAR 4:200;

(d) Ruined or unusable license stock; and

(e) Discarded printer ribbons.

(2) A license agent [License-agents] shall return the materials listed in this section to the department on the working day after each scheduled or unscheduled upload of information.

(3) The department shall charge the license agent for a voided license [lisenses] not returned as stipulated in subsection (2) of this section, and shall not issue credit for a voided license [lisenses] returned later than (30) days after the upload in which the void was reported.

Section 7. Suspensions and Revocation of Agent Status. (1) In addition to any penalties provided by KRS 150.990, the department shall suspend for one (1) year a license [an] agent who twice in a twelve (12) month period:

(a) Causes an electronic fund transfer failure; or

(b) Violates a provision of:

1. The agent agreement;
2. KRS 150.195; or

3. An [The] administrative regulation [regulations] adopted pursuant to KRS 150.195.

(2) The department shall [may] permanently revoke the agent status of a license [an] agent who:

(a) Commits for the second time an offense for which he has been previously suspended;

(b) Does not deposit the required funds in his agent bank account within twenty-four (24) hours of notification by the department of insufficient funds;

(c) Fails to notify the department prior to closing his agent bank account;

(d) Closes his business seasonally without notifying the department and settling his account;

(e) Knowingly issues a license containing false information; or

(f) Fails to notify the department within twenty-four (24) hours of discovering the loss or theft of a POS device or paper stock.

(3) Before issuing a final order suspending or revoking the status of an agent, the department shall:

(a) Notify the agent by registered mail that his status is under review; and

(b) Afford the agent the opportunity for an informal meeting with the commissioner or his designee to show cause why his agent status should not be suspended or revoked.

(4) A suspension or revocation [Suspensions-or-revocations] shall become effective upon receipt of notification from the department.

(5) A suspended or revoked agent [agents] shall:

(a) Surrender upon demand the POS devices and license stock in his [their] possession to an authorized agent of the department;

(b) Allow the department access to financial records dealing with license sales; and

(c) Immediately pay all funds owed to the department.

Section 8. Appeal of Suspension or Revocation of Agent Status.

(1) A license agent who wishes [Agents-who-wish] to appeal a suspension or revocation shall request a hearing in writing, postmarked or delivered in person to the department no later than ten (10) days after notification of suspension or revocation.

(2) Upon receipt of the request for a hearing, the department shall:

(a) Appoint a hearing officer qualified to conduct hearings under the provisions of KRS Chapter 13B; and

(b) Schedule a hearing to be held [either]:

1. Prior to the next regularly scheduled meeting of the commission, if the request for a hearing is received more than thirty (30) days before the scheduled commission meeting; or

2. Within thirty (30) days, if the request for a hearing is received within thirty (30) days of the next scheduled commission meeting.

(3) The hearing officer shall conduct the hearing and present his recommendation at the commission meeting immediately following the hearing date.

(4) At the hearing, the license agent:

(a) May be represented by counsel; and

(b) May present evidence which he feels should be considered, including the calling of witnesses.

(5) The department may present evidence and call witnesses to support the suspension or revocation.

(6) The commission shall make its decision by majority vote.

(7) An agent [Agents] may appeal a decision of the commission to Franklin Circuit Court pursuant to KRS 150.195.

(8) [Beginning July 15, 1996.] The department shall conduct suspension or revocation hearings according to the provisions of KRS Chapter 13B.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: August 13, 1998 at 1 p.m.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended at ARRS, October 13, 1998)

301 KAR 5:030. Purchasing licenses and obtaining replacement licenses.

RELATES TO: KRS 150.090, 150.170, 150.175, 150.195, 150.235, 150.990

STATUTORY AUTHORITY: KRS [150.090;] 150.195, 1998 Ky. Acts ch. 274

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.195(1) gives the department authority to promulgate administrative regulations pertaining to the issuance of licenses; 1998 Ky. Acts ch. 274 [RS-HB-654] grants the department authority to require proof of residency and age or disability for those eligible to purchase a senior/disabled combination license. This administrative regulation is necessary to specify the information required to purchase a POS license, the information required on the license, [and] how replacement licenses may be obtained, and how to obtain a disability authorization card.

Section 1. Information Required to Purchase a POS License. A person buying a POS license shall furnish the license agent the following information:

(1) The license applicant's date of birth; and

(2) An identification number, which shall be [either]:

(a) An identification number generated by the POS device; [or]

(b) The license applicant's:

1. Driver's license number;

2. State identification card number; or

3. Social Security number; or

(c) If buying a senior/disabled license:

1. If age sixty-five (65) or over, proof of age and Kentucky residency; or

2. If under age sixty-five (65), a disability authorization card issued by the department and another form of personal identification.

(3) To purchase a license using an identification number from the POS device, a person shall provide the full name and complete mailing address of the license applicant to the license agent on an identification card generated by the POS device.

Section 2. Providing Information on Licenses. (1) Before performing an act authorized by the license, the license holder shall:

(a) Sign:

1. The POS license; and

2. Each tag portion of the deer or turkey permit.

(b) Provide the following information, legibly in ink or indelible pencil, in the blanks provided on the POS license:

1. Address, including city, state and zip code;

2. Eye color;

3. Hair color;

4. Sex;

5. Height; and

6. Weight.

(2) A license [Licenses] not completed as specified in this section shall be invalid.

(3) A senior/disabled combination license shall not be valid unless accompanied by:

(a) Proof of age and Kentucky residency, if the license recipient is age sixty-five (65) or over; or

(b) A disability authorization card issued to the license recipient, if the license recipient is under age sixty-five (65).

Section 3. Replacement of Lost or Destroyed Licenses. (1) A person whose license is [Persons whose licenses are] lost or destroyed may:

(a) Request a replacement license from the department; or

(b) Purchase a replacement license and request a refund from the department.

(2) A person [Persons] requesting a replacement license or refund [licenses or refunds] shall provide the department with:

(a) His [Their] name and complete mailing address;

(b) The identification number used to purchase the original license; and

(c) One (1) of the following: [either]

1. A replacement fee of three (3) dollars; or

2. The license number of the license he [they] bought to replace the lost or destroyed license.

(3) If the department can verify the purchase of the original license, it shall:

(a) Void the original license; and [as appropriate:]

(b) Issue a:

1. Replacement license; or

2. [(c) Issue a] Refund check for the amount of the license, less a three (3) dollar replacement fee.

(4) A person shall not use, or present to a conservation officer or other peace officer, a license voided by the issuance of a replacement.

(5) The department shall not refund a license replacement fee [fees].

Section 4. Duplicate License Refunds. A person [Persons] may obtain refunds for a duplicate POS license [licenses]:

(1) From the license agent who completed the transaction, if:

(a) The request is made on the same day the license was issued; and

(b) The original license is surrendered to the license agent; or

(2) By furnishing the department with:

(a) The duplicate license;

(b) The name and mailing address of the person requesting the refund;

(c) The license number of the original license; and

(d) An explanation of the reason for the refund request.

(3) Upon receipt of the refund request and duplicate license, and subsequent verification of the original purchase, the department shall issue a refund.

Section 5. Buying Licenses for Another. A person purchasing a POS license for another person shall provide the license agent with the information about the person for whom the license is being purchased as required in Section 1 of this administrative regulation.

Section 6. Obtaining a Disability Authorization Card. (1) To verify that he qualifies for a senior/disabled combination license because of a disability as specified in 1998 RS HB 654, a person shall provide the department:

(a) A letter of verification from his local federal Social Security office certifying that he has been declared totally and permanently disabled;

(b) A copy of his disability rating from the Veterans Administration showing at least a fifty (50) percent military service-connected disability;

(c) A letter of verification from the United States Railroad Retirement Board certifying that the applicant has been declared totally and permanently disabled; or

(d) A letter, on that state board's letterhead, certifying that the applicant has been declared totally and permanently disabled by another state's workers' compensation board.

(2) A person declared totally and permanently disabled by the Kentucky State Workers' Compensation Board shall:

(a) Obtain a Disability Workers Compensation Exemption form from the department; and

(b) Complete the form and mail it to the address given on the form.

(3) Upon receipt of the verification required by subsection (1) of this section, the department shall issue a card certifying the person is eligible to purchase a senior/disabled combination license.

Section 7. Duration of Disability Exemption. Certification by the Social Security Administration, the United States Railroad Retirement Board, the Veterans Administration or a state worker's compensation board shall remain valid for three (3) years after issue of the disability authorization card.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Disability Authorization Card" (1998); and

(b) "Disability Authorization Card Instructions" (1998).

(2) This material may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, Division of Fiscal Control, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: August 13, 1998 at 1 p.m.

**JUSTICE CABINET
Kentucky Parole Board
(As Amended at ARRS, October 13, 1998)**

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

RELATES TO: KRS 439.352, 439.356, 439.358, 523.043, 532.060(3)

STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.354

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. [KRS 439.354 establishes the need to set a period of time which the parolee must successfully spend on parole before the granting of a final discharge from parole. This administrative regulation establishes a set time period for the issuance of a final discharge from parole as well as specific criteria for its issuance. The purpose of this administrative regulation is to continue to encourage lawful activity and compliance with the conditions of parole on the parolee's part and to provide successful integration back into society.]

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

All matters relating to the granting of a final discharge from parole shall be conducted in the following manner:]

Section 1. If [When] an offender paroled prior to July 15, 1998, reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board. [A parolee may request a final discharge from parole after the expiration of twenty-four (24) months clear conduct from the date of parole and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole or the maximum expiration date for all sentences excluding a life sentence. On a life sentence, the parolee may request a final discharge from parole upon the completion of a minimum of five (5) years on active or inactive parole supervision and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole, assuming clear conduct from the date of parole release.]

Section 2. (1) If an offender paroled on or after July 15, 1998, owes restitution, he shall not automatically receive a final discharge from parole upon reaching the maximum expiration of his sentence.

(2) The board shall not issue a final discharge to a parolee until he pays restitution in full.

(3) Verification of payment of restitution shall be obtained from the parole officer. [For any offender paroled on or after July 15, 1998, he shall not automatically receive a final discharge upon reaching the maximum expiration of his sentence from parole if he owes restitution. When a parolee who has reached his maximum expiration date pays his restitution in full, the board shall then issue a final discharge. Verification of payment shall be obtained from the parole officer.] [Upon receipt of evidence that a parolee has satisfied all preceding requirements, the chair may issue, or cause to be issued, a certificate of final discharge from parole on any sentence upon receipt of a written request from the parole officer and considered by the full board.]

[Section 3. A person subject to the provisions of 1998 Ky. Acts ch. 606, secs. 25 and 70, shall not receive a final discharge until the board receives verification of the expiration of the conditional discharge period.] [When a parolee reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.]

LINDA F. FRANK, Chair
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 7, 1998
FILED WITH LRC: August 13, 1998 at 3 p.m.

JUSTICE CABINET
Kentucky Department of Corrections
(As Amended at ARRS, October 13, 1998)

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

RELATES TO: KRS [Chapter] 202A.410

STATUTORY AUTHORITY: KRS [Chapter] 202A.410(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS [Chapter] 202A.410 requires the Department of Corrections to promulgate administrative regulations governing the notification of a crime victim who requests notice of when an involuntarily committed person, who is charged with or convicted of a violent crime, is discharged or escapes from a psychiatric or forensic psychiatric facility.

Section 1. Definitions. (1) "Notification" means the telephonic communication to the individual regarding the release or escape of an involuntarily committed person.

(2) "Register" means the electronic communication by the individual recording a telephone number to be contacted when the involuntarily committed person is released or escapes.

Section 2. (1) The chief administrator of a psychiatric or forensic psychiatric facility shall make available the name, date of birth, date

of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections.

(2) The Department of Corrections shall provide:

(a) The ability to register for notification purposes; and

(b) The notification for which the individual has registered.

Section 3. (1) A victim may register for notification by calling Victim Information and Notification Every Day (VINE) at (800) 511-1670 and providing his name, address, and telephone number.

(2) The victim may provide the notification information by:

(a) Speaking to a VINE operator; or

(b) Accessing the VINE system through the keypad on his telephone.

Section 4. If the Department of Corrections provides the administrator with any instrument or equipment to provide victim notification, the instrument or equipment shall be secured. The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 13, 1998 at 2 p.m.

TRANSPORTATION CABINET
(As Amended at ARRS, October 13, 1998)

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

RELATES TO: KRS 158.115, 1998 Ky. Acts ch. 615, Part I, subp. 87.d. [GA HB 321 Part I, P. 87d] [1996 Ky. Acts ch. 380, Part I, 0:87.d]

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 615, Part I, subp. 87.d. [GA HB 321 Part I, P. 87d] [1996 Ky. Acts ch. 380, Part I, 0:87.d]

NECESSITY, FUNCTION, AND CONFORMITY: In 1998 Ky. Acts ch. 615, Part I, subp. 87.d., funds were appropriated for nonpublic school transportation for each fiscal year. [The Commonwealth's Biennium Budget for several bienniums has included funds [fiscal years 1996-98 included \$2 million] in the Transportation Cabinet's public transportation budget each year for the transportation of nonpublic school students.] This administrative regulation establishes conditions and procedures for the reimbursement to fiscal courts of financial support for the transportation of nonpublic school students.

Section 1. Application for Funds. (1) A fiscal court that provided financial support for the transportation of nonpublic school students in a school year [1996-97 or 1997-98] pursuant to the provisions of KRS 158.115 may apply to the Transportation Cabinet for reimbursement of that financial support.

(2) By May 1 of a school year for which a fiscal court has authorized the expenditure of county funds pursuant to KRS 158.115 [1997 for school year 1996-97 and May 1, 1998 for school year 1997-98], the fiscal court shall in writing notify the Transportation Cabinet, Office of the Secretary of its intention to apply for reimbursement. The notification shall include:

(a) The name of the person in the county who will serve as liaison on the application;

(b) A resolution from the fiscal court stating that the county provided funds in the school year for the transportation of nonpublic school students;

(c) A detailed statement of the method by which the funds were made available for the transportation of the nonpublic school students;

(d) 1. A copy of each contract the fiscal court entered into to provide the transportation services; or

2. If the fiscal court does not contract for the provision of transportation services with a bus company or a board of education, a copy of the legal notice requesting applications for supplementary funds from providers of transportation of nonpublic school students; and

(e) An estimate of the total amount of funds to be provided.

(3) The final application to the Transportation Cabinet shall:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(a) Be received by the Office of the Secretary by [not later than] June 30 of the applicable school year;

(b) Include the amount of funds provided by the county for the transportation of nonpublic school students; and

(c) Include proof of payment of the amount requested for reimbursement; and

(d) Include a copy of each application or invoice for payment and the supporting documentation from the transportation provider.

(4)(a) The Transportation Cabinet shall:

1. Evaluate the applications received for compliance with the requirements established by this section; and

2. Divide the funds [\$2 million] available in each fiscal year between applicants who comply with the requirements established by this section as provided by paragraphs (b) and (c) of this subsection.

(b) If the application amounts spent by the counties equal or total less than the amount appropriated by the General Assembly for that school year, the Transportation Cabinet shall authorize payment for each requested reimbursement amount.

(c) If the application amounts spent by the counties exceed the amount [appropriated by the General Assembly], the Transportation Cabinet shall prorate the amount appropriated by the General Assembly among the applicants as provided by Section 2 of this administrative regulation.

Section 2. Proration of Appropriated Funds. Funds shall be prorated, as required in Section 1(4)(c) of this administrative regulation, in the following method:

(1) The cabinet shall obtain the most recent figures at the time the application is received, and determine the total number of:

(a) Public school students transported; and

(b) Nonpublic school students who are eligible for transportation.

(2) The number of nonpublic school students in subsection

(1) of this section, shall not include a student who:

(a) Attends a:

1. School on a military reservation; or

2. School that is fully federally funded; or

(b) Is taught at home.

(3) The cabinet shall determine the:

(a) State-wide average for the annual cost of the transportation of an individual student; and

(b) Amount of local funds expended or budgeted for the transportation of nonpublic school students.

(4) The maximum amount for which a county shall be eligible to apply shall be the lesser of the following:

(a) The sum of the total number of students established pursuant to subsections (1) and (2) of this section, multiplied by the sum established in subsection (3)(a) of this section; or

(b) The total funds actually expended by the county for transportation of nonpublic school students during the applicable school year.

(5) If it is necessary to prorate the appropriation for a specific fiscal year, the funds for each eligible applicant county shall be the sum of the funds appropriated by the General Assembly for that school year, multiplied by the county's application amount established by subsection (4) of this section, divided by the total number of eligible applications received. [Funds required to be prorated pursuant to Section 1(4)(b) of this administrative regulation shall be prorated as provided by this section.]

(1) From the latest figures from the Department of Education available at the time applications are reviewed, the cabinet shall determine:

(a) The total of the number of public school students transported and the number of nonpublic school students who would be eligible for transportation. The number of nonpublic school students shall not include those students who:

1. Attend schools on military reservations or which are fully federally funded; or

2. Are taught at home.

(b) The statewide average for the annual cost of the transportation of an individual student.

(c) The amount of local funds expended or budgeted for the transportation of nonpublic school students.

(2) The maximum a county shall be eligible to apply for shall be the lesser of the following:

(a) The product of the total students established pursuant to subsection (1)(a) of this section times the value established pursuant to subsection (1)(b) of this section; or

(b) The funds actually expended by the county for the transportation of nonpublic school students during the applicable school year.

(3) If it is necessary to prorate the appropriation for a specific fiscal year, the funds for each eligible applicant county shall be the product of the funds appropriated by the General Assembly for that school year [\$2,000,000] times the application amount for the county established by subsection (2) of this section divided by the total amount of the eligible applications received for all counties pursuant to subsection (2) of this section.]

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 28, 1998 at 4 p.m.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers

(As Amended at ARRS, October 13, 1998)

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

RELATES TO: KRS 138.463, 281.615, 281.626, 281.650, 281.655 [281.600 through 281.670], 1998 Ky. Acts ch. 166 [Chapters 138, 186, 281]

STATUTORY AUTHORITY: KRS [138.463, 186.005;] 281.600, 1998 Ky. Acts ch. 166, sec. 5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 and 1998 Ky. Acts ch. 166, sec. 5 requires the department to promulgate administrative regulations for the collection of usage taxes on a loaner vehicle and application for a U-drive-it permit. This administrative regulation establishes the procedure and designates the forms for an applicant or motor vehicle dealer to apply for a U-drive-it permit. [through 281.670 require that a motor carrier obtain a permit or certificate of operating authority from the Transportation Cabinet prior to beginning or continuing operation as a motor carrier. Section 1 of 1998 Ky. Acts ch. 166 requires a motor vehicle dealer with a loaner vehicle for which he intends to pay the usage tax pursuant to KRS 138.463 to show the Transportation Cabinet that he is regularly engaged in the servicing or repair of motor vehicle and loans the loaner motor vehicle to a retail customer. [The Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax and to qualify U-drive-it operators.] This administrative regulation sets out the procedures to be followed by an applicant for a U-drive-it permit or a motor vehicle dealer who applies for a U-drive-it permit in order to pay the usage tax on a loaner vehicle as set forth in KRS 138.463.] [It also establishes procedures for obtaining a vehicle identification document and for the payment of the monthly usage tax.]

Section 1. (1) The application for a permit to engage in the business of U-drive-it as defined by KRS 281.014(4) or for the annual renewal of the permit shall be made on Transportation Cabinet form TC 95-16, "Application for U-drive-it".

(2) A motor vehicle dealer who applies for a U-drive-it permit or annual permit renewal in order to pay usage tax on a loaner motor vehicle pursuant to KRS 138.463 shall provide the information required by Section 1(2) of 1998 Ky. Acts ch. 166 on Transportation Cabinet form TC 95-16-L, "Application for U-drive-it - Loaner".

(3) The application or renewal application fee established by KRS 281.620(2) [the form is prescribed and furnished by the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers; and shall be accompanied by a filing fee of twenty-five (25) dollars; Payments] made by check or money order shall be made payable to "Kentucky State Treasurer."

Section 2. An [(1) All initial applications for a U-drive-it permit shall be the subject of a hearing before the cabinet in accordance with the

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

procedures established by administrative regulation 601 KAR 1:030.

(2) Applicants for a U-drive-it permit shall be required to meet the standards established by KRS 281.626. Prior to any application being docketed and noticed for hearing, the applicant shall submit to the Division of Motor Carriers evidence, which may include affidavits, attesting to the fact that the applicant is fit, willing and able to provide the requested service, and that the operation proposed by the applicant is one in which each transaction is arm's length and is based on a fair rental value of the vehicle. Upon determination by the division that the application is complete, the cabinet shall set the matter for hearing.

(3) The cabinet shall give a minimum of thirty (30) days written notice of each hearing to all required and interested parties. The notice shall state the time and place the hearing will be held, shall fully describe the matter to be heard, shall contain the name and address of the party initiating or involved in the matter to be heard, and shall contain the docket number assigned to the matter by the cabinet. The notice shall state that anyone having an interest in the matter may file a protest or other proper pleading in accordance with the requirements of the administrative regulations of the cabinet. Any application filed may in the discretion of the Commissioner of the Department of Vehicle Regulation be considered at a consolidated hearing or may be heard independently at a time set by the cabinet.

(4) All protests, pleadings, motions, and other papers shall be filed with the cabinet in duplicate and shall refer to the docket number assigned thereto by the cabinet, if any. All protests shall be filed no later than ten (10) days prior to the scheduled hearing. Pleadings, protests, motions or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit. The attorney's signature shall constitute the certification by him that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay. If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation, it may be stricken as sham and false, and the matter may proceed as though there had been no filing. All protests shall state the statutory grounds of the protest and the reasons therefor. That which is not filed in conformance herewith will not be considered or accepted as a matter of record.

(5) Any application which is protested or which is brought into question by the cabinet shall be set for a [separate] hearing pursuant to 601 KAR 1:030.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference in this administrative regulation:

(a) Transportation Cabinet form TC 95-16, "Application for U-drive-it", November 1993 edition; and

(b) Transportation Cabinet form TC 95-16-L, "Application for U-drive-it - Loaner" July 1998 edition.

(2) Copies of the material incorporated by reference may be inspected, copied, or obtained at the Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-4540.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: July 14, 1998

FILED WITH LRC: July 14, 1998 at 4 p.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, October 13, 1998)

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

RELATES TO: KRS 138.463, 138.4631, 154.45-090(6), [138.450 through 138.470, 154.690,] 186.281(3), 281.626, 1998 Ky. Acts ch. 166 [Chapters 138, 154, 186, 281]

STATUTORY AUTHORITY: KRS 186.281(2)(c), [138.463, 186.281,] 1998 Ky. Acts ch. 166, sec. 1 [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"; or

(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 license 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 [iden-

tification 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 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

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
Division of Audit Review
(As Amended at ARRS, October 13, 1998)

601 KAR 9:135. Apportioned registration.

RELATES TO: KRS 186.020(1), (3), 186.050(3), (13), 186.051(2), 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 a recreational vehicle, vehicle displaying a restricted plate, a city pickup and delivery vehicle, a bus used in the transportation of a chartered party, and a government-owned vehicle [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;

(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) [(f)] 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 a decal [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

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

the Department of Vehicle Regulation or to 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 or [/] lessor may be the registrant and the vehicle may be registered in the name of the owner or [/] lessor. The allocation of registration fees shall be based on the operational records of the owner or [/] lessor. The apportioned license plate and IRP cab card shall be the property of the lessor; or

(2) The lessee may be the registrant and the vehicle may be registered by the lessee in both the owner's or [owner /] lessor's name and that of the lessee. 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) Pursuant to Section 404 of the International Registration Plan, a Kentucky registrant shall pay trailer registration taxes and fees to Kentucky and a member jurisdiction which has filed an exception under Section 404 to apportioned registration. [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) Within forty-five (45) days of the date of the audit supplemental tax statement, the registrant shall:

(a) Pay the supplemental tax; or

(b) Protest in writing to the Transportation Cabinet, Division of Audit Review. [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:
 - a. Specific adjustment [adjustments] requested; or
 - b. Portion of the audit being protested; and
2. The portions of the audit being protested; and
3. Set [setting] forth the reason for making the protest. [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) Except for the audit provisions established in Sections 14 and 15 of this administrative regulation, a person aggrieved by an action or decision of the Transportation Cabinet, made pursuant to the provisions of this administrative regulation, shall protest to the

Division of Motor Carriers within ten (10) days of the decision. [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 [f] protest conference with the Division of Motor Carriers [Vehicle Licensing]. The information-gathering and [f] 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 [f] 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 [95-96]-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

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of District Support Services
(As Amended at October 13, 1998)

702 KAR 3:060. Procedure for payment of employees.

RELATES TO: KRS [156.031-] 156.070(1), 160.291, 160.450, 161.210(1)

STATUTORY AUTHORITY: KRS 156.070(1), 161.210(1)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary and resubmitted to the Legislative Research Commission prior to December 30, 1990.] KRS 160.291 provides for all school employees working on a continuing, regular basis of less than twelve (12) months a year to be paid regularly, on dates determined by the employing board of education, with the gross salary received on each pay date to be equal to the employee's annual salary divided by the number of pay dates and with payments deemed to be for services rendered. KRS 160.450 provides for the fiscal year of all school districts to begin on July 1 and end on June 30. KRS 161.210 requires a teacher or other person in a public school [allows for requiring teachers] to submit reports at the time and in the manner prescribed by the state board. [-and] KRS 156.070 gives the Kentucky [State] Board of [for Elementary and Secondary] Education the management and control of the public schools. This administrative regulation[-in the interests of uniform and efficient fiscal management-] establishes procedures relative to payment of certified and classified school employees.

Section 1. A board of education shall establish a calendar for payment of salaries to all school employees working on a continuing, regular basis of less than twelve (12) months a year and may require a teacher to present reports of attendance and other necessary reports before the salary check is delivered.

Section 2. A board of education may adopt a policy whereby employees' salaries may be made payable for a period in excess of the number of months for which the school is operated, not exceeding twelve (12) months if the board adopts [-but a board doing such shall adopt] one (1) of the following plans:

(1) The board of education shall write all deferred salary checks on or before June 30 of the current fiscal year and these deferred checks shall then be delivered at the regular pay periods in July and August of the following fiscal year; or

(2) The board of education shall set up a payroll account into which shall be transferred on the order of the board of education on or before June 30, the gross amount for salaries earned by employees but not paid. The amounts transferred into this payroll account shall be held for the payment of deferred employees' salaries and shall not be used for any other purpose. Payment of salaries from this fund shall be at the regular pay periods in July and August of the following fiscal year.

Section 3. Upon written request to the superintendent by a school district employee, a local board of education shall pay all

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

deferred salary checks to the employee. To comply with the written request, a local board shall provide the deferred checks prior to the end of the fiscal year and no later than the first regular payroll date occurring after completion of the employee's responsibilities or duties.

WILMER S. CODY, Commissioner of Education
HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: August 4, 1998

FILED WITH LRC: August 6, 1998 at 9 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau for Management Support Services
(As Amended at ARRS, October 13, 1998)

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070(2)

STATUTORY AUTHORITY: KRS 156.070(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 requires the Kentucky Board of Education (KBE) to manage and control the common schools, including interscholastic athletics in the schools, and authorizes the KBE to designate an agency to manage athletics. This administrative regulation designates an agent for high school athletics; establishes the financial planning and review processes for the agent; and incorporates by reference the bylaws, procedures and rules of the agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) shall be the Kentucky Board of Education's agent to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school.

Section 2. To remain eligible to maintain the designation as the agent to manage interscholastic athletics, the KHSAA shall:

- (1) Accept four (4) at-large members appointed by the Kentucky Board of Education to its governing body;
- (2) Sponsor an annual meeting of its member schools;
- (3) Provide for each member school to have a vote on constitution and bylaw changes submitted for consideration at the annual meeting;
- (4) Provide for regional postseason tournament net revenues to be distributed to the member schools in that region participating in that sport, utilizing a share approach determined by the schools within that region playing that sport;
- (5) Require its governing body to establish goals and objectives and perform a self-assessment and submit them annually to the KBE.
- (6) Advise the Department of Education of all legal action brought against the KHSAA;
- (7) Permit a board of control member to serve a maximum of two (2) four (4) year terms with no region represented for more than eight (8) years;
- (8) Employ a commissioner and evaluate that person's performance annually and establish all staff positions upon recommendation of the commissioner;
- (9) Permit the commissioner to employ other personnel necessary to perform the staff responsibilities;
- (10) Permit the Board of Control to assess fines on a member school;
- (11) Utilize a trained independent hearing officer instead of an eligibility committee for an appeal; ~~and~~
- (12) Establish a philosophical statement of principles to use as a guide in an eligibility case; ~~and~~
- (13) As a condition present to membership, require each member school and superintendent to annually submit a written certification of compliance with 20 USC Section 1681 (Title IX); and
- (14) Conduct all meetings in accordance with KRS 61.805 through 61.850. [Require annually submission to the KHSAA by each

~~member school and superintendent, as a condition precedent to membership, a written certification of compliance with Title IX.]~~

Section 3. Financial Planning and Review Requirements. (1) KHSAA shall submit the following financial documents to the KBE:

- (a) Draft budget for the next two (2) years in November of each year;
 - (b) Annual audit with KHSAA Commissioner's letter addressing an exception within thirty (30) days of receipt of the audit; and
 - (c) Midyear and end-of-year budget status reports by July 30 and January 30, respectively.
- (2) KHSAA shall submit a strategic plan to KBE by June 1 of each year.
- (3) KHSAA shall submit a midyear and annual report by July 30 and January 30, respectively.
- (4) KHSAA shall complete an annual review of its bylaws by October 30 of each year, including the following:
- (a) Athletic appeals;
 - (b) Eligibility rules;
 - (c) Duties of school officials;
 - (d) Contests; and
 - (e) Requirements for officials and coaches.
- (5) KHSAA shall submit to KBE a report of all athletic appeals and their disposition by September 1 of each year. The annual report on appeals shall include the name of the individual, grade, school, and the action taken by KHSAA.

Section 4. The bylaws, tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1998-99 [1997-98] shall apply to high school interscholastic athletics in Kentucky.

Section 5. Incorporation by Reference. (1) "Kentucky High School Athletic Association Handbook, 1998-99 [1997-98 Edition]", Kentucky High School Athletic Association, is incorporated by reference.

(2) This material may be inspected and copied at the Office of Legal Services, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Monday through Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this proposed administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner
Kentucky Department of Education

HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

Approved by agency: June 10, 1998

FILED WITH LRC: June 10, 1998 at 3 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, October 13, 1998)

704 KAR 20:710. Professional certificate for instructional leadership - school principal, all grades.

RELATES TO: KRS 161.020, 161.027, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.027, 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher or [and] other professional school personnel hold a certificate of legal qualification for the respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.027 specifically requires a preparation program for principals. A teacher education institution shall be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the preparation and certification program for school principals, at all grade levels. [This administrative regulation is not required by federal law.]

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 1. Conditions and Prerequisites. (1) The provisional and professional certificate for instructional leadership - school principal shall be issued to an applicant who has completed an approved program of preparation and requirements, including assessments.

(2) The provisional and professional certificate for instructional leadership - school principal shall be valid for the position of school principal or school assistant principal for all grade levels.

(3) Prerequisites for admission to the program of preparation for the provisional and professional certificate for instructional leadership - school principal shall include:

(a) Qualification for a Kentucky classroom teaching certificate;

(b) A 2.5 grade point average on a 4.0 scale on all collegiate preparation;

(c) Successful completion of a generic test of communication skills, general knowledge, and professional education concepts approved by the Education Professional Standards Board as a condition for the issuance of a Kentucky classroom teaching certificate or other test authorized for this purpose by the appropriate state agency recognized by the Education Professional Standards Board through contract with Interstate Agreement on Qualification of Educational Personnel; and

(d) Successful completion of the Kentucky Teacher Internship Program, as provided in 704 KAR 20:045, or two (2) years of successful teaching experience outside the state of Kentucky.

Section 2. Kentucky Administrator Standards for Preparation and Certification. The approved program of preparation for the provisional certificate for instructional leadership - school principal shall include a master's degree in education and shall be designed to address recommendations of relevant professional organizations including the National Policy Board for Educational Administration, the University Council for Educational Administration, the National Council of Professors of Educational Administration, the National Association of Secondary School Principals, and the American Association of School Administrators and to prepare a candidate for the position of School Principal as specified in the standards included in "Interstate School Leaders Licensure Consortium Standards for School Leaders" that is incorporated by reference and [following Administrator Standards] adopted by the Education Professional Standards Board. The standards are as follows:

(1) School leader [Administrator] standard 1. A school [I- The] administrator is an [the] instructional leader who promotes the success of all students by facilitating the development, articulation implementation, and stewardship of a vision of learning that is shared and supported by the school community [guides, facilitates, and supports the curriculum, instruction, and assessment];

(2) School leader [Administrator] standard 2. A school [II- The] administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth; [practices positive, promotional, and proactive communication strategies (oral and written) for effective parent, community, school involvement to improve the learning environment for all students; and]

(3) School leader [Administrator] standard 3. A school [III- The] administrator is an educational [the organizational] leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment; [and manager who acts within legal and ethical guidelines to accomplish educational purposes.];

(4) School leader standard 4. A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(5) School leader standard 5. A school administrator is an educational leader who promotes the success of all students by acting with integrity, fairness, and in an ethical manner; and

(6) School leader standard 6. A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

Section 3. Assessment Prerequisites for the Provisional Certificate for Instructional Leadership - School Principal. (1) An applicant for

certification as a school principal, including vocational principal, shall attain the specified minimum score on each of the following assessments prior to receiving the provisional certificate, except as provided by KRS 161.027(6):

(a) Kentucky Specialty Test of Instructional and Administrative Practices, with a score of eighty-five (85) percent correct responses; and

(b) The written test of applied knowledge approved by the Education Professional Standards Board.

(2) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

Section 4. Statement of Eligibility for Internship. A statement of eligibility for internship for the provisional certificate for instructional leadership - school principal shall be issued for a five (5) year period to an applicant who:

(1) Has successfully completed an approved program of preparation;

(2) Has three (3) years of full-time teaching experience; and

(3) Has successfully completed the appropriate assessment requirements for the school principal certification or qualifies for a one (1) year period of completion of assessments under KRS 161.027(6).

Section 5. (1) A professional certificate for instructional leadership - school principal, level I, shall be issued upon successful completion of the principal internship as provided in KRS 161.027 and 704 KAR 20:470.

(2) The renewal of the professional certificate for instructional leadership - school principal, level I, shall require a recommendation from the approved recommending authority regarding the successful completion of an approved level II program. The certificate shall be valid for five (5) years.

(3) In addition to the requirements of KRS 161.027(9), each subsequent five (5) year renewal of the professional certificate for instructional leadership - school principal, level II, shall require:

(a) Successful completion of two (2) years of experience as a school principal within the preceding five (5) years; or

(b) If the applicant has not successfully completed the two (2) years of experience, completion of three (3) semester hours of additional graduate credit directly related to the position of school principal for each required year of experience the applicant has not completed.

Section 6. Implementation Dates. (1) The provisions for the issuance of the provisional and professional certificate for instructional leadership - school principal, levels I and II, shall apply to a student admitted to a program of preparation beginning September 1, 1998.

(2) A candidate admitted prior to September 1, 1998, to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 shall complete the program by September 1, 2000.

(a) A candidate formally admitted to an approved preparation program for school principal under 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400 by September 1, 1997, shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Completion of the program in which the candidate is enrolled as identified in this subsection;

2. The successful completion of an approved additional three (3) to six (6) graduate semester hours. The additional graduate semester hours shall be designed to address content of the preparation program not addressed in 704 KAR 20:380, 704 KAR 20:390, or 704 KAR 20:400;

3. A recommendation from the institution of higher education for the appropriate certificate; and

4. Successful completion of the required assessment in effect at the time of application for the certificate.

(b) A candidate who holds a valid Kentucky principal certificate shall be eligible for the instructional leadership-school principal, all grades certificate upon:

1. Enrollment in an approved program of preparation that shall:

a. Be designed to address leadership at all grade levels;

b. Include school-based experiences; and

c. Not require more than three (3) to six (6) additional hours of

graduate credit; and

2. A recommendation from the institution of higher education for the appropriate certificate.

(3) A candidate who fails to complete the approved program and appropriate assessments specified in subsection (2) of this section by September 1, 2000, or [and] does not apply for certification by May 1, 2001, shall be required to qualify for the certificate identified in this administrative regulation.

(4) A college or university shall take adequate steps to inform a candidate in these programs regarding the implementation dates identified in this section.

Section 7. Incorporation by Reference. (1) "Interstate School Leaders Licensure Consortium Standards for School Leaders, [Copyright] 1996, [by] the Council of Chief State School Officers"[-, which includes school leader standards, expected knowledge, dispositions, and performances of beginning school leaders,] is incorporated by reference.

(2) This material [Copies of the booklet] may be inspected at the Division of Testing and Internship, Office of Teacher Education and Certification, Kentucky Department, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or [and] obtained from either the Division of Testing and Internship or the Council of Chief State School Officers, Attn: Publications, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Legislative Liaison

APPROVED BY AGENCY: May 11, 1998

FILED WITH LRC: August 12, 1998 at 8 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

**Department of Alcoholic Beverage Control
(As Amended at ARRS, October 13, 1998)**

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

RELATES TO: KRS 243.040(12)[- 243.157]

STATUTORY AUTHORITY: KRS 241.060(1), 243.040(15)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 243.040(12) requires that an out-of-state brewer obtain a license for the sale of a malt beverage to a Kentucky distributor. This administrative regulation establishes the requirements for licensing. [was amended in 1998 to create a new license for out-of-state brewers selling malt beverages to Kentucky distributors. This administrative regulation tiers the requirements for licensing and permits the repeal of 804 KAR 4:190, which is no longer required.]

Section 1. (1) An out-of-state brewer, distributor, importer for a brewer, or importer of a non-U.S. brand of malt beverage may obtain a license for importing a malt beverage into Kentucky if it is:

(a) Licensed to do business in the state in which it is located; and

(b) Registered with the Kentucky Revenue Cabinet.

(2) An entity listed in subsection (1) of this section, who wishes to import more than 25,000 barrels or 775,000 gallons of malt beverage shall:

(a) Apply for an out-of-state brewer's license on an application provided by the cabinet;

(b) Submit documentation required by the application; and

(c) Pay the fee required by KRS 243.040(12).

(3) An entity listed in subsection (1) of this section, who wishes to import less than 25,000 barrels or 775,000 gallons of malt beverage shall:

(a) Apply for a limited out-of-state brewer's license on an application provided by the department;

(b) Submit documentation required by the application; and

(c) Pay an annual fee of \$250. [Any out-of-state brewer, distributor, importer for a brewer, or any importer of a non-U.S. brand of malt beverage who is licensed to do business by the state in which they are located, and is registered with the Kentucky Revenue Cabinet, may obtain a license for the purpose of importing malt beverages into the state of Kentucky, subject to the following require-

ments:

(1) Any brewer, distributor, importer for a brewer, or importer of a foreign brand who desires a license to import more than 25,000 barrels or 775,000 gallons of malt beverages or the equivalent, into the state shall apply for an out-of-state brewers' license and submit all required documentation and a fee described in KRS 243.040(12).

(2) Any brewer, distributor, importer for a brewer, or importer of a foreign brand who desires a license to import less than 25,000 barrels or 775,000 gallons of malt beverages or the equivalent, into the state shall apply for a limited out-of-state brewers' license and submit all required documentation and an annual fee of \$250.]

Section 2. An out-of-state applicant [applicants] shall be exempt from the requirements of KRS 243.360.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) ABC-Form 745 "Out-of-State Brewer's License", (6/15/98 Edition), Department of Alcoholic Beverage Control; and

(b) ABC-Form 745-A "Limited Out-of-State Brewer's License", (6/15/98 Edition), Department of Alcoholic Beverage Control.

(2) This material may be inspected, copied, or obtained at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [(+) ABC-Form 745, an "Out-of-State Brewers' License" (06/15/98 Edition), Department of Alcoholic Beverage Control, is incorporated by reference.

(2) ABC-Form 745-A, a "Limited Out-of-State Brewers' License" (06/15/98 Edition), Department of Alcoholic Beverage Control, is incorporated by reference.

(3) The licenses may be inspected, copied, or obtained at the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

RICHARD N. JOHNSTONE, Commissioner

LAURA DOUGLAS, Secretary

REBECCA W. GOODMAN, General Counsel

APPROVED BY AGENCY: August 10, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET

**Department of Insurance
(As Amended at ARRS, October 13, 1998)**

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

RELATES TO: 1998 Ky. Acts ch. 312 [RS-HB-429]

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 312 [RS-HB-429]

NECESSITY, FUNCTION, AND CONFORMITY: 806 KAR 9:240 confirmed the applicability of licensure statutes and insurance consumer protections to financial institutions. The licensure requirements for financial institutions were addressed by the 1998 General Assembly in 1998 Ky. Acts ch. 312 [RS-HB-429] thereby eliminating the need for 806 KAR 9:240. Therefore, in order to avoid duplicative or conflicting licensing requirements for financial institutions, it is necessary to repeal 806 KAR 9:240.

Section 1. 806 KAR 9:240, Financial institutions licensed as noncredit-related insurance agents, is hereby repealed.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: July 12, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, October 13, 1998)

806 KAR 17:150. Health benefit plan rate filing requirements.

RELATES TO: 1998 Ky. Acts ch. 496 secs. 1, 9-11, 15-23
 STATUTORY AUTHORITY: 1998 Ky. Acts ch. 496, sec. 9(7)
 NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 496, sec. 9(7) authorizes the commissioner to [provides that the commissioner may] promulgate an administrative regulation to obtain relevant information for health benefit plan rate filings and to set forth the format of the filings. This administrative regulation establishes procedures for filing health benefit plan rates so the commissioner will have relevant information to approve or disapprove the rate filing.

Section 1. Definitions. (1) "Base new business rate" means the premium rate for each product benefit plan for each class of business, prior to any adjustments for case characteristics or health status.

(2) "Base new business rate change" means:

(a) For a [any] product benefit plan, the percentage change in the base new business rate measured from the first day of the prior rating period to the first day of the proposed rating period; and

(b) For a [any] product within a market segment class of business, [shall be] equal to the premium weighted average base new business rate change for all of the product benefit plans within that market segment class of business.

(3) [The definition of] "Base premium rate" is defined in [shall be governed by] 1998 Ky. Acts ch. 496, sec. 1.

(4) "Class of business" means all or a distinct grouping of small employers or individuals as shown on the records of the small employer or individual insurance carrier.

(5) "Date of filing" means the date the department confirms that the appropriate filing fee and all information required by this administrative regulation have been received by the department.

(6) "FFS" means a fee for service product type.

(7) [The definition of] "Guaranteed Acceptance Program" or "GAP" is defined in [shall be governed by] 1998 Ky. Acts ch. 496, sec. 1.

(8) "Health benefit plan region" or "geographic region" means each one of the eight allowable rating regions for health benefit plans identified in Form LH-33.

(9) "HMO" means a health maintenance organization product type.

(10) [The definition of] "Index rate" is defined in [shall be governed by] 1998 Ky. Acts ch. 496, sec. 1.

(11) [The definition of] "Large group" is defined in [shall be governed by] 1998 Ky. Acts ch. 496, sec. 1.

(12) "POS" means a point of service product type.

(13) "PPO" means preferred provider organization product type.

(14) [The definition of] "Small group" is defined in [shall be governed by] 1998 Ky. Acts ch. 496, sec. 1.

Section 2. Scope. (1) A [Every] health benefit plan rate filing to which the standards of 1998 Ky. Acts ch. 496, sec. 9 apply, shall include the information required by this administrative regulation.

(2) The period of time in which the commissioner must [may] affirmatively approve or disapprove the filing shall not begin [and the insurer shall not use the proposed rates] until the date of filing.

(3) The insurer shall not use the proposed rates until the date of filing.

(4) The filing and fee shall not be deemed received until the department confirms [has confirmed] that:

(a) All [of the] information required by this administrative regulation has been received; and

(b) [provided and that] The appropriate fee has been paid [received].

Section 3. Health Benefit Plan Rate Filing Procedures. (1) The following shall be included and properly completed in a health benefit plan rate filing submission:

(a) Form LH-32, the Health Benefit Rate Filing Information Form;
 (b) \$100 filing fee or the domiciliary state fee, whichever is greater;

(c) Form LH-1, Face Sheet and Verification Form;

(d) Signed actuarial memorandum prepared in accordance with Section 6 of this administrative regulation;

(e) The Income and Expense Worksheet; and

(f) Certification Form LH-34.

(2) Two (2) copies of all written material shall be submitted to the department.

(3) One (1) copy of all written material [including any amendment, update, additional information, or response to an inquiry from the department] shall be submitted to the Attorney General's Office by the insurer at the same time as the submission to the Department of Insurance. This shall include:

(a) An amendment;

(b) An update;

(c) Additional information; or

(d) A response to an inquiry from the department.

(4) The insurer shall provide a self-addressed, postage-paid envelope large enough to accommodate a return copy for notification of the commissioner's decision [when filing is approved or disapproved by the commissioner].

(5) One (1) copy of the annual report to shareholders or policyholders of the company shall be attached to the filing as an exhibit.

Section 4. Filing Format. (1) A separate health benefit plan rate filing shall be submitted for each market segment as follows:

(a) Individual;

(b) Small group;

(c) Association;

(d) Employer-organized association; and

(e) Large group.

(2) A large group rate filing may include each product type offered as follows:

(a) FFS;

(b) PPO;

(c) POS; and

(d) HMO.

(3) A rate filing for a market segment other than large group may be submitted separately for each product type listed in subsection (2) of this section or in the following combinations:

(a) FFS and PPO; or

(b) POS, HMO, and PPO.

Section 5. Employer-organized Association Rate Filings. (1) An [Each] employer-organized association rate filing shall include the name of each employer-organized association that generated the rating experience contained in the filing. Each employer-organized association that provides the insurer with written permission to have rates based on experience other than their own may have experience combined for rate determination. Proposed rates for a combination of associations shall be contained in one (1) filing.

(2) If an insurer is proposing to begin marketing a health benefit plan to the employer-organized association market segment, a rate filing may be based on the standard plan benefits, including appropriate formulas and rate factors within the limitations outlined in 1998 Ky. Acts ch. 496, sec. 11. The filing shall include:

(a) [This filing would include] Factors for a [any] plan likely to be offered; and

(b) [would provide] A detailed description of the methodology for incorporating the actual experience of an employer-organized association in determining rates for that association.

(3) Within thirty (30) days of receiving written permission from an employer-organized association, the insurer shall submit two (2) copies of the written permission to the commissioner. The written permission shall include the following:

(a) A statement giving the insurer permission to rate the employer-organized association on experience other than the employer-organized association's own experience;

(b) Name, address, and telephone number of the employer-organized association giving permission to the insurer;

(c) Name, address, and telephone number of the insurer to which permission is given;

(d) Month, day, and year that permission is given to the insurer;

and

- (e) Number of eligible association members.

Section 6. Actuarial Memorandum. (1) The actuarial memorandum for each rate filing shall be prepared in accordance with the following:

(a) American Academy of Actuaries Actuarial Standard of Practice No. 8, Regulatory Filings for Rates and Financial Projections for Health Plans; and

(b) Interpretative Opinion 3, Professional Communications of Actuaries.

(2) The actuarial memorandum for a rate filing, other than a large group rate filing, shall include the following:

(a) Qualifications of the signing actuary;

(b) A statement identifying when the company will begin using the proposed rates;

(c) A discussion of rate development which shall include a detailed explanation of the following:

1. The effects of each of the following mandated benefits which discussion shall include the percentage cost and actual dollars attributable to the rates and the number of policyholders who are affected:

- a. Autism;
- b. Cochlear implants;
- c. Diabetes;
- d. Cancer drugs;
- e. Women's health; and
- f. Hospice.

2. The claim cost development that shall include an explanation of the following:

- a. Methodology;
- b. Any assumption including the following:
 - (i) Trend;
 - (ii) Any benefit change;
 - (iii) Any utilization or cost-per-service change;
 - (iv) Any demographic change;
 - (v) Any change in medical management;
 - (vi) Any change in provider contracts;
 - (vii) Any other assumption used; and
- c. Experience, including exposures or members, earned premium, paid claims, incurred claims and incurred loss ratio, for the last three (3) years for this product, or for a similar product if this filing is for a new product;

3. Development and printout of the base premium rates, index rates, corresponding highest premium rates and any applicable GAP premium rates for the standard plan option by age, gender, and tier combination using the lowest industry factor and the lowest area factor, and separately using the highest industry factor and the highest area factor. If the filing contains more than one (1) product, the information required by this subparagraph shall be provided for each product separately. For any filing containing proposed rates for more than (1) one class of business, the information required in this subparagraph shall be provided separately for each class of business.

4. Every factor for each case characteristic including age, gender, industry or occupation, and geographic region, with a separate summary of the maximum factor and the minimum factor for each case characteristic.

a. **A health benefit plan region other than the eight (8)** [Only the eight (8) health benefit plan regions] identified in Form LH-33 shall not [may] be used for a geographic region factor adjustment.

b. Include any healthy lifestyle discount factor, along with an explanation of the determination of that factor, and where that factor is applicable;

5. The anticipated pricing loss ratio including a detailed justification of the following load factors:

a. The percentage allocated for the administrative expense assumption, with an explanation for any change from the factor used for existing rates. **It shall be explained** [Explain] how these costs are allocated among each benefit plan design and attach demonstrative documentation as an exhibit;

b. The percentage allocated for the commission assumption with an explanation for any change from the factor used for existing rates;

c. The percentage allocated for federal, state and local govern-

ment tax assumptions with an explanation for any change from the factor used for existing rates;

d. The percentage allocated for the investment income assumption with an explanation for any change from the factor used for existing rates;

e. The percentage allocated for the profit and contingency assumption with an explanation for any change from the factor used for existing rates; and

f. The percentage allocated for any other factor;

(d) Detailed explanation, with example, of the following:

1. The method for determining a small group composite rate;

2. When a small group composite rate is recalculated; and

3. The group size that is eligible for a composite rate calculation;

(e) Each health benefit plan description and the applicable benefit factor adjustment, or any other method of calculating rates for a different benefit plan if the method is not multiplicative, for each benefit plan to which this filing applies. If applicable, the two (2) individual GAP benefit plans, other than the Standard Benefit Plan, shall be identified. Any other benefit plan offered to a GAP participant shall also be identified.

(f) Detailed discussion of the manner in which the projected amount of net assessments and refunds under 1998 Ky. Acts ch. 496, secs. 21 and 22 is included in establishing the proposed rates in the filing as required by 1998 Ky. Acts ch. 496, sec. 9(6);

(g) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to the rate requested, including any assumption used regarding provider discounts in the rate filing; and

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for the rate filing period;

(h) If a trend rate is used, include the time period to which the trend applies and the applicable annual trend rate;

(i) Explanation of the anticipated effect of the requested rates on the current policyholders, subscribers, or enrollees;

(j) Information regarding each class of business which shall include:

1. Identification of each class of business;

2. Justification of each separate class of business; and

3. A demonstration that each index rate for the class of business with the highest index rates is within ten (10) percent of the corresponding index rate from the class of business with the lowest index rates; and

(k) Prospective certification of the following, which shall be filed as an attachment to the actuarial memorandum for a rate filing other than a large group filing, and signed by the qualified actuary who prepared and signed the actuarial memorandum:

1. That the information is prepared in accordance with American Academy of Actuaries Actuarial Standard of Practice No. 26, Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans, applicable to the following markets:

- a. Individual;
- b. Association;
- c. Employer-organized association; and
- d. Small group business; and

2. That all the proposed rates are in compliance with 1998 Ky. Acts ch. 496, secs. 10, 11, and 19.

Section 7. Large Group Rate Filings. (1) The actuarial memorandum for a large group rate filing shall include the following information:

(a) The information provided in Section 6(2)(a), (b), (c)1, (c)2, (c)5, (f), (g), (h) and (i);

(b) Development of rating basis including each adjustment for the following:

- 1. Age;
- 2. Gender;
- 3. Family composition;
- 4. Benefit plan;
- 5. Industry;
- 6. Healthy lifestyle; and

7. Any other adjustment;
 - (c) Any formula for new and renewal business including a definition of each term used in the formula;
 - (d) Credibility criteria used in conjunction with experience rating;
 - (e) Detailed explanation of any change in the manual rating formula or experience rating formula;
 - (f) Detailed explanation of any change in factors that would be used in any formula;
 - (g) Any periodic trend rate applied in the formula;
 - (h) The composite effect of any change in formula and formula factors; and
 - (i) Detailed explanation of any trend assumption used in experience rating.
- (2) Certification Form LH-34 shall not be required for a large group rate filing.

Section 8. Material Incorporated by Reference: (1) The following material is incorporated by reference:

- (a) Form LH-32, "Health Benefit Plan Rate Filing Information Form (7/98 Edition)";
- (b) Form F-1 LH, "Face Sheet and Verification Form (4/98 Edition)";
- (c) Actuarial Standards of Practice No. 8, "Regulatory Filings for Rates and Financial Projects for Health Plans (Doc. No. 010, 1990 Edition)", American Academy of Actuaries;
- (d) Actuarial Standard of Practice No. 26, "Compliance with Statutory and Regulatory Requirements for the Actuarial Certification of Small Employer Health Benefit Plans (Doc. No. 052, adopted October, 1996)", American Academy of Actuaries;
- (e) Interpretive Opinion 3, "Professional Communications of Actuaries (1992 Edition)", American Academy of Actuaries;
- (f) Income and Expense Worksheet (1998 Edition);
- (g) Form LH-33, "Health Benefit Plan Regions (7/98 Edition)"; and
- (h) Certification Form LH-34 (7/98 Edition).

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
 LAURA M. DOUGLAS, Secretary
 GALE PEARCE, General Counsel
 APPROVED BY AGENCY: July 31, 1998
 FILED WITH LRC: August 3, 1998 at 4 p.m.

**CABINET FOR HEALTH SERVICES
 Department for Medicaid Services
 (As Amended at ARRS, October 13, 1998)**

907 KAR 1:022. Nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [KRS 205.520]

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.558, 1998 Ky. Acts ch. 426, sec. 4(3) [GA-HB-132] [42-CFR-430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456, 42 USC 1396, 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer Medicaid the program. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to nursing facility and intermediate care facility for the mentally retarded services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and medically needy recipients.

Section 1. Definitions. [The following definitions shall be applicable:] (1) "Department" means the Department for Medicaid Services

or its designee.

(2) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with care provided in beds also participating in the Medicare program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards established in Section 4(2) of this administrative regulation [under Medicare].

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to a Medicaid eligible individual who meets [individuals who meet] ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour-per-day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards established in Section 4(3) of this administrative regulation.

(7) "Nursing facility" [(NF)] means:

(a) A facility which:

1. Has a license as a nursing facility; and

2. [which] is certified to the Department for Medicaid Services by the state survey agency as meeting the nursing facility standards; or

(b) A hospital swing bed that provides [beds-providing] services in accordance with 42 USC 1395tt and 42 USC 1396l, [shall also be considered nursing facilities] if the swing bed is [beds-are] certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 USC 1396r(b), (c), (d), 42 CFR 447.280 and 482.66 [under federal laws and regulations].

(8) "Nursing facility with waiver" (NF-W) means a facility which:

(a) May not meet Medicare participation requirements;

(b) Has a license as a nursing facility; and

(c) [which] is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. [Some nursing facilities with waiver do not meet Medicare participation requirements.]

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means a medical condition [one-(t)] which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. ["Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.]

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis:

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of

the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396t shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program.

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made [to the cabinet] using the procedures specified by the [Commissioner,] Department for Medicaid Services[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when enrollment is completed [participation status is achieved].

(2) All nursing facilities [Each nursing facility] shall have [be required to have] participatory status in the program of health care known as Medicare in at least twenty (20) percent of all [the facility's] Medicaid certified [participating] beds, [(but not less than ten (10) beds, also certified to participate in Medicare unless the facility has [they have] obtained a Medicaid waiver of the nurse staffing requirement. (:) If the nursing facility has less than ten (10) [Medicaid participating] beds certified for Medicaid, all Medicaid certified [participating] beds shall also be certified to participate in [the] Medicare [Program] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility which has obtained a Medicaid waiver of the nurse staffing requirements [with waiver] chooses to participate in [the] Medicare, the facility [they] [Program, the facility] shall have [meet Medicare participation requirements in] at least twenty (20) percent of all [the facility's] Medicaid certified [participating] beds, [(but not less than ten (10) beds, also certified to participate in Medicare. If [the facility has] less than ten (10) [Medicaid participating] beds are certi-

fied for Medicaid, all Medicaid [participating] beds shall also be certified to participate in [the] Medicare. [Program.])]

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and [annual] resident review requirements specified in 42 USC 1396r and 907 KAR 1:755 [effective with regard to admissions and resident stays occurring on or after January 1, 1989]. A facility [Facilities] failing to comply with these requirements [this requirement] shall be subject to disenrollment, with exclusion from participation to be accomplished in accordance with 907 KAR 1:671, [1:220, Terms and conditions of provider participation; provider appeals, and federal regulations at] 42 CFR 431.153 and 431.154.

(5) A facility shall be required to be certified by the state survey agency as meeting NF, NF-W, or ICF-MR status[; a facility not appropriately certified shall not participate in the Medicaid Program except for appropriately certified SNFs or ICFs during the grandfathered period which ends upon the facility's first survey by the state survey agency on or after October 1, 1990].

(6) A facility shall have appropriate accreditation to provide specialized rehabilitation services [as approved by the state]. A facility shall be considered accredited if [Appropriate accreditation shall have occurred when] the facility has been accredited by:

(a) [a nationally recognized accrediting agency or organization such as] The Commission on Accreditation of Rehabilitation Facilities (CARF); or

(b) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Section 3. Provision of Service. (1) Payment for high intensity, low intensity and ICF-MR services shall be limited to those services meeting the care definitions established [shown] in Section 1 of this administrative regulation.

(a) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for high intensity services provided to a Medicaid eligible individual [individuals] meeting high intensity patient status criteria if the services are provided in a bed [beds] also participating in the Medicare Program. [and]

(b) A nursing facility or nursing facility with waiver shall [may] provide and receive payments for low intensity services provided to a Medicaid eligible individual [individuals] meeting low intensity patient status criteria if [when] the services are provided in a [any] Medicaid participating bed [beds]. (:)]

(c) An ICF-MR shall [may] provide and receive payments for ICF-MR services only.

(2) A participating nursing facility shall [may] be certified in accordance with standards and conditions specified in the [907-KAR 1:545; Incorporation by reference of the] nursing facility services manual before the facility may [to] operate a unit that provides:

(a) [providing] Preauthorized specialized rehabilitation services for a person with a brain injury; or

(b) Care for a person who is ventilator dependent. [persons with brain injuries.]

[(3) A participating nursing facility may be certified in accordance with standards and conditions specified in the nursing facility services manual to operate a unit providing care for persons who are ventilator dependent.]

Section 4. Determining Patient Status. The department [Professional staff of the cabinet, or a peer review organization operating under its lawful authority pursuant to the terms of its agreement with the cabinet,] shall review and evaluate the health status and care needs of the individual [recipient] in need of institutional care giving consideration to the medical diagnosis, care needs, services and health personnel required to meet these needs and the feasibility of meeting the needs through alternative institutional or noninstitutional services.

(1) An individual [A patient] shall not qualify for Medicaid patient status unless the individual [person] is qualified for admission, and continued stay as appropriate, under the preadmission screening and [annual] resident review criteria specified in 42 USC 1396r and 907 KAR 1:755 [with regard to admissions and resident stays occurring on or after January 1, 1989].

(2) An individual shall [Individuals] [Patients] qualify for high intensity nursing care if:

(a) On a daily basis:

1. ~~[when]~~ **The individual's** ~~[Their]~~ needs mandate:

a. High intensity nursing care; or

b. ~~[2.]~~ High intensity rehabilitation services; and

2. ~~[3.]~~ ~~[on a daily basis and when, as a practical matter,]~~ The care can only be provided on an inpatient basis;

(b) ~~[Where]~~ The inherent complexity of a service prescribed for ~~an individual~~ ~~[a patient]~~ exists to the extent that it can be safely or effectively performed only by or under the supervision of technical or professional personnel; or

(c) **The individual has** ~~[They have]~~ ~~[the patient would qualify for high intensity nursing care. A patient with] an unstable medical condition manifesting a combination of care needs in the following areas~~ ~~[shall qualify for high intensity nursing care];~~

1. ~~[(a)]~~ Intravenous, intramuscular, or subcutaneous injections and hypodermoclysis or intravenous feeding;

2. ~~[(b)]~~ Nasogastric or gastrostomy tube feedings;

3. ~~[(c)]~~ Nasopharyngeal and tracheotomy aspiration;

4. ~~[(d)]~~ Recent or complicated ostomy requiring extensive care and self-help training;

5. ~~[(e)]~~ In-dwelling catheter for therapeutic management of a urinary tract condition;

6. ~~[(f)]~~ Bladder irrigations in relation to previously indicated stipulation;

7. ~~[(g)]~~ Special vital signs evaluation necessary in the management of related conditions;

8. ~~[(h)]~~ Sterile dressings;

9. ~~[(i)]~~ Changes in bed position to maintain proper body alignment;

10. ~~[(j)]~~ Treatment of extensive decubitus ulcers or other widespread skin disorders;

11. ~~[(k)]~~ Receiving medication recently initiated, which requires high intensity observation to determine desired or adverse effects or frequent adjustment of dosage;

12. ~~[(l)]~~ Initial phases of a regimen involving administration of medical gases; or

13. ~~[(m)]~~ Receiving services which would qualify as high intensity rehabilitation services if ~~[when]~~ provided by or under the supervision of a qualified therapist~~[(s)]~~, for example:

a. Ongoing assessment of rehabilitation needs and potential;

b. Therapeutic exercises which **shall** ~~[must]~~ be performed by or under the supervision of a qualified physical therapist;

c. Gait evaluation and training;

d. Range of motion exercises which are part of the active treatment of a specific disease state which has resulted in a loss of, or restriction of, mobility;

e. Maintenance therapy if ~~[when]~~ the specialized knowledge and judgment of a qualified therapist is required to design and establish a maintenance program based on an initial evaluation and periodic reassessment of the patient's needs, and consistent with the patient's capacity and tolerance;

f. Ultrasound, short wave, and microwave therapy treatments;

g. Hot pack, hydrocollator infrared treatments, paraffin baths, and whirlpool ~~(if [in cases where] the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, fractures or other complications, and the skills, knowledge, and judgment of a qualified physical therapist are required);~~ or ~~[and]~~

h. Services by or under the supervision of a speech pathologist or audiologist if ~~[when]~~ necessary for the restoration of function in speech or hearing.

(3) An individual shall be determined to meet low intensity patient status if ~~[when]~~ the individual requires intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with a stable medical condition requiring intermittent high intensity services not provided in a personal care home shall be considered to meet patient status.

(b) An individual with a stable medical condition, who has a complicating problem which prevents the individual from caring for himself in an ordinary manner outside the institution shall be considered to meet patient status. For example, an ambulatory cardiac patient with hypertension ~~[and hypertensive patients]~~ may be reasonably stable on appropriate medication, but have intellectual deficiencies preventing safe use of self-medication, or other problems requiring frequent

nursing appraisal, and thus be considered to meet patient status.

(c) An individual with a stable medical condition manifesting a significant combination of the following care needs shall be determined to meet low intensity patient status if ~~[when]~~ the professional staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;

2. Physical or environmental management for confusion and mild agitation;

3. Must be fed;

4. Assistance with going to bathroom or using bedpan for elimination;

5. Old colostomy care;

6. In-dwelling catheter for dry care;

7. Changes in bed position;

8. Administration of stabilized dosages of medication;

9. Restorative and supportive nursing care to maintain the individual ~~[patient]~~ and prevent deterioration of his condition;

10. Administration of injections during time licensed personnel is available;

11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or

12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not ~~[generally]~~ be considered to meet patient status criteria if ~~[when]~~ care needs are limited to the following:

1. Minimal assistance with activities of daily living;

2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch~~[(es)]~~ or cane;

3. **A limited diet** ~~[limited diets]~~ such as low salt, low residue, reducing or another ~~[and other]~~ minor restrictive diet ~~[diets]~~;

4. Medications that can be self-administered or the individual requires minimal supervision.

(4) ~~An individual [Evaluation of patient status for persons with mental disorders or mental retardation. A person] with a mental illness~~ ~~[disorder]~~ or mental retardation or a related condition meeting the health status and care needs specified in subsections (2) and (3) of this section shall:

(a) ~~[generally]~~ Be considered to meet patient status; and

(b) ~~[However, these individuals shall]~~ Be specifically excluded from coverage in the following situations:

1. ~~[(a)]~~ If ~~[When]~~ the department ~~[cabinet]~~ determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual ~~[patient]~~, other patients in the facility, or staff of the facility; and

2. ~~[(b)]~~ If ~~[When]~~ the nursing care needs result directly and specifically from a mental illness or mental retardation or a related condition; or ~~[disorder; i.e., are essentially symptoms of the mental disorder; and]~~

3. ~~[(c)]~~ If ~~[When]~~ the individual ~~[patient]~~ does not meet the preadmission screening and ~~[annual]~~ resident review criteria specified in 42 USC 1396r and 907 KAR 1:755 for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for individuals with mental retardation ~~[the mentally retarded]~~ and individuals ~~[persons]~~ with related conditions if ~~[when]~~ the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status, the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his own limitations;

3. Obtaining educational experiences that will be useful in self-

supporting activities; or

4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

1. [when] The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and

3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) ~~An [It shall be the policy of the cabinet that no]~~ individual shall not be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation), the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. (1) Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation.

(2) Patient status shall be reevaluated at least once every six (6) months.

(3)~~[(a)]~~ If a reevaluation of care needs reveals that the individual ~~[patient]~~ no longer requires high intensity care, low intensity care, or intermediate care for a person ~~[the persons]~~ with mental retardation: ~~[- then]~~

~~(a) [(b)] [mentally-retarded services and payment is no longer appropriate in the facility;]~~ Payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care; and

~~(b) [(c)]~~ Ten (10) days from the date of the reevaluation, payment shall no longer be appropriate in the facility.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals ~~[Persons]~~ with Brain Injuries. An individual who is ~~[Individuals [Patients] who are]~~ brain injured and meets the ~~[meet-usual]~~ high intensity nursing facility patient status criteria or is ~~[as]~~ qualified under subsection (5) of this section shall ~~[may]~~ be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if ~~[when]~~ the care is preauthorized by ~~[staff of]~~ the department ~~[for Medicaid Services]~~ using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the brain ~~[head]~~ injury into the certified brain ~~[head]~~ injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

(a) Central nervous system injury from physical trauma;

(b) Central nervous system damage from anoxia or hypoxic episodes; or ~~[and]~~

(c) Central nervous system damage from an allergic condition, toxic substance or another acute medical or clinical incident. ~~[allergic conditions, toxic substances and other acute medical/clinical incidents;]~~

(2) The following items shall be ~~[is a list of]~~ indicators for admission and continued stay:

(a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;

(b) The individual shall not be in a persistent vegetative state;

(c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;

(d) The individual requires coma management; or ~~[and]~~

(e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

(a) The presenting problem;

(b) The goals and expected benefits of the admission;

(c) The initial estimated time frames for goal accomplishment; and

(d) The services needed.

(4) The following ~~[is a]~~ list of conditions ~~[which]~~ shall ~~[are]~~ not be considered brain injuries requiring specialized rehabilitation under this section:

(a) A stroke ~~[Strokes]~~ treatable in a nursing facility ~~[nursing facilities]~~ providing routine rehabilitation services;

(b) A spinal cord injury ~~[injuries]~~ in which there is ~~[are]~~ no known or obvious injury ~~[injuries]~~ to the intracranial central nervous system;

(c) Progressive dementia or ~~[dementias and]~~ other mentally impairing condition ~~[conditions];~~

(d) Depression or ~~[and]~~ psychiatric disorder ~~[disorders]~~ in which there is no known or obvious central nervous system damage;

(e) Mental retardation or ~~[and]~~ birth defect related disorder ~~[disorders]~~ of long standing; or ~~[and]~~

(f) Neurological degenerative, metabolic or ~~[and]~~ other medical condition ~~[conditions]~~ of a chronic, degenerative nature.

(5) An individual ~~[A patient]~~ may qualify for coverage under the brain injury program if the patient meets low-intensity level of care and has sufficient neurobehavioral sequelae resulting from the brain injury which when taken in combination require an intensity of care which is equal to high intensity nursing care, if the following criteria are met:

(a) The individual ~~[patient]~~ shall not have previously received specialized rehabilitation services ~~(an individual [individuals] [persons] discharged for the purpose of transfer to another brain injury facility shall not be [are not] considered to have "previously received specialized rehabilitation services")~~ as provided for in this section;

(b) The individual ~~[patient]~~ shall have the potential for rehabilitation;

(c) The care shall be prior authorized on an individual basis by the Department for Medicaid Services; and

(d) The care shall be authorized for no more than six (6) months at any one (1) time.

Section 7. Requirements, Standards and Preauthorization of Certified Distinct Part Nursing Facility Ventilator Services. An individual who is ~~[Individuals who are]~~ ventilator dependent and meets the ~~[meet-usual]~~ high intensity nursing facility patient status criteria shall ~~[may]~~ be provided care in a certified distinct-part ventilator nursing facility unit providing specialized ventilator services if the care is preauthorized using criteria specified in this section and the Nursing Facilities Services Manual.

(1) Facility participation criteria.

(a) The nursing facility shall operate a program of ventilator care within a certified distinct part nursing facility unit which meets the needs of all ventilator patients admitted to the unit.

(b) The unit shall have not less than twenty (20) beds certified for the provision of ventilator care.

(c) The unit shall be required to have an average patient census of not less than fifteen (15) patients during the calendar quarter preceding the beginning of the facility's rate year or the quarter for which certification is being granted in order to qualify as a distinct-part ventilator nursing facility unit.

(d) The unit shall have a ventilator machine owned by the facility for each certified bed with an additional back-up ventilator machine required for every ten (10) beds.

(e) The facility shall have an appropriate program for discharge planning and weaning from the ventilator.

(2) Patient criteria and service characteristics. The following items shall be the ~~[describe]~~ patient criteria and treatment characteristics for distinct-part ventilator nursing facilities:

(a) The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual:

1. Requires:

a. This ~~[such]~~ mechanical support for twelve (12) or more hours per day; and

b. [requires] Twenty-four (24) hours per day high intensity specialty nursing care; or

2. ~~[(b)]~~ The individual shall be considered ventilator (or respiration stimulating mechanism) dependent if the individual is in an active weaning program ordered by and under the management of a physician and reviewed and approved by the department; and

a. ~~[(1)]~~ The goal of the active weaning program is to attain the least mechanical support in the least invasive manner that is con-

sistent with the maximal function of the individual and ultimately no mechanical respiratory support;

b. [2:] The individual demonstrates steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism) as documented in the individual's physician and nursing progress notes; and

c. [3:] The individual requires twenty-four (24) hours per day high intensity specialty nursing care.

(b) [(e)] An individual shall not be considered ventilator dependent due to being in an active weaning program if:

1. The individual is no longer demonstrating steady progress in decreasing the number of hours and dependence upon the ventilator (or respiration stimulating mechanism); or

2. The individual has been off the ventilator (or respiration stimulating mechanism) for seventy-two (72) consecutive hours.

(c) An admission [(d) Admissions] from hospitalization or other location shall demonstrate two (2) weeks clinical and physiologic stability including applicable weaning attempts prior to transfer. [; and]

(d) [(e)] A physician's order shall specify [specifies] that the services shall not be provided in an alternative setting due to the medical stability and safety needs of the individual.

(3) A patient status determination [determinations] shall be made taking into consideration the following factors and those defined in the Nursing Facility Services Manual, Section IV-B, C and D:

(a) Alternative care possibilities;

(b) Goals for patient care;

(c) Primary hypoventilation, restrictive lung, ventilatory muscular dysfunction, or [and] obstructive airway disorders needs which may necessitate mechanical ventilator and related care;

(d) Nonhospital management factors and needs;

(e) Patient treatment characteristics;

(f) Home care potential;

(g) Suitability of transfer to the ventilator care unit;

(h) Provision of an appropriate place of care; and

(i) Other facility admission indicators as established [shown] in the Nursing Facility Services Manual.

Section 8. Denial of Patient Status. If an individual does not meet Medicaid criteria for admission or continued stay in a nursing facility, the individual may appeal the denial in accordance with 907 KAR 1:563.

Section 9. Reserved Bed Days. The department [cabinet] shall cover reserved bed days in accordance with the following specified upper limits and criteria.

(1) Reserved bed days for a nursing facility or a nursing facility [nursing facilities and nursing facilities] with waiver shall be covered for a maximum of fourteen (14) days per absence for a hospital stay with an overall maximum of forty-five (45) days per provider during the calendar year. Reserved bed days shall be covered for a maximum of fifteen (15) days per provider during the calendar year for leaves of absence other than for hospitalization.

(2) For an intermediate care facility [intermediate facilities] for the mentally retarded and individuals [persons] with related conditions, reserved bed days shall be covered for a maximum of forty-five (45) days per provider within a calendar quarter. Reserved bed days for hospital stays shall not exceed fifteen (15) days per stay. [No] More than thirty (30) consecutive reserved bed days (for a hospital stay[(s)] plus leave[(s)] of absence, or leave of absence [only]) shall not be approved for coverage.

(3) Coverage during an individual's [a recipient's] absence for hospitalization or leave of absence shall be contingent on the following conditions being met:

(a) The individual [person] shall be in Medicaid payment status in the level of care he/she is authorized to receive and shall have been a resident of the facility at least overnight. An individual [individuals] [Persons] for whom Medicaid is making Medicare coinsurance payments shall not be considered to be in Medicaid payment status for purposes of this policy;

(b) The individual may [person can] be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there shall be [is] a likelihood that the bed would be occupied by some other

patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, or another noncovered service [etc.]; and

(e) For a leave [leaves] of absence other than for hospitalization, the individual's [patient's] [physician-orders-and] plan of care shall include a physician's order providing [provide] for leave. A leave [such-leaves-Leaves] of absence shall include a visit [visits] with a relative or friend, or a leave [relatives-and-friends-and-leaves] to participate in a state-approved therapeutic or rehabilitative program [programs].

Section 10. Preadmission Screening and Resident Review. (1) Prior to admission of an individual, an NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) Compliance with 907 KAR 1:755 shall be [is] required in order for an individual to be admitted to an NF.

Section 11. Incorporation by Reference. (1) "Medicaid Nursing Facility Services Manual", Department for Medicaid Services, October [February] 1998 edition, is incorporated by reference.

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

[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: July 27, 1998

FILED WITH LRC: July 29, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, October 13, 1998)

907 KAR 1:560. Medicaid hearings and appeals regarding eligibility [for-recipients].

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 42 CFR 431 subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.025, 194.050, 1998 Ky. Acts ch. 426, sec. 4(3) [GA-HB-132] [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid grievance, hearing and appeal process regarding Medicaid eligibility issues. [for-recipients.]

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Designated hearing agency" means the Department for Social Insurance.

(5) ["Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program:

(6) "Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral health care organization:

(7) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. With

the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 906 KAR 1:080, the following provisions shall apply:

(1) An applicant or recipient shall be informed of his right to a hearing:

- (a) Verbally and in writing when application is made; and
- (b) In writing if an action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) An applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) Other spokesperson; or
- (e) Himself.

Section 3. Request for a Hearing. With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 906 KAR 1:080, the following provisions shall apply:

(1) An applicant, recipient or an authorized representative may request a hearing by filing a request with the designated hearing agency at the local office or central office.

(2) The applicant, recipient or authorized representative shall clearly indicate a desire for a hearing by submitting a statement:

- (a) In written form; or
- (b) Verbally and followed up in writing.

(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or verbal (with appropriate follow-up in writing) request from an applicant, recipient or authorized representative with regard to an action or a delay in taking a timely action by the Department for Medicaid Services or its designee regarding Medicaid eligibility [or coverage] shall be received by the designated hearing agency within:

(a) ~~Forty (40) days of the date of the advance notice of adverse action;~~

(b) Thirty (30) days of the notice of:

- 1. Denial of an application;
- 2. Discontinuance of an active case;
- 3. Increase in patient liability; or
- 4. ~~Reduction of Medicaid coverage; or~~

(b) ~~(c)~~ A time period equal to the delay in action by the agency.

(2) An additional thirty (30) days for requesting a hearing shall [may] be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of:

- 1. Adverse action;
- 2. ~~[or the notice of]~~ Discontinuance of Medicaid eligibility; or
- 3. Increase in patient liability; ~~[or reduction of Medicaid coverage;]~~

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of:

- 1. Adverse action;
- 2. ~~[or the notice of]~~ Discontinuance of the Medicaid eligibility;
- 3. Increase in patient liability; ~~[or reduction of Medicaid coverage;]~~

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Except as provided in subsection (3) or (4) of this section, Medicaid eligibility [coverage] shall be continued at the level prior to the adverse action through the month in which the hearing officer's decision is:

(a) Rendered if the request results from dissatisfaction regarding a:

- 1. Proposed discontinuance; or
- 2. Proposed increase in patient liability; or
- 3. ~~Proposed reduction of Medicaid coverage;~~ and
- (b) Received within ten (10) days of the date of the:
- 1. Advance notice of adverse action; or

2. Notice of ~~[decrease or]~~ discontinuance from the Department for Medicaid Services or its designee.

(2) Except as provided in subsection (4) of this section, Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of:

- 1. Adverse action;
- 2. ~~[or notice of]~~ Discontinuance of Medicaid eligibility; or
- 3. Increase in patient liability ~~[or reduction of Medicaid coverage];~~

and

(b) The reason for delay meets the good cause criteria established in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, recipient or authorized representative requests the discontinuance or [;] increase in patient liability ~~[or reduction of Medicaid coverage]~~ to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation.

(5) A continued or reinstated benefit shall be considered an overpayment if the agency decision is upheld.

(6) A time limited benefit shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding:

- 1. The hearing process;
- 2. ~~[including]~~ The right to case record review prior to the hearing;
- 3. The right to representation; and
- 4. A statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2) A party to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case. Less timely notice may be requested by the applicant, recipient or authorized representative to expedite the scheduling of the hearing.

(3) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date of the decision, with the exception that a hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant, recipient or authorized representative:

(a) May withdraw his request for a hearing prior to release of the hearing officer's decision; and

(b) Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative prior to finalizing the action.

(2) Abandonment of request.

(a) A hearing request shall be considered abandoned if the applicant, recipient or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause criteria established in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
- (b) Review the case record relating to the issue; and
- (c) Submit additional information in support of his claim.

(2) If the hearing involves medical issues:

(a) A medical assessment by other than a person involved in the original decision shall be obtained at the department's expense if the hearing officer considers it necessary; and

(b) If a medical assessment at the department's expense is requested by the applicant, recipient or authorized representative and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant, recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

- (a) Before the hearing; and
 - (b) In accordance with the good cause criteria established in Section 4(2) of this administrative regulation.
- (2) The decision to grant the postponement shall be made by the hearing officer.
- (a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.
- (b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. (1) The department may determine that corrective action to provide or restore eligibility [services or coverage] is appropriate if:

- (a) A hearing has been requested;
 - (b) A hearing decision has not been rendered; and
 - (c) The department's action or proposed action made the applicant or recipient ineligible for benefits [a service or coverage] to which he was entitled.
- (2) After corrective action has been taken:
- (a) The applicant, recipient or authorized representative shall be given the opportunity to withdraw the hearing request; and
 - (b) The hearing process shall continue if the applicant, recipient or authorized representative wishes to pursue the request.

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(3) The hearing shall be conducted in-state where the applicant, recipient or authorized representative may attend without undue inconvenience.

(4) If necessary to receive full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(5) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 12. The Decision. **With the exception of a dispute resolution regarding a utilization review denial, which shall be processed in accordance with 906 KAR 1:080, the following provisions shall apply:**

(1) After the hearing is concluded, the hearing officer shall issue a decision in accordance with the requirements of KRS 13B.110.

(2) A decision with regard to a community spouse's income allowance shall be subject to a downward adjustment as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment with regard to a resource that is:

- 1. Attributed to the community spouse; and
- 2. Not transferred within six (6) months of the Medicaid approval date.

(b) This adjustment shall be appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for an Applicant and Recipient. (1) An applicant, recipient or his authorized representative wishing to appeal the decision of a hearing officer shall file an appeal to an appointed appeal board.

(2) The appeal request shall be considered timely if it is received

in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed.

(3) If the good cause criteria established in Section 4(2) of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be:

- (a) Filed:
 - 1. In writing; or
 - 2. Verbally, if a written request is subsequently sent; and
- (b) Considered filed on the day the request is received.

(5) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request.

(6) Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to an Appeal Board Consideration. (1) An appeal shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant, recipient or authorized representative specifically requests permission to file additional proof.

(2) If an appeal is being considered on the record, a party may present a written argument and at the appeal board's discretion, be allowed to present an oral argument.

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to the introduction of additional evidence or to rebut or refute the additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board **shall:**

- (1) **Be** duly signed by members of the appeal board;
- (2) **[shall]** Set forth in writing the facts on which the decision is based; and
- (3) **[unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150, shall]** Be irrevocable in respect to the issue in the individual case **unless the decision is set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.**

Section 17. Medicaid Case Actions Following a Decision. (1) A Medicaid case action following a decision of a hearing officer or the appeal board shall be made promptly and shall include:

- (a) The month of application; or
- (b) If it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal involving **[a reduction of Medicaid coverage or]** an increase in patient liability, action shall be taken to **reduce the patient liability [restore benefits]** within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. **[Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determination. The department shall contract with a peer review organization to provide a level of care determination for an individual in a nursing facility. For an individual appealing a peer review organization's determination, the following special provisions shall be applicable:**

- (1) **If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the department. The**

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency.

(a) The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision.

(b) If the request for reconsideration is made within ten (10) days, benefits shall continue as appropriate until the reconsideration decision has been made.

(c) A reconsideration hearing shall be held within:

1. Ten (10) working days of the request if the recipient is in the facility; and

2. Thirty (30) days of the request if the request for reconsideration is received after the recipient has left the facility.

(3) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(4) Impartiality. The hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(5) After the hearing is concluded, the hearing officer shall issue a decision in accordance with the requirements of KRS 13B.110. A copy of the decision shall be mailed to the recipient and his representative.

(6) If the reconsideration decision is adverse to the recipient, he may appeal to the department for a hearing in accordance with this administrative regulation.

(a) The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision. A request may be filed with the utilization review agency or directly with the department.

(b) If filed with the utilization review agency, the agency shall forward the request with appropriate medical records and other necessary documentation to the department.

(7) If a negative decision has been appealed to the department, the appeal shall be processed as established in Sections 3, 4, 5, and 6 of this administrative regulation.

Section 19.] Medicaid Managed Care Provision of Services. (1) A dispute resolution between a recipient and a partnership or managed behavioral health care organization shall be in accordance with KRS 211.461 through 211.466 and 906 KAR 1:080.

(2) All other hearings or appeals relating to the Medicaid managed care provision of services shall be processed in accordance with 907 KAR 1:563. [Special Procedures Relating to a Managed Care Participant. Special procedures relating to a managed care participant are located in 907 KAR 1:563.] [(1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral health care organization in which a member is enrolled in accordance with 907 KAR 1:710.

(2) If the of the partnership or the managed behavioral health care organization decision is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral health care organization or its subcontracted provider to the department in accordance with Sections 3 through 12 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral health care organization plan.

(3) A member or his authorized representative wishing to appeal the decision of a hearing officer shall file an appeal to an appointed appeal board.

(4) An appeal shall be processed as established in Sections 14, 15 and 16 of this administrative regulation.]

Section 19. [20:] Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief included) of an appeal to the appeal board;

(c) \$175 for preparation and presentation, including a pleading

and appearance in court, of an appeal to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

[Section 21. A hearing or an appeal relating to a decision to reclassify or transfer a person with mental retardation in a state institution shall be in accordance with the requirement of KRS 210.270.]

Section 20. [22:] Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7). [In accordance with KRS 13B.090(7), in a proceeding conducted pursuant to this administrative regulation, the burden of proving eligibility or coverage shall be borne by the applicant or recipient.]

Section 21. [23:] Incorporation by Reference. (1) Form PAFS-78, May 1996 edition, Department of Medicaid Services, is incorporated by reference.

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

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: July 27, 1998

FILED WITH LRC: July 29, 1998 at 2 p.m.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, October 13, 1998)**

907 KAR 1:563. Medicaid covered services hearings and appeals.

RELATES TO: KRS Chapter 13B, 194.025, 205.231, 205.237, 42 CFR 483.12, 431 Subpart E, 483 Subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 Ky. Acts ch. 205, sec. 1, ch. 426, sec. 4(3) [GA HB 132, 406]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to the Medicaid covered services hearing and appeal process for applicants and recipients.

Section 1. Definitions. (1) "Applicant" means an individual who has applied for covered services.

(2) "Authorized representative" means an individual or guardian acting on behalf of a recipient.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Medicaid covered services" means items or services a Medicaid recipient may receive through the Medicaid Program.

(5) "Member" means a Medicaid recipient who is enrolled in a partnership or a managed behavioral healthcare organization.

(6) "Peer review organization" means a federally designated organization that is performing the utilization review functions for the department.

(7) "Recipient" means an individual who receives Medicaid.

(8) "Secretary" means the Secretary of the Cabinet for Health Services.

(9) "Time-limited benefits" means Medicaid coverage which is restricted to a specified period in time.

Section 2. Informing the Recipient of Medicaid Coverage Hearing Rights. (1) An applicant, recipient or guardian shall be informed

of his right to a cabinet level administrative hearing in writing if an adverse action is taken affecting covered services.

(2) An applicant, recipient or guardian shall be informed of the method by which he may obtain a hearing and that he may be represented by:

- (a) Legal counsel;
- (b) A relative;
- (c) A friend;
- (d) Other spokesperson;
- (e) Authorized representative; or
- (f) Himself.

(3) The notice shall contain a statement of:

- (a) The Medicaid adverse action;
- (b) The reason for the action;
- (c) The specific **federal or state law or** administrative regulation

that supports the action; and

(d) An explanation of the circumstances under which payment for services **shall be [is]** continued **if [when]** a hearing is requested timely in accordance with Section 5 of this administrative regulation.

Section 3. Notification Process. (1) **An adverse notice [Adverse notices]** shall be mailed to an applicant or a recipient using the United States Postal Service.

(2) **An adverse notice [Adverse notices]** to an applicant, recipient **or [and]** responsible party covered under Section 5(1) of this administrative regulation shall be sent using a return receipt requested format.

Section 4. Request for a Hearing. (1) An applicant, recipient or an authorized representative may request a hearing by filing a written request with the department.

(2) If an applicant, recipient or authorized representative requests a hearing, **the request [it]** shall:

- (a) Be in writing and clearly specify the reason for the request;
- (b) Indicate the date of service or type of service for which payments may be denied; and
- (c) Be postmarked within thirty (30) calendar days from the date of the department's written notice of adverse action of:
 - 1. Discontinuance of services;
 - 2. Adverse determination made with regard to the PASRR requirements of 42 USC 1396r(e); or
 - 3. Patient liability.

Section 5. Continuation of Medicaid Covered Services. (1) If the request for a cabinet level administrative hearing is postmarked or received within ten (10) days of the advance notice date of denial specified on the notice for denial of level of care, **a** Medicaid vendor **payment [payments]** for nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, **or [and]** home- and community-based waivers services shall continue until the date the final cabinet level hearing decision order is rendered in accordance with Section 9 of this administrative regulation.

(2) Subsection (1) of this section shall not apply to **a [any]** Medicaid Program service not stated in subsection (1) of this section.

(3) Subsection (1) of this section shall not apply if the Medicaid Program service has been reduced or discontinued as a result of a change in law or administrative regulation.

(4) Time-limited benefits shall not be extended based on a request for a hearing.

(5) If the request for a cabinet level administrative hearing is postmarked or received from a recipient within ten (10) days of the advance notice of an adverse PASRR determination made in the context of a resident review, **a** Medicaid vendor **payment [payments]** for nursing facility services shall continue until the date the cabinet level administrative hearing decision is rendered.

Section 6. Notice of Scheduled Hearing. (1) The scheduled hearing notice shall contain:

- (a) The date, time and place of the scheduled hearing; and
- (b) A statement that the local Department for Social Insurance office provides information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(2) A cabinet level administrative hearing shall be conducted

within thirty (30) days of the date of the request for a hearing and a decision shall be issued within thirty (30) days of the hearing date, except that a hearing decision regarding vendor payments to the following shall be issued within fifteen (15) days:

- (a) Nursing facilities;
 - (b) Intermediate care facility for the mentally retarded and developmentally disabled; **or [and]**
 - (c) Community based waiver services.
- (3) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the right to:

- (a) Legal counsel or other representation;
 - (b) Review the case record relating to the issue; and
 - (c) Submit additional information in support of his claim.
- (4) If the hearing involves medical issues:
- (a) A medical assessment by an independent physician participating in the Medicaid Program shall be obtained at the department's expense if the hearing officer considers it necessary based on case record review;
 - (b) If an independent physician assessment at the department's expense is requested by the recipient or authorized representative and is denied by the hearing officer, notification of the reason for denial shall be set forth in writing.

Section 7. Conduct of a Hearing. (1) The cabinet level administrative hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality. The cabinet level hearing officer shall be impartial and shall disqualify himself as required by KRS 13B.040.

(3) The cabinet level administrative hearing shall be conducted in-state where the recipient or authorized representative may attend without undue inconvenience.

(4) The hearing officer shall offer to transmit the hearing decision by electronic format.

(5) If necessary to receive full information on the issue, the administrative hearing officer may examine each party who appears and his witnesses.

(6) The administrative hearing officer may reopen the hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

Section 8. Withdrawal or Abandonment of Request. (1) The recipient or authorized representative:

- (a) May withdraw the appeal for a hearing prior to the release of the hearing officer's decision; and
- (b) Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative prior to finalizing the action.

(2) Abandonment of request. A hearing request shall be considered abandoned if the recipient or authorized representative fails without prior notification to report for the hearing.

Section 9. The Cabinet Level Decision. (1) After the hearing is concluded, the hearing officer shall issue a recommended decision.

(2) Exceptions shall be filed with the cabinet within fifteen (15) days from the recommended decision.

(3) A final order shall be issued within ninety (90) days from the date of the request for a hearing.

(4) A copy of the recommended decision and a copy of the final order shall be mailed to the recipient and his representative.

(5) If requested during the hearing, a copy of the recommended decision and the final order shall be electronically transmitted on the dates the recommended decision is rendered and the date the final order is rendered to a site specified by the applicant or recipient.

Section 10. Appeal of Cabinet Level Hearing Decision. (1) The final order, with respect to the issue considered, shall be final regarding continuation of vendor payments.

(2) Further appeal at the circuit court level may be initiated within thirty (30) days from the date of mailing of the decision in accordance with KRS 13B.140 and 13B.150.

(3) Information regarding free legal aid and welfare rights organizations may be obtained in accordance with Section 6(1) of this administrative regulation.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 11. Medicaid Case Actions Following Circuit Court Level Appeal Decision. (1) For a reversal involving a reduction of Medicaid coverage, action shall be taken to restore services within ten (10) days of the receipt of the circuit court decision.

(2) If a recipient continues to remain in or continue to receive services from a nursing facility, intermediate care facility for the mentally retarded and developmentally disabled, or community-based waiver services, a vendor **payment** [payments] shall be authorized to reimburse the provider for services rendered during the circuit court appeal process.

Section 12. Special Procedures Relating to A Managed Care Participant. (1) A Medicaid recipient shall be informed in writing of the requirements for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral healthcare organization in which a member is enrolled in accordance with 907 KAR 1:710.

(2) If the decision of the partnership or the managed behavioral healthcare organization is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the action or inaction on the part of the partnership, the managed behavioral healthcare organization or its subcontracted provider to the department in accordance with Section 3 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the other complaint or grievance resolution processes contained within the partnership or managed behavioral healthcare organization plan.

(3) A cabinet level appeal shall be processed as established in Sections 3, 4, 6, 7, 8, and 9 of this administrative regulation.

Section 13. Limitation of Fees. (1) Pursuant to KRS 205.237, the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) \$175 for preparation and presentation, including a pleading and appearance in court, of an appeal to the circuit court;

(c) \$300 for preparatory work and briefs and all other matters incident to an appeal to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted from a public assistance payment otherwise due and payable to the recipient.

Section 14. A hearing or an appeal relating to a decision to re-classify or transfer a person with mental retardation in a state institution shall be in accordance with the requirement of KRS 210.270.

Section 15. Burden of Proof. The party bearing the burden of proof shall be determined in accordance with KRS 13B.090(7).

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 27, 1998

FILED WITH LRC: August 14, 1998 at noon

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION CABINET

Department for Environmental Protection

Division of Water

(Amended After Hearing)

401 KAR 5:009. Permits for swine feeding operations.

RELATES TO: KRS 224.10, 224.70, 224.73, 40 CFR Part 136

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110, 40 CFR Part 136

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

Section 1. Applicability. The number of swine units used to determine the applicability of this administrative regulation shall be calculated according to the formula in subsection (4) of this section.

(1) This administrative regulation shall apply to the owner and operator of:

(a) A new swine feeding operation;

(b) An existing agricultural wastes handling system with less than 1,000 swine units, that increases the total number of swine units at the operation to 1,000 or more after April 17, 1998. The provisions of this administrative regulation shall apply to that portion of an expanded operation from 1,000 swine units and above. However, the total number of swine units at the operation shall determine whether this administrative regulation applies to the new portion; and

(c) An existing swine feeding operation with 1,000 or more swine units, that increases the number of swine units at the operation after April 17, 1998. The provisions of this administrative regulation shall apply to that portion of an expanded swine feeding operation above previous swine unit levels. However, the total number of swine units at the operation shall determine whether this administrative regulation applies to the new portion.

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

(a) The swine feeding operation was permitted before April 17, 1998, for the construction or operation of an agricultural wastes handling system pursuant to 401 KAR 5:005;

(b) The swine feeding operation submitted to the cabinet before April 17, 1998, either the Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, or the Site Survey Request, both required in 401 KAR 5:005, Section 2(1)(e) and before April 15, 2000, applies for and receives a KNDOP pursuant to 401 KAR 5:005; or

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

1. On April 17, 1998, it had an operating lagoon in place for the treatment of swine waste, otherwise conformed to the requirements of 401 KAR Chapter 5, and would have received a construction or operational permit for the swine feeding operation if it had applied for the permit;

2. On April 17, 1998, it was engaged in the current daily operation of a swine feeding operation; and

3. The owner and operator:

a. Before October 15, 1998, notifies the cabinet in writing that it intends to comply with 401 KAR 5:005. The notification shall include the number of swine units that are confined at the swine feeding operation;

and

b. Before April 15, 2000, applies for and receives a KNDOP pursuant to 401 KAR 5:005. This provision shall not exempt the owner or operator of an unpermitted facility from complying with 401 KAR 5:005 before that date.

(3) After April 15, 1999, an existing agricultural wastes handling system or swine feeding operation may increase, under its current operating permit, the total number of swine units at the system or operation to 1,250 swine units if:

(a) The owner and operator has had an approved KNDOP pursuant to 401 KAR 5:005 for at least the previous twelve (12) months;

(b) The operation or system has had no violations during the last twelve (12) months;

(c) The owner and operator submits to the cabinet a request for permit modification pursuant to Section 2(8) of this administrative regulation; and

(d) Additional barns and lagoons are no closer to setback features than the existing barns and lagoons.

(4) The number of swine units shall be determined by the following formula. The worksheet "Worksheet for Calculating Swine Units", incorporated by reference in Section 19 of this administrative regulation, may be used to assist the owner or operator in calculating the number of swine units at the operation.

$$\text{Swine Units} = (0.1 \times N_n) + (0.4 \times N_f) + (0.45 \times N_b) + (3.55 \times N_{ff}) + (0.75 \times N_{fw}) + (0.41 \times N_{wf}) + (0.35 \times N_{wt})$$

Where:

N_n = Number of nursery pigs;

N_f = Number of finishing pigs;

N_b = Number of boars;

N_{ff} = Number of sows, farrow to finish;

N_{fw} = Number of sows, farrow to wean;

N_{wt} = Number of pigs, wean to finish.

(5) If an applicant for a swine waste management permit operates or intends to operate a swine feeding operation under a contract with another entity that owns the swine, directs the manner in which the swine will be housed, or controls the inputs or the other material aspects of the operation, the permit application shall bear the signatures of the owner and operator of the swine feeding operation and all other entities exercising control or ownership over any aspect of the operation. **The owner and operator shall be liable for complying with the permit. All signatories shall be jointly liable for an unpermitted release of swine waste, for repairs of a lagoon pursuant to Sections 6 and 8 of this administrative regulation, and for closure of a lagoon in accordance with Section 6(4) of this administrative regulation. [complying with the permit.]**

Section 2. Swine Waste Management Permit. (1) No person shall construct, modify, or operate a swine feeding operation without having received a permit to do so from the cabinet. The permitted area shall include:

(a) The area where the swine are confined;

(b) The swine waste lagoon; and

(c) The land application areas.

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

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

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

(c) Beginning land application of the swine waste.

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

(4) The owner and operator of a swine feeding operation shall apply for a permit pursuant to this administrative regulation before the operation commences construction, or for a permit renewal, ninety (90) days before the permit expires. The owner and operator shall not begin construction or operation at the planned site until he receives the permit from the cabinet.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(5) The SWMP shall be valid for five (5) years from the date of issuance.

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

(7) The owner and operator of the swine feeding operation shall submit to the cabinet a complete application for a SWMP. A complete application shall consist of two (2) copies of the following:

(a) A completed permit application form, "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application", incorporated by reference in Section 19 of this administrative regulation. The application shall include general facility information regarding its location, and owner and operator information;

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

(c) Documentation of public notification as required in Section 4(1) of this administrative regulation;

(d) A USGS seven and one-half (7 1/2) minute topographic quadrangle map with the swine feeding operation location clearly marked;

(e) A site map with a scale of no less than 1" = 660' including a north arrow and legend, clearly showing the swine waste lagoon location, roads, setback features in Section 5 of this administrative regulation and their setbacks, easements if applicable, locations of buildings on the site, field number and acres of land application areas, filter strips, and existing and proposed monitoring wells and lysimeters;

(f) A monitoring plan as required by Section 7 of this administrative regulation, designed to monitor the integrity of the swine waste lagoon;

(g) An operation-specific nutrient management plan as required by Section 9 of this administrative regulation;

(h) A certified copy of a legal deed, easement, or contract if required by Section 5 or 9 of this administrative regulation;

(i) A demonstration that the lagoon complies with the siting requirements of Section 5 of this administrative regulation; and

(j) The results of the baseline soil analyses required by Section 10 of this administrative regulation for each field that will receive the swine waste.

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

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

(8) Permit modification.

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

1. The swine waste lagoon design changes during construction or if an existing permitted swine waste lagoon is to be modified unless the repairs or changes are made pursuant to Section 8 of this administrative regulation;

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

3. There is a change in the permitted land application area that was not previously included in the permit application and approved by the cabinet.

(b) A complete application for modifying a SWMP shall consist of two (2) copies of:

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

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

3. The public notice required by Section 4(1) of this administrative regulation; and

4. For a new land application area:

a. The results of the baseline soil analyses required in Section 10 of this administrative regulation; and

b. The legal documents required by Section 5 or 9 of this administrative regulation.

(9) Permit renewal. For renewals of the SWMP, a complete appli-

cation shall consist of two (2) copies of:

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

(b) The most recent five (5) years of the sampling and analytical data and the land application rates, as required by Section 11 of this administrative regulation, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be submitted; and

(c) The public notice required by Section 4(1) of this administrative regulation.

(10) Permit transfer. The permit is not transferable to a person except after notice to the cabinet. The notice of transfer shall be submitted on the "Change in Ownership Certification for Swine Waste Management Permit", incorporated by reference in Section 19 of this administrative regulation. The cabinet may require modification or reissuance of the permit to change the name of the permittee and incorporate other requirements as required by KRS Chapter 224.

(11) Signatures. The permit application shall be signed and certified by the owner and operator of the swine feeding operation and persons who meet the criteria in Section 1(5) of this administrative regulation, according to the certification in Section 15 of this administrative regulation.

Section 3. Related Agricultural Wastes Handling Systems. (1) If two (2) or more agricultural wastes handling systems are related, the number of swine units used to determine the applicability of this administrative regulation shall be the sum of the swine units at all related facilities.

(2) Facilities are related if:

(a) They share common swine waste lagoons; or

(b) They share common land application areas.

Section 4. Public Notification Requirements. (1) Applicant notification.

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

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

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

(b) The notification shall contain the following information:

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

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

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

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

(d) This notice shall be required for a permit renewal only if the operation has changed in size or has changed its land application areas.

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

(3) A person shall have up to thirty (30) days from the date of the publication of the cabinet's intended action to submit comments about the permit to the cabinet. A person who submits comments shall include the commentator's name and address. The cabinet shall notify each person who submitted comments to the cabinet on the draft permit of the cabinet's final action on the permit.

Section 5. Siting Requirements. (1) Siting restrictions.

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

1. A state or national park, state or national forest, or nature preserve; or

2. A wellhead protection area approved by the cabinet pursuant to 401 KAR 4:220.

(b) The barn or lagoon shall not be located in:

1. A 100-year floodplain unless permitted pursuant to 401 KAR 4:060;

2. A jurisdictional wetland as determined by the NRCS; or

3. A sinkhole or other enclosed depression where subsidence is evident.

(c) Swine waste shall not be land applied on:

1. Land with a slope greater than:

a. Twelve (12) percent if it does not have an established hay or pasture vegetative cover; or

b. Eighteen (18) percent if it does have an established hay or pasture vegetative cover; or

2. Land that has less than eighteen (18) inches of soil to bedrock.

(d) A swine waste lagoon shall be located so that there is at least:

1. Three (3) feet of soil between the bottom of the lagoon liner and bedrock. This distance may be reduced with the use of an approved synthetic liner; and

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

(2) Setbacks.

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

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

(c) Minimum distance. Distance shall be the shortest distance measured from the nearest edge of the barn, lagoon, or land application area to the nearest edge of the setback feature. An existing setback feature shall be existing as of the date that the applicant notifies the public pursuant to Section 4(1) of this administrative regulation.

Existing Setback Feature	Barn and Lagoon	Land Application Area Land Application method	
		Injection	Other Method
Dwelling not owned by applicant, church, school and school yard, business, other structure to which the general public has access, park	1,500 feet	500 feet	1,000 feet
Incorporated city limit	3,000 feet	1,000 feet	2,000 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant	300 feet	150 feet	150 feet
Property line	750 feet	50 feet	500 feet
Downstream* water listed in 401 KAR 5:030 as other than use protected, outstanding resource water**	1 mile	750 feet	1,500 feet
Downstream* public water supply surface water intake	5 miles	1 mile	1 mile
*Measured along gradient			
**Designated outstanding resource waters are listed in 401 KAR 5:026			

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

submitted to the cabinet with the permit application.

Section 6. Requirements for a Swine Waste Lagoon. Each swine feeding operation shall have at least one (1) anaerobic or aerobic lagoon, sized in accordance with this administrative regulation. No swine feeding operation shall have as its only means of treatment a holding pond or deep pit.

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

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

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

1. At least one (1) year's production of residual solids;

2. The minimum design volume for an anaerobic lagoon;

3. At least 180 days of swine waste production;

4. Twelve (12) inches of excess precipitation; and

5. Precipitation from one (1) twenty-five (25) year, twenty-four (24) hour rainfall event;

(c) The swine waste lagoon shall have an emergency spillway above the maximum design volume, with one (1) foot of freeboard above the spillway. The spillway shall have a slope with a vertical to horizontal ratio of no steeper than one to three (1:3) and shall be:

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

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

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

1. The maximum design volume;

2. The minimum design volume for an anaerobic lagoon; and

3. The crest of the spillway.

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

(f) Each swine waste lagoon shall have either:

1. A compacted soil liner constructed so that:

a. The lagoon has a hydraulic gradient of no greater than eight and zero-tenths (8.0);

b. The liner has a maximum permeability of 1×10^{-7} cm/sec; and

c. (i) The soil is deposited and compacted in place in at least two (2) six (6) inch lifts; or

(ii) There is naturally occurring soil in the finished lagoon excavation, compacted in place and with one (1) six (6) inch lift; or

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

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

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

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

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

(k) The berm shall have a vegetative cover.

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

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

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

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

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

(a) After construction of the lagoon and before beginning lagoon operation, the as-built construction of the lagoon shall be certified by a professional engineer or the NRCS as meeting the requirements of subsection (1) of this section and shall be submitted to the cabinet pursuant to Section 15 of this administrative regulation;

(b)1. Before introducing swine waste into an anaerobic lagoon, the lagoon shall be filled with water to at least one-half (1/2) of the minimum design volume; and

2. After the initial filling of an anaerobic lagoon, the lagoon level shall be maintained above the minimum design volume by adding wa-

ter;

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

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

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

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

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

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

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

(c) The owner and operator shall stabilize the site by using standard erosion control practices, unless the cabinet approves an alternative closure that complies with the environmental standards in Section 12 of this administrative regulation.

Section 7. Swine Waste Lagoon Performance Monitoring. The applicant shall develop a swine waste lagoon liner performance monitoring plan for detection of problems with the swine waste lagoon liner and to provide the opportunity to repair problems with the swine waste lagoon liner before a chronic failure of the lagoon develops or groundwater contamination occurs. The monitoring plan shall address the following items.

(1) The permittee shall conduct groundwater monitoring to measure the performance of the lagoon liner for each lagoon. Except as provided in paragraphs (c) and (d) of this subsection, swine waste lagoon performance monitoring shall be conducted by monitoring the zone of saturation using monitoring wells. If the zone of saturation occurs at a depth of greater than twenty (20) feet below the bottom of the swine waste lagoon, or if bedrock is encountered below the bottom of the swine waste lagoon liner at a depth shallower than the zone of saturation, the owner or operator may monitor the vadose zone using lysimeters, instead of monitoring the zone of saturation. If the owner or operator monitors the vadose zone, the owner or operator shall follow the procedures in paragraph (b) of this subsection.

(a) Zone of saturation monitoring requirements. Zone of saturation monitoring shall be conducted using the following procedures. A minimum of one (1) up-gradient and two (2) down-gradient monitoring wells shall be constructed for each swine waste lagoon.

1. Location of monitoring wells.

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

b. Each down-gradient monitoring well shall be constructed in an area close to and hydrologically down-gradient of the lagoon in a location that maximizes the ability of the monitoring well to detect a lagoon liner failure.

2. Monitoring well construction requirements. A monitoring well shall be constructed in accordance with 401 KAR 6:310 and shall:

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

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

c. Prevent unauthorized access to the monitoring well;

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

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

(b) Vadose zone monitoring requirements. Vadose zone monitoring shall be conducted using the following procedures. A minimum of one (1) up-gradient and two (2) down-gradient lysimeters shall be installed

for each swine waste lagoon.

1. Location of lysimeters.

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

b. Each down-gradient lysimeter shall be constructed in an area close to and hydrologically down-gradient of the lagoon in a location and depth that maximizes the ability of the lysimeter to detect a lagoon liner failure.

2. Lysimeter construction. If lysimeters are to be used to monitor the vadose zone, the lysimeters shall be constructed to:

a. Prevent surface contaminants from entering groundwater by way of the lysimeter;

b. Prevent unauthorized access to the lysimeter;

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

d. Be at a total depth of no greater than twenty (20) feet.

(c) If conditions at the site are such that zone of saturation or vadose zone monitoring would not reflect a contribution from the swine waste lagoon, the applicant shall submit an alternative monitoring plan to demonstrate the performance of the lagoon liner.

(d) The cabinet may require additional monitoring, based on geological considerations and the lagoon size, shape, and structure, to reasonably ensure that a leak from the liner will be detected.

(2) Analysis parameters. The permittee shall analyze each monitoring sample for the following parameters: chlorides, nitrate nitrogen, total phosphorus, and fecal coliform. However, if lysimeters are used to monitor the vadose zone, fecal coliform shall not be sampled and analyzed.

(3) Monitoring well and lysimeter sampling.

(a) Each monitoring sample shall be collected and analyzed according to the procedures in Section 11 of this administrative regulation.

(b) Each monitoring well shall be purged three (3) to five (5) well volumes prior to sampling. Purging is not required for a lysimeter.

(c) Each monitoring well and lysimeter shall be sampled quarterly after beginning lagoon operation. Samples from each monitoring well and lysimeter shall be analyzed for the parameters listed in subsection (2) of this section.

(4) Reporting and recordkeeping. Monitoring sample results shall be recorded on the form "Groundwater Sample Analysis for Swine Feeding Operations", incorporated by reference in Section 19 of this administrative regulation and shall be submitted to the cabinet according to the procedures in Section 11 of this administrative regulation.

Section 8. Lagoon Liner Failure Response. (1) If a down-gradient monitoring sample analysis result exceeds three (3) times the value of the up-gradient monitoring sample analytical result and for nitrate nitrogen exceeds ten (10) mg/l or for chlorides exceeds 250 mg/l, then the permittee shall notify the cabinet immediately by calling 1-800-928-2380. The permittee shall also develop a plan to repair the swine waste lagoon or to determine the source of contamination.

(2) The permittee shall submit the plan to the cabinet for review and approval within forty-five (45) days of receiving the sampling results that exceed the value in subsection (1) of this section. The plan shall include a timetable for investigating the cause of the exceedances and all lagoon liner performance monitoring data required by this administrative regulation. The plan may include additional monitoring to demonstrate that the lagoon liner is performing as designed. If the lagoon liner is not performing as designed, the plan shall specify the methods for repairing the lagoon liner.

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

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

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

(6) Before restarting lagoon operation, the permittee shall have a professional engineer or the NRCS certify that the repairs have been made in accordance with the approved plan and shall notify the cabinet that the repairs have been made and so certified.

(7) After restarting the lagoon operation following the procedures specified in Section 6 of this administrative regulation or following the procedures in the approved plan, the permittee shall return to the original sampling frequency required in Section 7 of this administrative regulation or the frequency specified in the approved plan.

Section 9. Land Application. (1) The permittee shall dispose of the swine waste in the swine waste lagoon by land application, unless an alternative practice is approved by the cabinet pursuant to Section 13 of this administrative regulation. The permittee shall apply waste only on areas that are included in the SWMP.

(2) Nutrient management plan.

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

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

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

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

a. Number of acres needed to land apply the swine waste based on the land application rate per acre in subparagraph 1 of this paragraph; and

b. Number of acres needed to comply with the siting restrictions for land application in Section 5 of this administrative regulation;

3. A demonstration that the applicant has adequate land available to comply with the land application requirements of subparagraph 2 of this paragraph. The demonstration shall consist of a certified copy, duly filed of record, of at least one (1) of the following that demonstrate legal right to apply waste to the proposed land application area or legal right to the variance on the setback allowed by Section 5 of this administrative regulation:

a. The deed to the property;

b. The lease for the property of at least five (5) years' duration, evidencing the right to use another's property for land application; or

c. An easement evidencing the right to use another's property for land application or legal right to the variance in the setback allowed by Section 5 of this administrative regulation; and

4. A swine waste lagoon management plan that describes:

a. The frequency of the supernatant removal;

b. The frequency of residual solids removal;

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

d. The odor control practices;

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

(3) Land application management.

(a) For every land application event, the permittee shall sample the swine waste to be applied. The sample shall be collected and analyzed for the parameters listed in Section 10(2) of this administrative regulation.

(b) Supernatant and residual solids shall be land applied using irrigation, surface spreading, or injection techniques. Residual solids shall be incorporated into the soil within twenty-four (24) hours of land application or shall be injected.

(c) Swine waste shall not be land applied:

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

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

3. On crops grown for direct human consumption.

(d) Swine waste shall not reach waters of the Commonwealth by runoff, drift, manmade conveyances, direct application, or direct discharge.

(e) The document "Natural Resources Conservation Service, Con-

servation Practice Standard, Filter Strip (ACRE), Code 393, NRCS-KY-April 1997", incorporated by reference in Section 19 of this administrative regulation, shall be used to determine if a filter strip is required for a field that receives swine waste. If a filter strip is required, it shall be designed, installed, and maintained according to that document. This strip may be included as a part of the setback area.

Section 10. Swine Waste Lagoon and Land Application Sampling Analysis and Recordkeeping. The applicant shall conduct background and annual land application performance soil analysis and annual swine waste lagoon analysis specified in this section and maintain records of those analysis results according to the procedures specified in this section and Section 11 of this administrative regulation.

(1) Soil sample analysis.

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

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

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

(a) Total [kjeldahl] nitrogen [~~nitrate nitrogen~~, and ~~ammonia nitrogen~~];

(b) Total phosphorus;

(c) Total potassium;

(d) pH;

(e) Chloride; and

(f) Total solids.

(3) Each swine feeding operation shall maintain records of all swine waste that is land applied. The records shall be entered on the form "Swine Waste Land Application Log", incorporated by reference in Section 19 of this administrative regulation. Copies of the records shall be submitted with the permit renewal application. The records shall contain the following information:

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

(b) For each land application event:

1. Field number and acreage;

2. Date applied;

3. Crop;

4. Quantity applied;

5. Method of application;

6. Type of swine waste applied; and

7. Percent of total solids of swine waste applied.

Section 11. General Monitoring, Analysis, and Reporting Requirements. (1) Reports.

(a) Groundwater monitoring, soil sampling, and swine waste analytical results shall be maintained by the swine feeding operation on-site. The forms "Groundwater Sample Analysis for Swine Feeding Operations" and "Swine Waste Land Application Log", incorporated by reference in Section 19 of this administrative regulation, shall be used to record the data.

(b) A minimum of five (5) years of data shall be maintained, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be maintained. These data shall be made available to the cabinet upon request.

(c) Copies of the analytical and monitoring data for the most recent five (5) years shall be submitted to the cabinet with an application to renew or modify the permit, unless the operation has had its permit for less than five (5) years. If the operation has had its permit for less than five (5) years, all required data shall be submitted.

(2) Monitoring, analysis, and records.

(a) Sampling shall be conducted and the analysis shall be performed according to the procedures in 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", adopted without change in Section 18 of this administrative regulation, unless

other procedures have been specified in the permit.

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

(c) Monitoring records shall include:

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

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

Section 12. General Environmental Conditions. (1) No permit shall be issued to a swine feeding operation authorizing a direct discharge into the waters of the Commonwealth except a discharge caused by a rainfall event exceeding a twenty-five (25) year, twenty-four (24) hour rainfall event.

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

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

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

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

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

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

(f) Not result in the destruction of endangered or threatened species or contribute to the taking of a federally endangered or threatened species of fish or wildlife; and

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

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

Section 13. Variance for Experimental or Alternative Practices. A swine feeding operation may obtain a variance from Sections 5, 6, 7, and 9 of this administrative regulation with the use of an experimental or alternative practice or technology that deviates from the requirements of this administrative regulation. The variance shall be submitted as a new permit, permit modification, or permit renewal.

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

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

(3) The variance may be granted if the applicant demonstrates the practice or technology will comply with the requirements of Section 12 of this administrative regulation, will not pollute the waters of the Commonwealth, will not result in additional problems with odors from the operation, and will not cause additional health or environmental problems.

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

Section 14. Compliance. If the swine feeding operation is not in compliance with the requirements of this administrative regulation or the conditions of its permit, the cabinet may:

- (1) Revoke or modify the permit;
- (2) Initiate enforcement action;
- (3) Issue a notice of intent to deny a new permit;
- (4) Issue a new permit under Section 2 of this administrative regulation

with appropriate conditions; or

(5) Take other actions authorized by KRS Chapter 224 and the administrative regulations in 401 KAR Chapter 5.

Section 15. Standard Permit Conditions. The following conditions shall apply to all permits for swine feeding operations:

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

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

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

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

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

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

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

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

(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

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

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

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

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

(10) After construction of the swine waste lagoon is completed and before beginning lagoon operation, the permittee shall submit to the cabinet the as-built certification required by Section 6 of this administrative regulation. The cabinet shall notify the permittee within ten (10) days of receipt of the certification of any problems associated with the certification or the construction of the lagoon.

(11) Signatures. Each application, report, or other information submitted to the cabinet shall be signed and certified by the owner and operator of the swine feeding operation and persons who meet the criteria in Section 1(5) of this administrative regulation. A person who knowingly makes a false statement, representation, or certification in a record or other document submitted or required to be maintained under this administrative regulation, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 16. Compliance Reporting Requirements. (1) Planned changes. The permittee shall give notice to the cabinet as soon as possible of a planned physical alteration or addition to the permitted swine feeding operation.

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

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

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

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

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

(d) Steps taken to reduce, eliminate, and prevent recurrence of the discharge.

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

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

Section 17. Permit Timetables. This section shall apply to permits issued pursuant to this administrative regulation.

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

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

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

(4) The cabinet shall issue its final decision on a complete permit application within ninety (90) calendar days after receipt of an administratively complete permit application. A complete permit application shall contain all the administrative and technical information required by this administrative regulation.

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

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

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

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

Section 18. Federal Regulation Adopted Without Change. The following federal regulation is adopted without change: "40 CFR Part 136, 'Guidelines Establishing Test Procedures for the Analysis of Pollutants', as in effect July 1, 1997". The subject matter of this administrative regulation relating to testing methods is governed by that federal regulation.

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

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

Section 19. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application, DEP 7033-SFO (7/98)", Kentucky Division of Water;

(b) "Change in Ownership Certification for Swine Waste Management Permit, DEP 7033-CO (7/98)", Kentucky Division of Water;

(c) "Swine Waste Land Application Log, DEP 7033-LOG (7/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water;

(d) "Groundwater Sample Analysis for Swine Feeding Operations, DEP 7033-GW (7/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water;

(e) "Worksheet for Calculating Swine Units, DEP 7033-W (7/98)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water; and

(f) "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (Acre), Code 393, NRCS-KY-April 1997".

(2) This material may be inspected, copied, or obtained at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. This material may be subject to copyright law. The document in subsection (1)(f) of this section may be inspected or copied at the Kentucky Division of Water, or may also be obtained from the NRCS, 771 Corporate Drive, Suite 110, Lexington, Kentucky 40503, 606/224-7350.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 14, 1998 at noon

CONTACT PERSON: Jack A. Wilson, Director, Division of Water, Frankfort Office Park, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-3410 (Voice), (502) 564-0111 (Fax).

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation applies to a new swine feeding operation. A swine feeding operation is an operation that confines 1,000 swine units or more and is not a concentrated animal feeding operation. This administrative regulation does not apply to existing agricultural wastes handling systems, which will be allowed to continue under the Kentucky No-Discharge Operational Permit (KNDOP) program pursuant to 401 KAR 5:005, as long as they do not expand their operation. This administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems, after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. For existing operations not invoking this expansion provision, expansions up to or beyond 1,000 swine units will

require the operations to be in compliance with this administrative regulation. In all cases, when an operation expands beyond the applicable threshold, only the expanded portion will be subject to this administrative regulation. This administrative regulation does not apply to an existing swine feeding operation that obtained a permit under the KNDOP program, or had applied for the permit before April 17, 1998, unless the swine feeding operation increases the number of swine units after April 17, 1998. This administrative regulation applies to an existing swine feeding operation that confines 1,000 or more swine units and that failed to obtain a permit under the KNDOP program and failed to apply for the permit before the effective date of this administrative regulation, unless it notified the cabinet in writing by October 15, 1998, that it wished to be governed under the KNDOP program. In this instance, the swine feeding operation must apply for and receive a permit under the KNDOP program by April 15, 2000. Once permitted, changes to the swine feeding operation would be regulated as if the facility had obtained a permit under the KNDOP program or had applied for the permit before the effective date of this administrative regulation. The number of new swine feeding operations seeking to locate in Kentucky is unknown. However, some large integrator swine feeding operations have expressed an interest in obtaining a permit to locate in Kentucky. If large integrator swine feeding operations locate in Kentucky and obtain permits, they will require contract growers. This administrative regulation requires integrators to be jointly liable, along with their contract growers, for permit compliance. By holding both parties liable, this administrative regulation assures that the owners of the swine will be responsible for the waste their swine generate. This provision also eases the regulatory burden on the contract growers, since liability will be shared with the integrators. Large integrators confine a large number of sows for breeding purposes at a central swine feeding operation ("farrowing"). The sows give birth to an average of 2.3 litters per year with approximately 10 piglets born with each litter. The piglets are often housed at swine nursery facilities until they reach a certain weight (approximately 55 pounds) at which time they are transferred to a "finishing" swine feeding operation where they are raised to market weight. Swine finishing operations are commonly "contract growers" for the large integrators. Nursery facilities may also work under contract with large integrators. With integrators locating in Kentucky, the need for contract growers will likely be addressed to some extent by the expansion of some existing operations permitted under the KNDOP program; however, some new swine feeding operations will likely be established. The cabinet can only estimate the number of existing agricultural wastes handling systems currently permitted under the KNDOP program seeking to expand up to or beyond the 1,000 swine unit threshold. The cabinet estimates there are fewer than 150 agricultural wastes handling systems that are near or above the 1,000 swine unit threshold, or 6% of the total number of swine operations in Kentucky. This estimate is based on the cabinet's KNDOP program database and a survey conducted by researchers at the University of Kentucky's Department of Agricultural Economics. This administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. This expansion opportunity may lower the number of potentially affected entities to less than the 150 systems stated above. Note, however, that future expansions of these operations beyond the 1,250 swine unit threshold would require the expanded portion of the operations to comply with this administrative regulation. Researchers at the University of Kentucky's Department of Agricultural Economics indicate the number of swine produced has generally declined in Kentucky since 1982; however, eleven counties in the central portion of the state have seen a 25% increase in the number of hogs produced during this period. Over the same period, there has been a 45% decrease in the number of farms producing hogs in these counties. This suggests that swine production facilities have become larger in terms of the number of swine produced at any given site. If this trend continues, the number of affected entities will continue to rise over time, though the total number of swine-producing operations may actually decrease. The cabinet tracks existing permit-holders based on the number of head of swine at each permitted operation. The cabinet presently permits 143 agricultural wastes handling systems with 1,000 or more head of swine, all of which are located in the western part of

the state (west of Interstate 75). The top four largest swine operations are in Nelson (16,400 swine), Graves (12,000 swine), Allen (11,200 swine), and Butler (11,020 swine) counties, respectively. Most permitted agricultural wastes handling systems with 1,000 or more swine are west of Interstate 65. The cabinet can only estimate the number of existing agricultural wastes handling systems expected to choose to become regulated under the less stringent requirements of 401 KAR 5:005. According to Kentucky Agricultural Statistics 1996-97 there are approximately 2,500 swine operations in Kentucky. The KNDOP program currently lists 394 permittees. Using these estimates, there are roughly 2,106 unpermitted swine operations within the Commonwealth, though not all of these operations require a permit under this administrative regulation.

(2) Direct and indirect costs or savings on the affected entities: This administrative regulation will require affected entities to comply with siting, permitting, design, operation, and public notification requirements. All affected entities will be required to have under their control land of suitable acreage to allow for the required setbacks and the proper disposition of swine waste. These costs could be significant depending on the size and location of the operation. This administrative regulation includes siting restrictions for swine feeding operations in wellhead protection areas, jurisdictional wetlands, and 100-year floodplains. Land application of swine waste is prohibited in areas with slopes steeper than 12% or those areas with permanent vegetative cover having slopes greater than 18%. Land application is also prohibited in areas with less than 18 inches of soil to bedrock and on areas where crops for direct human consumption are grown. Land application of swine waste is not to exceed the agronomic capacity of the receiving fields. In some instances of existing operations seeking to expand, the land may be unsuitable, or unavailable, for the increased waste to be applied, thus necessitating a greater amount of acreage for land application. Furthermore, setback requirements constrain the acreage of available land for swine waste application. These factors will limit availability of suitable land for swine waste application. With this administrative regulation in effect, certain areas may experience upward pressure on property values (and taxes) if demand for suitable sites increases. Land acquisition costs would increase accordingly. It should be noted, however, that the acreage required for land application of swine waste can be much less if the operator opts to inject the waste directly into the soil, as opposed to spraying or other methods, due to shorter setback requirements. As this technology becomes more widely available and less costly, this may become an option for more and more operators. Land acquisition costs will vary depending on the amount of land already under control of the affected entity, the setbacks applicable to the site, and the agronomic characteristics of the land application areas. Farm property values average \$1,077 per acre (1992 Census of Agriculture). This administrative regulation may require the purchase of additional land to meet all setback and siting requirements. However, these costs could be reduced or nonexistent, depending on the amount of land under the operator's control. Costs can also be minimized through a negotiated lease or other agreement between the owner or operator of the swine feeding operation and the owner of acreage suitable for land application of the swine waste. Furthermore, these costs can be offset through income generated by the sale of row crops grown on the land application areas, or through renting the land to farmers of row crops. Considering the extent of environmentally sensitive areas and other restricted sites, the installation of swine feeding operations in many areas of Kentucky will be prohibited, possibly creating a premium for those lands that are suitable. If large integrator swine feeding operations do not locate in Kentucky, there could be less demand for associated agricultural operations such as grain suppliers and contract growers. However, it is unclear whether the installation of large integrator swine feeding operations in Kentucky will cause a positive or negative net economic impact on small-scale swine operators. Anecdotal evidence from Oklahoma indicates large integrators tend to drive up demand for land application acreage to the point that small-scale swine operators cannot purchase land needed for expansion of their operations. Researchers from the University of Kentucky's Department of Agricultural Economics indicate the community and regional economic impacts associated with large integrator swine feeding operations could be significant if these integrators acquire building materials, feed, labor and other production inputs from the local economy. However, there is anecdotal evidence from the Corn-Belt region indicating large integrators tend to contract building materials, feed, and veterinary services

out to larger companies not necessarily located in the community where the feeding operations reside. Chism and Levins (1994) found that for livestock-intensive operations, the percent spent locally declined dramatically with the size of the operation. If so, then the economic benefit to the host community from large integrators would be diminished. Data are insufficient to conclude the economic impacts large swine feeding operations will have on communities. However, even if all construction, feeding and veterinary services are obtained from outside the host community, there will be expenditures. Hence, if large integrator swine feeding operations do not locate in Kentucky, this will have the negative effect of these foregone expenditures in host communities although the scale of this impact is difficult to predict. Compliance standards will require a swine feeding operation to conduct lagoon liner performance testing to adequately determine the integrity of waste lagoons. Lagoon liner performance testing for the first year will require four samples at three points (one up-gradient and two down-gradient of the lagoon(s)). Installation of three wells for lagoon liner performance testing will cost an estimated \$1,200 to \$9,000. Tests conducted for the prescribed parameters will cost an estimated \$67 to \$200 per well per sampling event, including labor costs. With these estimates, lagoon liner performance testing costs, including well installation, are estimated at between \$2,000 and \$11,400 for the first year. These costs could be less if the site is suitable for the use of lysimeters, instead of wells, for groundwater monitoring. Installation of three lysimeters is estimated to cost \$1,500. Expanding swine feeding operations may be required to modify their existing lagoon if the lagoon fails to conform to the requirements of this administrative regulation. The liner requirements and depth to bedrock requirements for lagoons, along with the setbacks required, may preclude expansion of existing operations in certain circumstances, depending on land availability. Liners must have a minimum of 12 inches of compacted soil, constructed with two 6-inch lifts, or a synthetic liner to meet permeability standards. Liner costs will vary depending on the availability of suitable soils near the lagoon. Estimates for a clay liner for a 5-acre lagoon range from \$20,000-\$30,000 and twice this figure for a synthetic liner. This administrative regulation allows naturally-occurring soil in the finished excavation to be compacted in place for the first 6-inch layer, as long as permeability and hydraulic gradient requirements are met. This may reduce costs of a clay liner. Permeability tests for the liner cost an estimated \$75. For the second and subsequent years, swine feeding operations affected by this administrative regulation will be required to incur a minimal cost (approximately \$800 to \$2,400 total per year) to test for lagoon liner leaks at three (3) detection points four times per year. If leaks are detected, the permittee must develop a plan for repair or further monitoring. The swine feeding operation may perform additional monitoring to verify that the liner is performing as designed and potentially avoid liner replacement costs for properly performing lagoons. Testing costs will be dependent on the extent of lagoon leakage. A swine feeding operation is also required to develop and implement a nutrient management plan to ensure proper disposition of lagoon waste. Currently a nutrient management plan is a standard part of any large-scale agricultural operation. This requirement is not expected to create significant new costs for the affected entities. Baseline and annual soil testing, as part of the overall nutrient management plan, will be required at each field targeted to receive swine waste. Cost for the affected entities are estimated at \$50 per year per field. Total costs will vary depending on the number of fields to be sampled. Swine waste testing is required prior to each land application event. If a swine feeding operation applies waste 5 times in a year, the testing costs would total an estimated \$50 per event, or \$250 for the year. Costs of compliance will vary dramatically depending on several factors. These include the existing infrastructure at the operation and the amount of land under the operator's control. The cabinet has prepared the following general breakdown of new costs to the affected entities.

First Year	
Suitability assessment of lagoon site	\$5,000
Permit application preparation and	\$4,000
development of nutrient management plan *	
Lagoon construction with compacted soil liner	\$25,000
If synthetic liner is required, add	\$25,000
Lagoon liner permeability test	\$75
Groundwater monitoring well installation	\$5,100
If lysimeters are appropriate, the cost is lowered to	\$1,500

Quarterly groundwater monitoring	\$1,600
Lagoon waste testing (for 5 land application events)	\$250
Soils testing (per field)	\$50
Second and Subsequent Years	
Quarterly groundwater monitoring	\$1,600
Lagoon waste testing (for 5 land application events)	\$250
Soils testing (per field)	\$50

*Could be less if conducted by the NRCS.

Additional land may be necessary to meet setbacks and siting requirements. Costs are dependent on the amount of land under the control of the swine feeding operation, the cropping system employed on the land application areas, and whether the land is leased or purchased.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cabinet can only estimate the extent to which this administrative regulation will impact the cost of living and employment for new swine feeding operations. It is unclear whether this administrative regulation will deter the installation of large swine feeding operations. Operations of this size (an estimated \$2 million - \$5 million investment) are believed to factor in the costs of environmental compliance into their operations. Furthermore, the limited studies that have been conducted regarding this issue provide mixed reviews as to whether the installation of large swine feeding operations would produce an overall positive or negative effect on the cost of living and employment. Because this administrative regulation does not apply to existing swine feeding operations operating under their current permit, there are no foreseen impacts on the cost of living or employment levels for existing swine feeding operations. All affected entities will incur costs to come into compliance with this administrative regulation. This cost could have an effect on the employment levels of these operations. Employment levels, however, are dependent on many factors including market demand for swine, and the management practices of the affected entities.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The cabinet can only estimate the extent to which this administrative regulation will impact the cost of doing business. This administrative regulation does not apply to agricultural wastes handling systems operating under their currently permitted capacity. Therefore, there are no foreseen impacts on the cost of doing business for existing agricultural wastes handling systems, unless they increase up to or beyond the 1,000 swine unit threshold. Furthermore, these operations will be allowed to take advantage of the expansion opportunity provided for in this administrative regulation and, thus stay under the existing regulatory program in 401 KAR 5:005.

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

1. First year following implementation: Reporting and paperwork will be greater for the affected entities under the new SWMP program, compared to the existing KNDOP program. Increased reporting and paperwork result from the requirements for site suitability assessments, monitoring well installation, soil testing, lagoon liner performance testing, lagoon waste testing, and nutrient management plans. For more detailed information on first year costs, see section (2) above.

2. Second and subsequent years: Increased reporting and paperwork result from the requirements for soil testing, lagoon liner performance testing, and lagoon waste testing. For more detailed information on costs for the second and subsequent years, see section (2) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet currently devotes 0.2 person-years to the review and issuance of animal feeding operations covered under the KNDOP program governed by 401 KAR 5:005. Given the added complexity of the reviews required, the cabinet lacks the resources to fully implement the new SWMP program. Additional staff time will be required to conduct a thorough review of the reports submitted by permit applicants. The cabinet will require two new engineers to adequately process the expected permit load. The cabinet also conducts site visits as part of the permitting process. Site inspections are necessary to

determine the overall suitability of the site and verify that construction is commencing in accordance with the issued permit. There is an expected increase in the number of complaints to be investigated, compliance inspections, records reviews, and confirmation sampling. To meet expected demand, the cabinet will require four new field inspectors. Total personnel costs for two additional engineers and four additional inspectors are estimated at \$215,000.

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

3. Additional factors increasing or decreasing costs: If soil data or lagoon liner performance data indicate environmental degradation is occurring, additional testing and lagoon repairs may be required. These events would require further devotion of staff time to conduct a thorough review of the swine feeding operation. However, these testing requirements may prevent a future lagoon breach or environmental degradation, thus preventing significant damages (financial and otherwise) to the affected entities, the promulgating agency, and the environment. North Carolina environmental officials have indicated a 22-million-gallon lagoon breach in North Carolina resulted in a \$62,000 fine for the operator, and a multi-million dollar assessment and cleanup effort.

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

(4) Assessment of anticipated effect on state and local revenues: Permit fees are not required for this administrative regulation. Therefore, state General Fund revenue and federal grants will be used for implementation and enforcement of this administrative regulation. Swine feeding operations may impact local revenues. New swine feeding operations could impact local tax revenues as provided by local tax ordinances. However, it is unclear whether this administrative regulation will affect the location decisions of swine feeding operations.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund revenue and federal grants will be used for implementation and enforcement of this administrative regulation. Existing resources are insufficient to fully implement the new SWMP program.

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

(a) Geographical area in which administration regulation will be implemented: The requirements of this administrative regulation apply throughout Kentucky.

(b) Kentucky: Most swine operations are located in western Kentucky, therefore the economic impacts are expected to be most prevalent in that region. Also, the siting restrictions, setbacks, and land application restrictions will further constrain the number of swine feeding operations locating in eastern Kentucky. Economic impacts are dependent on many factors. One component is property values. A Minnesota study by Taff, Tiffany and, Weisburg (1996) found that if newly locating swine feeding operations increase demand for housing through new hires or transferred labor, property values could increase. However, if swine feeding operations create negative effects on quality of life (odors, increased traffic, etc.) for the surrounding areas, property values could decrease. A Michigan study by Abeles-Allison and Connor found housing values decreased \$.43 for each additional hog within a five mile radius of the study area (or \$430 for each additional 1,000 swine). Palmquist, Roka, and Vukina (1996) studied the impacts on nearby housing prices of new hog operations in southeastern North

Carolina. This study shows that the proximity of hog operations has a statistically significant and negative impact on property values. The results also show that monetary damages decrease with the increasing distance from the swine production facility to the house. The results also show that expansion of swine production in areas where swine concentration is already high will have a smaller negative effect on surrounding property values than when expansion occurs in low swine density areas. This administrative regulation creates safeguards for proper operation and management of swine feeding operations. If implemented correctly by the affected entities, these negative effects can be minimized.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered extending the applicability of this administrative regulation to all swine feeding operations that had more than 300 swine units. However, the cabinet rejected that approach because the cabinet considers the smaller operations to be adequately addressed under the current KNDOP permitting program. The cabinet also considered continuing the current permitting program for all operations regardless of their size, or establishing a threshold higher than 1,000 swine units. However those approaches were rejected since the volume of waste generated by the larger operations poses a threat to Kentucky's environment, and the potential environmental damage due to failure of a lagoon is greater for the larger operations. To ease the burden on existing permitted operations, an expansion opportunity is provided. This provision allows existing permitted operations or existing permitted agricultural wastes handling systems to expand their operations or systems up to 1,250 swine units after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. Any additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. The cabinet may approve an alternative or experimental technology if the applicant demonstrates that the alternative or experimental technology will comply with the general environmental conditions required in this administrative regulation, not pollute the waters of the Commonwealth, will not result in additional problems with odors, and will not cause additional health or environmental problems.

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

large integrators jointly liable for their contract growers' permit compliance. By holding both parties liable, this administrative regulation assures that the owners of the swine will be responsible for the waste their swine generate.

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

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

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

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy that may be in conflict, overlapping, or duplication. Any potential conflict or overlapping will be removed with the redefining of an agricultural waste handling system in 401 KAR 5:002. That term will be defined to exclude swine feeding operations, thus removing the potential conflict or overlapping.

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

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

(11) Any additional information or comments: None.

(12) TIERING: Is tiering applied? Yes, tiering was applied in several instances in this administrative regulation. The administrative regulation applies only to those swine feeding operations that confine 1,000 or more swine units (about 2,500 finishing swine) or more, instead of all swine operations. Existing permitted swine feeding operations that increase the number of swine units to 1,000 or more would be subject to this administrative regulation. Existing operations that are currently under the 1,000 swine unit threshold would not be affected by this administrative regulation, unless they expand above that threshold. However, this administrative regulation allows an expansion up to 1,250 swine units for existing permitted operations or existing permitted agricultural wastes handling systems, after April 15, 1999, if the operator was permitted for the previous twelve months and had no violations in that time period. The additional barns and lagoons may be no closer to setback features than those in existence prior to the expansion. This expansion opportunity should lower the number of potentially affected entities to less than the 150 systems stated earlier. Note however, that future expansion of these operations beyond the 1,250 swine unit threshold would require the new portion of the operation above 1,250 swine units to comply with this administrative regulation. Another example of tiering is in the amount of land needed for land application of the swine waste. Less land is needed in some instances if the owner or operator uses soil injection instead of surface application or other methods. Also, the barns and lagoons and land application areas must be at least a specified distance from given setback features.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. There is no federal mandate.
2. State compliance standards. Not applicable.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No.
2. State what unit, part or division of local government this administrative regulation will affect. Not applicable.
3. State the aspect or service of local government to which this

administrative regulation relates. Not applicable.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no effect on the expenditures.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation (Amended After Hearing)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.990, 314.011(8), 314.042(8), 320.210(2), 1998 GA SB 28, sec. 2 [(1)-(2)]

STATUTORY AUTHORITY: KRS 216B.042, 216B.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require [mandate] that the Kentucky Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation provides licensure requirements for the operation of and services provided by home health agencies.

Section 1. Definitions. (1) [~~"Board" means the Commission for Health Economics Control in Kentucky.~~]

(2) "Coordination agreements" means agreements to coordinate health care services within the service area of the agency.

(2) [(3)] "Home health aide" means a person who provides personal care and other related health services, as ordered by the attending physician.

(a) Selection of home health aides shall take into account the ability to:

1. Read and write;
2. Understand and carry out instructions;
3. Record messages; and
4. Keep simple records.

(b) Other factors to consider.

1. Emotional and mental maturity; and
2. Interest in and sympathetic attitude toward caring for the sick at home.

(3) [(4)] "Intermittent nursing service" means service up to a few hours a day, one (1) day or several days per week or month. On occasion, service may be provided more frequently for more time per day up to seven (7) days per week.

[(5)] "License" means an authorization issued by the Board for the purpose of operating a home health agency and offering home health service.]

(4) [(6)] "Medical social worker" means a person who has a baccalaureate degree in social work, psychology, sociology, or other field related to social work and has [had] at least one (1) year of social work experience in a health care setting. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(5) [(7)] "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.

(6) [(8)] "Physical therapist" means a person who is currently licensed by the Kentucky State Board of Physical Therapy.

(7) [(9)] "Qualified medical social worker" means a person who has a master's degree from a school of social work accredited by the Council on Social Work Education and who has social work experi-

ence in a hospital, outpatient clinic, medical rehabilitation, medical care or mental health program. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(8) [(10)] "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Section 2. Scope. A home health agency is a public agency or private organization, or a subdivision of such an agency or organization which provides intermittent health and health related services, to patients in their place of residence, either singly or in combination as required by a plan of treatment prescribed by a licensed physician.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the home health agency and for compliance with federal, state, and local laws and regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing and social information provided by the physicians responsible for the patient's care, by institutional personnel and by staff of the home health agency.

(b) Establishment and review of plan of treatment. The policy shall assure that services and items to be provided are specified under a plan of treatment established, signed and regularly reviewed by the physician who is responsible for the care of the patient or other personnel acting within the limits of their statutory scope of practice.

(3) Home health services shall be available to the total population regardless of age, sex, and ethnic background.

(4) The total plan shall be reviewed by the attending physician, or other personnel acting within the limits of their statutory scope of practice, in consultation with agency professional personnel at such intervals as the severity of the patient's illness requires, but in any instance, at least once every two (2) months. ~~[Except for drug orders:]~~ verbal authorization to change the plan of treatment shall be reviewed and signed ~~[by the physician]~~ within twenty-one (21) [seven (7)] days after ~~the verbal~~ order is issued.

(5) Clinical records. The home health agency shall maintain a clinical record for each patient which covers the services the agency provides directly and those provided through arrangements with another agency; and which contains pertinent past and current medical, nursing, and social information, including the plan of treatment. All records must be confidential.

(6) ~~[Physician's]~~ Original drug orders and changes in orders. The following shall be signed by the physician or other ordering personnel acting within the limits of their statutory scope of practice and incorporated in the patient record maintained by the agency:

(a) Original orders for drugs; and

(b) Changes in orders for the administration of those drugs subject to federal and state controlled substance acts, and other legend drugs, i.e., requiring prescriptions. Verbal authorization ~~[by the physician]~~ to change drug orders shall be reviewed and signed by the same ordering personnel [physician] within twenty-one (21) [seven (7)] days after order is issued.

(7) Evaluation. The agency shall have procedures which provide for systematic evaluation of its program at least once every two (2) years. The agency staff shall conduct the evaluation. The program evaluation shall include:

(a) Measures to determine whether the policies established are followed in providing services. These shall include a review of patient records on a sample basis in order to determine that services are being used appropriately and the extent to which the needs of the patients the agency serves are being met both quantitatively and qualitatively;

(b) A mechanism for reviewing overall management aspects of its service to assure economy and efficiency of operations.

(8) Planning. Each agency shall develop and annually review a long range plan which includes:

(a) Assessment of needs for services in the service area of the agency.

(b) Identification of agency's role in meeting those needs.

(c) Staff expansion for a two (2) year period.

(d) Establishment of goals and objectives.

(e) Coordination of volunteer services, community education and community development activities if these services are provided by the agency.

(9) Subdivision operating as home health agency. When a subdivision of an agency (e.g., the home care department of a hospital or the nursing division of a health department) applies for license, the subdivision rather than the parent organization must be licensed as a home health agency and maintain records in such a way that subdivision activities and expenditures attributable to services provided are identifiable. The parent organization shall determine who signs the coordination agreements and other official documents, and receive and disburse funds.

Section 4. Personnel; Supervision and Training. (1) Personnel policies. The agency shall have written policies concerning qualifications, responsibilities, and conditions of employment for each type of personnel (including licensure where this is required by state law). The policies shall be written and available to staff and cover:

(a) Wage scales, hours of work, vacation and sick leave;

(b) Preemployment criminal conviction information;

(c) A plan for preemployment and periodic medical examination, tuberculin test and/or chest x-ray, and other appropriate tests;

(d) [(e)] Plans for orientation and for on-the-job training, where necessary;

(e) [(d)] Periodic evaluation of employee performance; and

(f) [(e)] Job descriptions for each category of health personnel which are specific and include the type of activity each may carry out.

(2) Agency supervision. The home health agency shall designate a physician or registered nurse to supervise the agency's performance in providing home health services in accordance with the orders of the physician responsible for the care of the patient and under a plan of treatment established by such physician.

(3) Supervision of therapy services. When services of aides or other personnel providing supplementary services are utilized in providing home health services, they shall be trained and supervised by appropriate professional personnel. When such supervision is less than full-time, e.g., for a limited number of hours or days each week, the supervision shall be provided on a planned basis and shall be frequent enough to assure adequate review of individual treatment plans and progress.

(4) Supervision of home health aides. A registered nurse shall provide direct supervision as necessary and be readily available at other times by telephone. The supervisor shall be constantly evaluating the home health aide in terms of the aide's ability to carry out assigned duties, to relate well to the patient, and to work effectively as a member of a team of health workers. The registered nurse, or appropriate professional staff member, if other services are provided, shall make a supervisory visit to the patient's residence at least every two (2) weeks either when the aide is present to observe and assist, or when the aide is absent to assess relationships and determine whether goals are being met.

(5) Training of home health aides. The home health agency shall require [determine] that home health aides receive or have received a basic training program for home health aides. A home health aide shall be trained in:

(a) Methods of assisting patients to achieve maximum self-reliance;

(b) Principles of nutrition and meal preparation;

(c) The aging process and the emotional problems of illness;

(d) Procedures for maintaining clean, healthful and pleasant environment;

(e) Awareness of changes in patient's condition that should be reported;

(f) Work of the agency and the health team; and

(g) Ethics, confidentiality and recordkeeping.

FILED WITH LRC: October 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Section 5. Provision of Services. (1) The home health agency shall provide intermittent skilled nursing services and other services for restoring, maintaining and promoting health and/or rehabilitation with minimum disruption of daily living.

(2) Services shall range from skilled nursing services to basic health related services to unskilled supportive services.

(3) Services shall be available five (5) days a week with back-up arrangements for weekend[s] and emergency services.

(4) In addition to intermittent skilled nursing services, the agency shall provide home health aide services, medical supplies and equipment services. When a home health agency provides therapeutic and medical social services, the following conditions shall be met:

(a) Physical, speech or occupational therapy. When an agency provides or arranges for physical, speech or occupational therapy, service shall be given in accordance with a physician's written orders by or under the supervision of a therapist meeting the respective qualifications as set forth in Section 1(5), (6), and (8) [2(7), (8), and (10)] of this administrative regulation.

(b) Respiratory therapy. When an agency provides or arranges for respiratory therapy, services shall be given in accordance with a physician's written order, by or under the supervision of a licensed nurse with experience and/or training in the field of respiratory therapy.

(c) Medical social services. When an agency provides or arranges for medical social services, services shall be given in accordance with a physician's written order by a qualified medical social worker or a medical social worker meeting the qualifications set out in Section 2 of this administrative regulation.

(5) Home health aide services. Visits of the home health aide for providing personal care and other related health services must be ordered by the physician and included in a plan of treatment approved by the physician.

(6) Services arranged for with another licensed provider. When a home health agency makes arrangements for the provision of home health services by another agency which is a licensed provider of services, there shall be a written agreement which:

(a) Designates the services which are being arranged for. Services provided are to be within the scope and limitations set forth in the plan of treatment. Such services may be altered only upon the specific orders of the initiating home health agency issued as a result of a change made by the physician in the patient's plan of treatment;

(b) Describes how the contracted personnel, where applicable, are to be supervised; and

(c) Provides for the recording of the progress notes and observations of the contracted personnel in the home health agency records for purposes of planning and evaluating patient care.

(7) Services arranged for with a nonlicensed provider. When a home health agency arranges for services with an agency that is not a licensed provider of services, a contract shall be written. The contract shall:

(a) Designate the services which are being arranged [for];

(b) Specify the period of time the contract is to be in effect and how frequently it is to be reviewed;

(c) Describe how the contracted personnel are to be supervised;

(d) State that home health services provided to the patient are in accordance with a plan established by the patient's physician in conjunction with home health agency staff and, when appropriate, others involved in the patient's care. Services provided shall be within the scope and limitations set forth in the plan and shall not be altered in type, scope, or duration by the secondary agency; and

(e) Assure that personnel and services contracted for meet the same requirements as those specified for home health agency personnel and services, including personnel qualifications, functions, supervision, orientation, basic training program for home health aides, and in-service training.

(8) Service agreements with other health care facilities. Coordination agreements as defined in Section 2 of this administrative regulation shall be developed with the major health care providers in the service area including: hospitals, skilled, intermediate and personal care facilities and family care homes.

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 125 licensed home health agencies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

TIMOTHY L. VENNO, Inspector General
JOHN MORSE, Secretary
ELLEN M. HESEN, Attorney

APPROVED BY AGENCY: October 6, 1998

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(Amended After Hearing)

902 KAR 55:105. Requirements for controlled substance prescription blanks.

RELATES TO: KRS 218A.030 to 218A.140, 218A.170 to 218A.240, 1998 GA HB 115, secs. 14, 16, 17, 18, 19, 20, 21

STATUTORY AUTHORITY: KRS 194.050, 211.020, 218A.250, 1998 GA HB 115, sec. 14

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 115, sec. 14 of the 1998 General Assembly requires the cabinet to promulgate administrative regulations that establish security requirements for a prescription blank used by a practitioner to write a prescription for a controlled substance. The purpose of this administrative regulation is to establish minimum requirements that will decrease the potential for forgery or alteration of a prescription or a prescription blank for a controlled substance.

Section 1. Definitions. (1) "Logo" means a symbol utilized by an individual, professional practice, professional association, or hospital.

(2) "Security prescription blank" means a prescription blank that conforms to the requirements of Section 3 of this administrative regulation.

Section 2. Security Prescription Blanks Required. (1) **Beginning [After] January 1, 1999, a written prescription for a controlled substance shall be on a security prescription blank.**

(2) **To be valid, a prescription for a controlled substance shall be written on a security prescription blank, [A prescription that is not written on a security prescription blank shall not be valid.] unless the cabinet has granted a waiver to the practitioner who wrote the prescription or to the pharmacy that dispenses it.**

(3) **A practitioner who is licensed in Kentucky and in another state shall utilize a security prescription blank for writing a prescription for a controlled substance while practicing his profession within the Commonwealth unless the cabinet has granted a waiver to the practitioner or to the pharmacy that dispenses the controlled substance.**

Section 3. Requirements of a Security Prescription Blank. (1) A prescription for a controlled substance **shall [must]** contain the following security features:

(a) A latent, repetitive "void" pattern screened at five (5) percent in **pantone green shall [reflex-blue-must]** appear across the entire front of the document when the prescription is photocopied;

(b) A custom artificial watermark **shall [must]** be printed on the backside of the base paper so that it **shall [may]** only be seen at a forty-five (45) degree angle. The water mark shall consist of the words "Kentucky Security Prescription", appearing horizontally in a step-and-repeated format in five (5) lines on the back of the prescription using twelve (12) point Helvetica bold type style;

(c) An opaque B symbol **shall [must]** appear in the upper right-hand corner, one-eighth (1/8) of an inch from the top of the prescription blank and five-sixteenths (5/16) of an inch from the right side of the prescription blank. The symbol **shall [must]** be three-fourths (3/4) of an inch in size and must disappear if the prescription copy is lightened;

(d) Six (6) quantity check off boxes **shall [must]** be printed on the form and the following quantities **shall [must]** appear:

1. ☐ 1-24;
2. ☐ 25-49;
3. ☐ 50-74;
4. ☐ 75-100;
5. ☐ 101-150;
6. ☐ 151 and over;

(e) A logo may appear on the prescription blank. The upper left one (1) inch square of the prescription blank is reserved for the purpose of a logo;

(f) The following statement **shall [must]** be printed on the bottom

of the prescription blank: "Prescription is void if more than one (1) prescription is written per blank";

(g) Refill options **shall [that may be circled by the practitioner must]** appear below any logo **[and above a signature line]** on the left side of the prescription blank in the following order: Refill NR 1 2 3 4 5; **and**

(h) A prescription blank shall be four and one-quarter (4 1/4) inches high and five and one-half (5 1/2) inches wide. **[; and]**

(2) A prescription shall bear the preprinted, stamped, **typed**, or manually printed name, address and telephone number of the prescribing practitioner.

(3) A prescription blank for a controlled substance shall not contain:

(a) An advertisement on the front or the back of the prescription blank;

(b) The preprinted name of a controlled substance;

(c) The written, typed, or rubber-stamped name of a controlled substance until the prescription blank is signed, dated and issued to a patient.

(4) **A prescription blank for a controlled substance shall provide space for the patient's name and address, the practitioner's signature and the practitioner's DEA registration number. [If a prescription for a schedule III, IV, or V controlled substance is to be transmitted to a pharmacy by facsimile, prior to transmission the practitioner or practitioner's agent shall write or stamp "FAXED" on the face of the original prescription along with the date and the person's initials.]**

Section 4. Other Requirements. (1) Only one (1) prescription **shall [may]** be written per prescription blank.

(2) **A quantity check-off box that corresponds to the quantity prescribed shall be marked.**

(3) **If the controlled substance prescribed is listed in schedule III, IV or V, a refill option shall be marked.**

(4) **If a prescription for a schedule III, IV, or V controlled substance is to be transmitted to a pharmacy by facsimile, the practitioner or the practitioner's agent shall, prior to transmission, write or stamp "FAXED" on the face of the original prescription along with the date and the person's initials.**

(5) If the pharmacist uses due diligence in ascertaining the validity of the prescription, a prescription for a schedule III, IV, or V controlled substance that is transmitted to a pharmacy by facsimile shall be exempt from the requirement of **green [blue]** ink in Section 3(1)(a) of this administrative regulation and the requirement of a watermark in Section 3(1)(b) of this administrative regulation.

(6) **[;]** If a prescription for a schedule III, IV or V controlled substance is transmitted to a pharmacy by facsimile, **the practitioner shall file** the original prescription **[shall be filed]** in the patient's record.

Section 5. Exceptions. A pharmacist shall not be required to use a security prescription blank to record an oral prescription or a transferred prescription.

Section 6. Printers, Reproducers or Distributors of Security Prescription Blanks. (1) A printer, reproducer or distributor of security prescription blanks shall require a written **[and signed]** purchase order or request for security prescription blanks. The written **purchase order or** request shall remain on file for two (2) years.

(2) **The purchase order or request shall be signed by:**

(a) **A practitioner whose name is to be printed on the security prescription blanks; or**

(b) **The chief medical official of a health care facility, if the security prescription blanks are requested on behalf of practitioners who stamp, type or manually print their name, address, telephone number and DEA number on the security prescription blank.**

(3) **The provisions of this section shall not apply to distributors between printers, reproducers, or distributors.**

Section 7. Waiver of Security Prescription Blanks. (1) A practitioner or a pharmacy may apply in writing to the cabinet for a waiver from the requirement for security prescription blanks. A request for a waiver shall include:

- (a) The security features provided by the alternative system proposed by the applicant; or
- (b) The format of the alternative prescription blank.
- (2) The alternative proposed by the applicant shall provide a level of security equivalent to a security prescription blank.
- (3) The cabinet shall grant or deny the application in writing **within sixty (60) days after the request is received.**
- (4) When a waiver has been granted, the cabinet may suspend or revoke the waiver if the alternative system or alternative prescription blank does not provide security equivalent to a security prescription blank.
- (5) Upon notification of **denial, suspension, or revocation of** ~~(intent to deny, suspend or revoke)~~ the waiver of the requirement for a security prescription blank, the practitioner or pharmacy may request a hearing. The administrative hearing shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, M.D., Commissioner
JOHN H. MORSE, Secretary
ELLEN M. HESEN, Attorney

APPROVED BY AGENCY: October 6, 1998
FILED WITH LRC: October 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Danna E. Droz

- (1) Type and number of entities affected: 14,000 pharmacies and physicians, as well as an indeterminate number of Hospice patients or patients who receive schedule II narcotics for parenteral administration
- (2) Direct and indirect costs or savings on the:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received on this issue.
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received on this issue.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 - 1. First year following implementation: No public comments received on this issue.
 - 2. Second and subsequent years: No public comments received on this issue.
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 - 1. First year: No public comments received on this issue.
 - 2. Continuing costs or savings: No public comments received on this issue.
 - 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: No public comments received on this issue.
 - (4) Assessment of anticipated effect on state and local revenues: No public comments received on this issue.
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: No public comments received on this issue.
 - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: No comments received related to this issue.
 - (b) Kentucky: No comments received related to this issue.
 - (7) Assessment of alternative methods: reasons why alternatives were rejected: No public comments received on this issue.
 - (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 comments received on this issue.
 - (b) State whether a detrimental effect on environment and public

health would result if not implemented: No comments received on this issue.

- (c) If detrimental effect would result, explain detrimental effect: No comments received on this issue.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates these amendments
- (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions apply to all prescriptions for controlled substances.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (Amended After Hearing)

905 KAR 2:160. Child day care assistance program.

RELATES TO: KRS 199.892-896, 45 CFR 98
STATUTORY AUTHORITY: KRS 194.050(1), 199.892, 199.8994, 45 CFR 98.41, 7 USC 2015(d), 42 USC 601 et seq., 1998 Ky. Acts ch. 426, 615, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050 and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children and provide uniform administration of child day care funds. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Fund and for child care services pursuant to 904 KAR 2:017 and 904 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of child day care assistance program.

- Section 1. Definitions. (1) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education required by K-TAP and if postsecondary, consistent with employment goals and if a teen parent, participation in education leading to a high school diploma or a general equivalency diploma.
- (2) "Cabinet" means the Cabinet for Families and Children.
- (3) "Center-based child care" means a Type I licensed child day care facility.
- (4) "Certificate" means a payment mechanism provided by the cabinet or designee and used by a family to secure child day care from the provider of choice.
- (5) "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.
- (6) "Child care and development fund, (CCDF)" means child care assistance provided to families throughout the state to improve the affordability, quality and availability of child care services for a low-income family to work, participate in K-TAP or for protection and teen parents.
- (7) "Child protective service case" means a case registered for services in which the case file contains case documentation that substantiates child abuse, neglect, dependency or exploitation. This category may also include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families or teen parents.
- (8) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact, which is intended to protect a child from immediate danger.
- (9) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.
- (10) "Dependent care disregard" means a method of allowing a deduction from the gross income for child care expenses for K-TAP

and medical assistance recipients with earned income and for food stamp recipients with earned income or who are in training or educational programs which are preparatory to employment. This deduction allows the K-TAP recipient to retain more income to pay child care expenses.

(11) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided for child protective services cases, a family shall meet both need and income status criteria.

(12) "Employment" means public or private, full- or part-time, permanent or temporary work for which wages are paid, including self-employment.

(13) "Enrolled or enrollment" means the process by which unregulated providers become eligible for CCDF by completing the application for provider enrollment and obtaining approval by the Department for Community Based Services.

(14) "Family" means one (1) or more adults and children related by blood or law, including stepparents, and other person standing in loco parentis who is operating or functioning in the place of the parent, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Family child care counselor" means cabinet or designee staff who work strictly with the day care assistance program. The family child care counselor may provide services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Fund, (CCDF), Food Stamp Employment and Training Program (FSETP), and other federally funded programs that the cabinet deems the best interest of parents may be served through the child day care assistance program.

(17) "Food Stamp Employment and Training Program (FSETP)" means a program administered by the cabinet and operated by the Workforce Development Cabinet, Department for Employment Services, pursuant to 904 KAR 3:042.

(18) "Group home child care" means a Type II licensed child day care facility.

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

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home.

(20) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(21) "Physical or mental incapacity" means a child under the age of nineteen (19) who has multiple or severe problems diagnosed by a physician or qualified professional, as defined in KRS 202A.011, that prevent the child from caring for himself for a part of the day.

(22) "Priorities" mean that the client groups identified for receipt of child day care are ranked by priority.

(23) "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed child day care facility, certified family child care home, relative or enrolled home.

(24) "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides child care services only to a:

1. Grandchild;

2. Great grandchild;

3. Niece or nephew; or

4. Sibling, who resides in a separate residence; and

(c) Who is related to the children served by:

1. Marriage;

2. Blood relationship; or

3. Court decree.

(25) "Social services block grant, (SSBG)" means funding for child care assistance provided by licensed or certified providers for

families receiving protective and preventive services, which may include multiproblem families or teen parents, and low income working parents.

(26) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 105-17, Title I Part C, Section 632 or 20 USC 1432.

(27) "Type I licensed child day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care, including children of a staff member; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) "Type II licensed child day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7) to twelve (12) children, including the provider's own preschool children.

(29) "Unmet need" means a list that may be maintained by the cabinet or designee staff once funds are obligated in a contract area. The list is based on the availability of allocated day care funds in each area.

(30) "Unregulated provider" means a child care provider who is not subject to be licensed or certified by the state or federal government.

(31) "Without regard to income" means that SSBG or CCDF child day care services for child protective cases may be provided or purchased without regard to family income.

Section 2. Technical Eligibility for CCDF. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of nineteen (19) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;

2. A licensed or certified psychologist;

3. A qualified mental health professional as defined in KRS 202A.011; or

4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) 150 [133] percent of poverty at the time of application; or

(b) 150 percent of poverty at the time of reauthorization;

(c) To the extent necessary, the eligibility requirement relating to the percent of poverty may be increased based on the availability of state and federal funds.

(d) Except a child protective services case is eligible without regard to income.

(3) Resides with parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment.

(a) The family remains eligible for child care assistance for a period of twelve (12) consecutive months from the date of discontinuance from K-TAP and the family's income does not exceed eighty-five (85) percent of state median income; and

(b) The family shall be responsible for the maximum copayment amount specified in the child care daily parent copayment schedule.

(4) Resides with parents or K-TAP specified relative who are working, participating in K-TAP, are teen parents in education, or in need of protection. A K-TAP family shall comply with eligibility and limitations pursuant to 904 KAR 2:017, Kentucky Works supportive services.

(5) Resides with parents or specified relative who are non-K-TAP adults in a postsecondary education program, such as vocational school or college, if the family income meets the guidelines listed in subsection (2)(a) of this section.

(6) Copayment requirement.

(a) A family receiving child day care assistance shall be required to contribute toward the payment based on the family's income as described in Section 6(3) of this administrative regulation.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(b) An individual who fails to cooperate in paying the required copayments may, subject to notices and hearing requirements, lose eligibility for the period of time back copayments are owed, unless satisfactory arrangements are made to make full payment.

(c) In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

(7) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3 through 6 of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 5 or 6(4) of this administrative regulation.

(8) Families shall not be eligible for child care assistance if care is provided by:

- (a) Parents or stepparents;
- (b) Legal guardians;
- (c) Members of the K-TAP or food stamp assistance unit or persons living in a home, which includes the child in need of care;
- (d) Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and
- (e) Alternative programs such as Head Start, state preschool and kindergarten which are available and accessible for the hours child care is needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The Department for Community Based Services case record shall:

- (a) Substantiate child abuse, neglect, dependency or exploitation; or
- (b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.
- (c) Provide case-by-case documentation if the copayment is waived.
- (3) Working parents may be eligible if:
 - (a) Child care needs exist in order to allow the parent to work;
 - (b) The family is income eligible as specified in Section 2(2) of this administrative regulation; and
 - (c) CCDF funds are obligated.

Section 4. Technical Eligibility for Dependent Care Pursuant to the Food Stamp Employment and Training Program (FSETP).

(1) A dependent individual of a FSETP participant shall be eligible for services if he:

- (a) Is under the age of thirteen (13); or
 - (b) Regardless of his age, is physically or mentally incapable of caring for himself as verified by the written determination of:
 1. A physician;
 2. A licensed or certified psychologist;
 3. A qualified mental health professional as defined in KRS 202A.011;
 4. A Department for Community Based Services worker indicating that the dependent qualifies as a special needs child;
 5. A collateral agency (schools, comprehensive care center); or
 - (c) Is disabled pursuant to 904 KAR 3:010, Section 1(9); or
 - (d) Is under court supervision; and
 - (e) Resides with an adult household member who:
 1. Is responsible for his care; and
 2. Is subject to and complying with FSETP, pursuant to 904 KAR 3:042.
- (2) Families shall not be eligible for FSETP child care assistance if child care is provided by:
- (a) A member of the food stamp household;

(b) A food stamp household member who has been exempted from participation in FSETP because he is responsible for the care of a household member who is under six (6) years of age; or

(c) The food stamp household resides in a Kentucky Domestic Violence Center (KDVC) shelter and child care is provided onsite; or

(d) The FSETP participant is a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) Unless alternative programs such as Head Start, state preschool and kindergarten are available and accessible for the hours care is needed, a parent of an eligible child who receives or is offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Child Day Care Services Agreement and Child Care Certificate, which shall:

1. Be issued to the parent;
2. Be of value commensurate with the value of child care services provided in Section 5(1)(b) of this administrative regulation;
3. If chosen by the parent, be used for child care services provided by a sectarian or nonsectarian organization or agency;
4. Not be considered a contract or grant to the provider but assistance to the parent;
5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:
 - a. Licensed child care providers;
 - b. Certified family child care providers (CFCCP); and
 - c. Unregulated child care providers enrolled with the Department for Community Based Services; or
 - d. Relative providers as defined in Section 1 of this administrative regulation; and
6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Community Based Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet or designee shall:

- (a) Maintain a record of substantiated parental complaints; and
- (b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet or designee shall make available through brochures, handouts, and information shared by the service delivery agents, to the parents and general public, consumer education about parental options relating to child care services including:

- (a) The full range of child care providers available;
- (b) Licensing and regulatory requirements;
- (c) Information and criteria regarding the TANF exception for a single custodial parent who has demonstrated inability to obtain needed child care services for a child under six (6) years of age and information regarding the counting of time exempted toward the time limit on federal benefits; and
- (d) Complaint procedures.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDF, SSBG, FSETP and other local, state, federal funds under the child day care assistance program:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:100, 905 KAR 2:110, 905 KAR 2:120; and

(b) With the exception of these providers who are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:100, 905 KAR 2:110, 905 KAR 2:120 and are not relative providers. They shall be enrolled with the cabinet to meet minimum health and safety standards. Providers requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296,

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Child Care Provider Enrollment Selfassessment, and meet the following requirements:

1. The provider shall be at least eighteen (18) years of age;
2. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
3. The provider shall submit to a criminal records check conducted within the past year by the Kentucky State Police;
4. The provider shall not be found by the cabinet or court to have abused or neglected an adult or child.
5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care; and
6. The provider shall complete the enrollment process every three (3) years.
7. The provider shall have at least one (1) telephone in working order.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Community Based Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Quality Assurance Section of the Office of Performance Enhancement, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, a hearing officer shall be appointed to review the record, conduct the hearing, and make recommendations upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2),(3).

(g) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090.

(h) The hearing officer shall advise the parties that a recommended order shall be distributed within ten (10) days after the close of the hearing, the parties shall have fifteen (15) days from the date of the recommended order to file exceptions, and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date by which the child care payments shall cease.

(2) The cabinet has established maximum child day care payments as follows:

(a) These charts represent the local maximum payment rate on a per-day basis. Chart abbreviations are as follows: FD - full day, five (5) or more hours; PD - part day, less than five (5) hours.

KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES West/East Region

Counties: Allen, Ballard, Barren, Bath, Bell, Boyd, Bracken, Breckinridge, Breathitt, Butler, Caldwell, Calloway, Carlisle, Carter, Christian, Clay, Crittenden, Daviess, Edmonson, Elliott, Fleming, Floyd, Fulton, Grayson, Graves, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Lawrence, Larue, Laurel, Lee, Leslie, Letcher, Lewis, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McLean, Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Simpson, Todd, Trigg, Union, Warren, Washington, Webster, Whitley, and Wolfe

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$13	8	12	7	9	5
Preschool	\$13	8	13	8	9	5
School Age	\$13	8	12	7	9	5

Central Region

Counties: Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$16	10	15	9	12	7
Preschool	\$15	9	15	9	11	6
School Age	\$14	8	15	9	10	5

(b) Licensed or certified providers, if the same amount is charged to the general public, may receive one (1) dollar per day beyond the maximum rate if the provider:

1. Is accredited by the National Association for the Education for Young Children or National Association for Family Child Care;
 2. Provides child care to a child with special needs; or
 3. Provides nontraditional hour care to a child during the period 6 p.m. to 6:30 a.m. or Friday 6 p.m. through Monday 6 a.m.
- (3) The cabinet or designee shall determine a copayment which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

CHILD CARE DAILY PARENT COPAYMENT SCHEDULE							
Income Range Monthly	Family Size 2 Family Copay	Family Size 3 Family Copay		Family Size 4 Family Copay		Family Size 5 or More Family Copay	
		With 1 Child	With 2 or More	With 1 Child	With 2 or More	With 1 Child	With 2 or More
0-399	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
400-499	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
500-599	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
600-699	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
700-799	\$ 1.75	\$1.75	\$2.25	\$1.75	\$2.25	\$1.75	\$2.25
800-899	\$ 2.00	\$2.00	\$2.50	\$2.00	\$2.50	\$2.00	\$2.50
900-999	\$ 2.50	\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75
1,000-1,099	\$ 3.25	\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00
1,100-1,199	\$ 4.25	\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25
1,200-1,299	\$ 5.25	\$5.00	\$5.50	\$4.00	\$4.50	\$3.00	\$3.50
1,300-1,399	\$ 5.25	\$6.00	\$6.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400-1,499	\$ 6.00	\$7.00	\$7.50	\$6.00	\$6.75	\$4.25	\$4.75
1,500-1,599	\$ 6.75	\$7.75	\$8.50	\$7.00	\$7.75	\$5.00	\$5.75

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

1,600-1,699	\$ 7.50	\$7.75	\$8.50	\$8.00	\$8.75	\$6.00	\$6.75
1,700-1,799	\$ 8.00	\$7.75	\$8.50	\$8.50	\$9.25	\$7.00	\$8.00
1,800-1,899	\$ 8.25	\$8.25	\$9.00	\$9.25	\$10.25	\$8.00	\$8.75
1,900-1,999	\$ 8.75	\$8.75	\$9.75	\$9.25	\$10.25	\$9.00	\$10.00
2,000-2,099	\$ 9.25	\$9.25	\$10.25	\$9.25	\$10.25	\$9.75	\$10.75
2,100-2,199	\$ 9.75	\$9.75	\$10.75	\$9.75	\$10.75	\$10.75	\$11.75
2,200-2,299		\$10.25	\$11.25	\$10.25	\$11.25	\$10.75	\$11.75
2,300-2,399		\$10.75	\$11.75	\$10.75	\$11.75	\$10.75	\$11.75
2,400-2,499		\$11.00	\$12.25	\$11.00	\$12.25	\$10.75	\$11.75
2,500-2,599		\$11.50	\$12.75	\$11.50	\$12.75	\$11.50	\$12.75
2,600-2,699		\$12.00	\$13.25	\$12.00	\$13.25	\$12.00	\$13.25
2,700-2,799		\$-	\$-	\$12.50	\$13.75	\$12.50	\$13.75
2,800-2,899				\$13.00	\$14.25	\$13.00	\$14.25
2,900-2,999				\$13.25	\$14.75	\$13.25	\$14.75
3,000-3,099				\$13.75	\$15.25	\$13.75	\$15.25
3,100-3,199				\$14.00	\$15.50	\$14.00	\$15.50
3,200-3,299				\$-	\$-	\$14.00	\$16.00
3,300-3,399						\$14.00	\$16.00
3,400-3,499						\$14.00	\$16.00
3,500-3,599						\$14.00	\$16.00
3,600 and Above						\$-	\$-

There is no copay below \$700.

Low income working parent family is no longer eligible above 150 percent of poverty.

Families transitioning from TANF/K-TAP have one (1) year of eligibility if income is below eighty five (85) percent of state median income, may remain as low income working parent if income is less than 150 percent of poverty.

The maximum copay for eligible families with more than five (5) members is fourteen (14) dollars with one (1) child in care and sixteen (16) dollars with two (2) or more children in care.

(a) Copayments shall not be assessed in:

1. A K-TAP, medical assistance case where clients are receiving dependent care disregard; or

2. A food stamp or FSETP case.

(b) Copayments in child protective service cases:

1. Copayments may be waived in a child protective service case under SSBG or CCDF.

2. If the copayment is not waived, it shall be calculated at the maximum amount indicated, taking into consideration the family income, size, and number of children in care.

3. The family is eligible for services without regard to income.

(c) The cabinet or designee shall determine the maximum daily reimbursement rate and parent copayment, not to exceed rates as specified in subsection (2) of this section. If the parent fails to pay the copayment, the cabinet or designee shall develop a plan with the parent to pay the copayment.

(d) The cabinet or designee shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every twelve (12) months; and

2. Upon receipt of reported changes.

(4) The Cabinet for Families and Children may, except for protective service cases and FSETP cases, establish priorities for child care services as follows:

(a) Children with special needs;

(b) Teen parents;

(c) K-TAP participants to meet the needs of families who are attempting to transition off assistance;

(d) Parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment; and

(e) Other low income working parents.

(5) Recoupment.

(a) The following provisions apply to overpayment in SSBG, CCDF, FSETP and any other local, state, or federal funds available through the child day care assistance program. Recoup an overpayment in each of the following cases:

1. Of fraud;

2. Involving a current recipient; and

3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider if due to provider error or fraud.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(6) If a client's child care services are reduced or terminated due to need, income criteria, priority status, or change in law, administrative regulation or policy of the cabinet, the cabinet or designee shall:

(a) Reassess the family so a client may be given a minimum ten (10) days notice of their eligibility if they do not meet the new criteria after their authorization period expires; and

(b) Send written notice explaining new eligibility criteria with a notice of intended action.

(7) The cabinet or designee shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair hearing. If notice of intended action is appealed by the client, the child care worker shall notify the client that child care services shall not be continued through the appeal process.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Child Day Care Services Agreement and Child Care Certificate", DSS-76, "October, 1997", Cabinet for Families and Children;

(b) "Child Care Billing Statement, Enrollment/Attendance Verification", DSS-77, "February, 1998", Cabinet for Families and Children;

(c) "Application for Child Care Provider Enrollment: In Child's Home", DSS-1297, "October [February], 1998", Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, "October [February], 1998", Cabinet for Families and Children;

(e) "Child Care Provider Enrollment Self Assessment", DSS-1296, "February, 1998", Cabinet for Families and Children; and

(f) "Application for Subsidized Child Day Care Assistance", "October, 1997", Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, CHR Building, 3rd Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
VIOLA MILLER, Secretary

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

CHARLES P. LAWRENCE, Attorney
APPROVED BY AGENCY: October 1, 1998
FILED WITH LRC: October 5, 1998 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Cathy G. Mobley

(1) Type and number of entities affected: The type and number of entities affected are approximately 40,000 children who may receive subsidized child care assistance governed by this administrative regulation and provided by 634 certified, 1878 licensed and 2600 enrolled or relative child care providers. The cabinet or designee will be responsible for the delivery of direct child care services as specified in the approved Child Care and Development Fund Services State Plan which with SSBG has available \$64.3M for SFY'97 and \$75M for SFY'98. This plan allows for the delivery of subsidized child care assistance by a contractor which may improve the delivery of services for both clients and child care providers, expand community resources and increase the number of eligible children served.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. With the passage of the welfare reform bill, the cabinet has the flexibility to design a service delivery system for the provision of child day care assistance to eligible families. This revised system combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding co-payment scale based on client eligibility at below 150% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. This improved service delivery system may encourage the development of needed child day care providers as it may equate to an increase in revenue for these providers, though an exact amount of increase is not able to be calculated at this time. The improved service delivery system may also assist local K-TAP recipients and other low income families in obtaining child day care assistance in order to work. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. Additional savings will be available for the families as there will be no co-pay requirements for families below an income of \$700 per month and there are some internal adjustments to the co-pay scale for these families.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. The impact of doing business in the geographical areas will be enhanced with the development of this revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding co-payment scale based on client eligibility at below 150% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue.

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

1. First year following implementation: The compliance, reporting and paperwork requirement for the first year include the installation of the new child day care assistance automated system to meet expanded federal and state information needs and efficiently serve nearly double the number of children, required training of contractor

staff, local providers of subsidized child day care, and the compiling of the required federal reporting data necessary to comply with the CCDF State Plan. These first year requirements will be the responsibility of the local contractor upon designation and the contractors ability to assume authority for the full implementation of the local child day care assistance program.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include operation of the revised child day care assistance program with appropriate monitoring of funds, potential use of other community resources and the reporting of required data for the completion of federal reports mandated pursuant to the CCDF State Plan.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The first year direct and indirect costs to the agency include the cost of the revised child day care automated system, (\$3.8M) cost of contracting with a local agent to implement the program, (\$3.5M) development and issuance or revised policy and procedures for Cabinet staff, necessary training for contractors and providers as each contract area is phased in until the program is statewide. Staff currently providing child care services for the Cabinet will be phased into other direct service positions as each contract area becomes operational. The General Assembly allocated \$900,000 for each year of the biennium in order for the Cabinet to eliminate co-pays for families with income below \$700 per month. The cabinet has earmarked \$18 million in additional funds to enable us to move toward serving a significant portion of the families up to 150% of poverty who need assistance with child care. This includes current year state and federal CCDF funds as well as state and CCDF carry forward. Internal adjustments to the co-pay scale to align the lower end of the scale for a family of two with the scale for a family of three will cost approximately \$162,300 per year which will be offset by the \$3.5 million the Cabinet has identified for use to extend the eligibility to 150%. Additionally in order to serve more families, the following payment policies have been developed: Payments shall be made on an enrollment basis, with the Cabinet or designee enrolling children only for the amount of child care needed. Payments shall only be made for part-time arrangements for those needing only part-time care unless part-time is not available. No payment for private kindergarten unless public kindergarten hours do not permit the parent to work or participate in K-TAP. Families are not eligible for subsidies when alternative programs are available and accessible, e.g. Head Start, State pre-school, PACE. Families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. We do not have current data on the number of families in this category, but in March 1997, only 6% of the families served were over 150% of poverty. We estimate that families in transition with income at or below 85% of the state median represent less than 3% of the families currently served.

2. Continuing costs or savings: Continuing costs to the agency will include ongoing contract costs (\$4.2M), monitoring of the contract and statewide child day care expenses for compliance with federal regulations, licensure, certification and enrollment of child day care providers and maintenance of the CCDF State Plan and necessary updates (\$4.0M). The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. For FY 2000, the cabinet has earmarked \$18 million in additional funds to enable us to move toward serving a significant portion of the families up to 150% of poverty who need assistance with child care. This includes current year state and federal CCDF funds as well as state and CCDF carry forward. Internal adjustments to the co-pay scale to align the lower end of the scale for a family of two with the scale for a family of three will cost approximately \$162,300 per year which will be offset by the \$3.5 million the Cabinet has identified for use to expand the eligibility to 150%. The payment policies identified in the first year will continue to allow the Cabinet to serve more families with the limited funds available.

3. Additional factors increasing or decreasing costs: Additional

factors increasing or decreasing costs include how effective the local contractor is in integrating the fiscal and human resources of the local communities with state revenue, increases or decreases in the need for child day care assistance for child protection cases, to meet K-TAP participation rates or increases or decreases in the need of low income working parents for subsidized child day care assistance. The Cabinet has the flexibility with this regulation to expand the eligibility threshold to remain within the allocated funds for child day care assistance. Another factor that may increase or decrease the costs is the impact of recent minimum wage increases on the cost of the provision of child day care.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements include the development of contracts, monitoring of child day care expenditures, provision of technical assistance to the local contractors, and establish the policies, regulations and state plan for the child day care assistance programs.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on state and local revenues is that local contractors may be more effective in integrating the fiscal and human resources of the local communities with the state resources thereby expanding the number of families receiving assistance with meeting their child care needs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation is the Child Care and Development Fund, amended with the new welfare reform legislation, Social Services Block Grant and Food Stamp Employment and Training Programs.

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

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

(b) Kentucky: A regulation has been filed and a public hearing has been scheduled during which comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Cabinet in its effort to meet the increasing demand for child day care services considered numerous alternative methods for the provision of child day care services including retaining the current operating structure all of which were restricting to the Cabinet's goal of universal accessible child day care. The goal of universal access is to ensure a simplified system whereby all families in Kentucky are able to secure child care that is easily accessible, affordable and of such quality that all parents are able to work and participate in K-TAP without distraction. This system consists of a broad array of resources, including public and private programs and funding streams and assist all parents. Subsidies from the Cabinet are available to low income families and to protection cases while the contractor develops strategies to expand community participation and increase private investments in child day care.

(8) Assessment of expected benefits: Anticipated benefits of this administrative regulation are the development of a revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding co-payment scale based on client eligibility at below 150% of poverty at the time of application and 150% of poverty at the time of reauthorization, and eliminates some duplicative billing processes for providers in the community. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance as long as the families income does not exceed 85% of the state median income. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. Expected benefits for the enrollment process are that unregulated providers will become enrolled and be eligible for subsidies under the CCDF. Additional savings will be available for the families as there will be no co-pay requirements for families below an income of \$700 per month and there are some internal adjustments to the co-pay scale for these families. Additionally the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children

through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training. Additionally the requirement to have minimum health and safety standards for individuals caring for children provides parents with some assurance about the quality of care their children will receive.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One effect on the public health is that the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no detrimental effect as unregulated providers would be ineligible for subsidies under the CCDF as amended by the new welfare reform legislation.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(a) Necessity of proposed regulation if in conflict: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the Cabinet implements the child day care assistance program pursuant to these administrative regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq. and 45 CFR 98.41.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate the state has combined six existing child day care programs into one, implemented a simplified child care maximum rate structure, a revised sliding co-payment scale on client eligibility at below 150% of poverty at the time of application and 150% of poverty at the time of reauthorization, provides that families whose K-TAP case has been discontinued and needs child care assistance in order to accept or retain employment shall be eligible for twelve consecutive months from the date of K-TAP discontinuance as long as the families income does not exceed 85% of the state median income and established an enrollment process in order for unregulated providers to become eligible to receive payments under the Child Care Development Fund Block Grant as amended by PL 104-193.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training. Additionally the statute required that 70% of the CCDF be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of becoming dependent on assistance programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, prior to the amendment to the Child Care and Development Block Grant with Pub. Law 104-193, all unregulated providers requesting payment were required to become certified. With the expansion of the Child Care and Development Block Grant to include Title IV-A child care providers the cabinet developed the enrollment process that will

provide minimum health and safety requirements for providers of child care that are not required by statute to be licensed or certified.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

CABINET FOR HEALTH SERVICES
Department for Mental Health/Mental Retardation Services
(Amended After Hearing)

908 KAR 2:210. Domestic violence offender treatment certification standards.

RELATES TO: KRS 403.715 to 403.785

STATUTORY AUTHORITY: KRS 403.7505

NECESSITY, FUNCTION, AND CONFORMITY: KRS 403.7505 authorizes the Cabinet for Human Resources to promulgate administrative regulations establishing certification standards for mental health professionals providing court-ordered treatment services for domestic violence offenders. The purpose of this administrative regulation is to establish provider certification requirements and standards for services. This administrative regulation is necessary to assure the quality of court ordered services and reduce the danger of physical injury or death for victims of ineffectively treated domestic violence perpetrators.

Section 1. Definitions. (1) "Assessment" means the evaluation of the offender's characteristics, history of abusive behavior, risk of harm to self and others, and capacity to benefit from treatment.

(2) "Associate provider" means an individual that has been certified to provide services in accordance with the requirements of this administrative regulation only under the direct supervision of an autonomous provider.

(3) "Autonomous provider" means a mental health professional that has been licensed or certified pursuant to KRS Chapters 309, 311, 314, 319, or 335 that has been certified by the cabinet for unsupervised clinical practice in a domestic violence program.

(4) "Cabinet" means the Cabinet for Health Services.

(5) "Client" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS 403, and who has been admitted to a program.

(6) "Court-ordered," means an order by any district, family or circuit court judge for an offender to be assessed by a provider to determine the offender's eligibility for admission to a program.

(7) "Domestic violence" means any act or threat of physical or sexual assault or abuse; psychological or emotional abuse; or the destruction of property or pets intended to illicit fear in the victim. It includes criminal offenses against a victim and violations of emergency protective orders and domestic violence orders.

(8) "Offender" means any individual who has been charged with or convicted of a criminal offense related to domestic violence or who is a respondent in a protective order issued by a court pursuant to KRS Chapter 403.

(9) "Program" means the services provided in accordance with the requirements of this administrative regulation to offenders who have been referred by a court for assessment or treatment related to domestic violence.

(10) "Provider" means an associate provider or an autonomous provider.

(11) "Screening" means the actions taken by associate or autonomous providers to determine an offender's eligibility for admission to the program.

(12) "Treatment" means counseling and educational services that focus on the cessation of violence by an offender. Treatment includes individual and group services using a comprehensive curriculum of content relating to domestic violence.

Section 2. Certification Procedures. (1) The cabinet shall certify an individual as an associate provider or an autonomous provider if:

(a) The applicant meets the applicable qualifications specified in Section 4 of this administrative regulation; and

(b) An applicant that requests certification as an autonomous

provider meets all the requirements specified in Section 4 of this administrative regulation except those in subsection (2)(a), (b) or (e) of this section and requests certification before January 1, 1999.

(2) An individual may apply to be certified as an associate provider or an autonomous provider by submitting:

(a) A written request for certification to the cabinet; and

(b) Documentary evidence of qualifications; and

(c) If a certification has been denied or revoked in accordance with Section 3 of this administrative regulation, evidence that the individual has remedied the cause for the revocation.

(3) A request for certification shall be submitted to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health.

(4) The cabinet shall determine that a request is incomplete if:

(a) The documentation of qualifications is insufficient to meet the applicable qualifications; or

(b) The cabinet can not verify the authenticity of the documentation of qualifications.

(5) If the cabinet determines that a request is incomplete it shall return the request to the sender and specify additional documentation that is required or the documentation that can not be verified.

(6) The cabinet shall approve or deny the request for certification in writing no later than sixty (60) days after receiving a complete request for certification.

(7) Certification shall be effective for two (2) years.

(8) The cabinet shall renew the certification of an associate provider or an autonomous provider upon request if the provider submits documentation of completion of at least eight (8) hours per year of continuing education related to domestic violence unless his certification has been revoked in accordance with Section 3 of this administrative regulation.

Section 3. Denial or Revocation of Certification. (1) The cabinet may deny a request for certification or revoke the certification of a provider if the cabinet determines that the provider:

(a) Has been convicted of or pled guilty to a criminal offense including misdemeanors if the crime is against persons; or

(b) Has had a domestic violence protective order issued against him within the previous two (2) years; or

(c) Has an alcohol or other drug abuse problem as defined in KRS 222.005; or

(d) Has had a sanction applied against any licensure or certification held by the applicant or provider at any time in the past two (2) years; or

(e) Has provided domestic violence offender assessment or treatment services without supervision if supervision is required by Section 5(1) or (2) of this administrative regulation; or

(f) Has falsified any information in a request for certification; or

(g) Has failed to meet the requirements for maintenance of certification set forth in Section 2(8) of this administrative regulation; or

(h) Has failed to implement a corrective action plan imposed by the cabinet in accordance with Section 12(4)(a) or (b) of this administrative regulation.

(2) An applicant or a provider may appeal a denial of a request for certification or a revocation of certification. An appeal shall:

(a) Be submitted in writing to the Sexual and Domestic Violence Program Specialist, Department for Mental Health and Mental Retardation Services Division of Mental Health; and

(b) Specify the reason the provider believes the denial or revocation is unwarranted and;

(c) May include information or documentation supporting the appellant's position.

(3) If an applicant or a provider appeals a certification decision the cabinet shall appoint a hearing officer and conduct an administrative hearing in accordance with KRS Chapter 13B.

(4) An applicant or provider who has had his certification revoked shall be ineligible for certification or recertification until the second anniversary of the date his certificate was revoked.

Section 4. Qualifications of Certified Providers. (1) The qualifications of an associate provider are:

(a) A bachelors degree from an accredited university or college in a mental health related discipline; and

(b) Completion of twenty-four (24) clock hours of specialty train-

ing in domestic violence including:

1. Characteristics and dynamics of domestic violence;
2. Clinical profiling of domestic violence offenders;
3. Risk assessment and lethality of domestic violence offenders;
4. Treatment of offenders;
5. Effective services for victims and child witnesses of domestic violence;
6. Safety planning for victims; and
7. Criminal sanctions for domestic violence and legal remedies for victims.

(c) Four (4) years of full-time postbachelors degree work experience totaling at least 8000 hours that may include general clinical experience and direct-case experience related to domestic violence;

(d) Being a party to a written agreement to receive the supervision required by Section 5(2) of this administrative regulation; and

(e) Written recommendations for certification from representatives of two (2) victims advocate agencies.

(2) The qualifications of an autonomous provider are:

(a) An advanced degree from an accredited university or college in a mental health discipline that is regulated by licensure or certification under the statutes of the Commonwealth of Kentucky; and

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology;
2. Social work;
3. Medicine if board eligible in psychiatry and neurology;
4. Psychiatric nursing;
5. Marriage and family therapy;
6. Professional counseling; or
7. Art therapy; and

(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of one (1) of the licensed or certified professionals specified in paragraph (b) of this subsection of which eighty (80) percent of the time shall have been with offenders and twenty (20) percent with victims; and

(d) Completion of the training specified in subsection (1)(b) of this section; and

(e) A written recommendation for certification from the professional that provided the supervision required by paragraph (c) of this subsection; and

(f) Written recommendations for certification from representatives of two (2) victims advocate agencies.

Section 5. Scope of Practice and Supervision Requirements. (1) An associate provider may under the supervision of an autonomous provider:

(a) Screen, assess, plan and provide treatment services under the supervision of an autonomous provider to offenders and clients of a program; and

(b) Consult with the courts, prosecutors, law enforcement, other agencies, mental health providers and others regarding the assessment or treatment needs of clients; and

(c) Have contact with the victims of offenders who are clients of the program.

(2) An associate provider that provides the services specified in subsection (1) of this section shall participate in at least one (1) hour per week of face-to-face supervision including case discussion, review of reading assignments, skill building, and review of audio or video tapes of actual clinical practice provided by the associate provider.

(3) A certified autonomous provider may provide screening, assessment, treatment and consultation services independently and supervise associate providers if he has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a mental health licensing board or by the cabinet; and

(b) Been in the practice of domestic violence offender treatment for a period of at least one (1) year.

(4) A certified autonomous provider who supervises associate providers shall:

(a) Provide supervisees the supervision required by subsection (2) of this section; and

(b) Directly observe the supervisees' practice in person or

through video or audio tapes of the supervisees' clinical practice; and

(c) Assure that supervisees provide services in accordance with all the provisions of this administrative regulation.

(5) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) Services provided to offenders referred by a court for domestic violence services shall be based on the following premises regarding violent conduct, the roles of offenders, and the effects of domestic violence on victims:

(a) Domestic violence constitutes a health hazard to victims who may experience short and long-term effects from the abuse. Immediate and long-term cessation of the domestic violence is the priority purpose for treatment.

(b) Domestic violence in its various forms is criminal behavior.

(c) Services shall be designed to enhance and promote the safety of identified and identifiable victims including spouses, live-in partners, children and other family members.

(d) Victims are not responsible for the violent behavior of offenders and services shall not promote the concept of mutual responsibility in explaining domestic violence.

(e) The offender is accountable for domestic violence, which is the product of individual choice and learned traits. The offender's psychopathology, substance abuse, other disorders, or cultural background are not explanatory causes of the offenses but can influence the offender's behavior.

(f) Cooperation and service coordination between law enforcement, the courts, probation and parole agencies, the Department for Social Services, spouse abuse centers and other victim advocates, chemical dependency professionals, and other mental health professionals is necessary to assure effective treatment and the safety of victims and potential victims.

(2) A provider shall give each offender or client a written document that explains the complaint process of the program.

(3) A provider shall treat offenders with respect and dignity at all times and shall not discriminate against an offender based on race, ethnicity, gender, age, religion or disability.

(4) An offender shall have the right to complain verbally or in writing to the provider, the referring court, or the cabinet and a provider shall not take any adverse action against an offender that makes a complaint.

(5) A provider shall adjust fees based upon the client's ability to pay. If a court has made a finding prior to making a referral for treatment that a client is indigent, a court may order a client to perform community service in lieu of payment of a fee.

(6) A provider shall comply with any and all federal laws pertaining to research with human subjects and shall protect the privacy of any clients who give consent to participate in any provider sponsored research activities.

(7) The provider shall provide clean and comfortable facilities for client services that meet applicable fire safety codes and handicapped accessibility codes.

(8) The provider shall comply with all federal and state laws applicable to the confidentiality of client records.

Section 7. Contact with Victims. (1) If an offender consents to a victim's participation in assessment or treatment services a provider shall:

(a) Attempt to contact the victim within five (5) days of the offender's admission to the program; and

(b) Offer the victim an opportunity to participate in the assessment or treatment of the offender by disclosing information about the offender and the circumstances of the violence; and

(c) Interview victims who consent to participate in an assessment of the offender; and

(d) Provide the victim information about the program, its possible benefits, the limitations of services, and the degree to which the offender's participation may or may not result in increased safety for the victim; and

(e) Educate the victim about community services, which are available to assist in meeting current or future protection needs of the victim and family members.

(2) Providers shall document their efforts to contact victims.

(3) Victim interviews shall not be conducted in the presence of the offender.

(4) If a victim does not consent to participate, or withdraws consent to participate, or refuses to participate or provide information, a provider shall not attempt to coerce or persuade the victim to participate.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria which may include an offender's admission of responsibility for a domestic violence related offense and may not be based solely on an offender's inability to pay for services; and

(b) Procedures for acceptance of referrals of offenders from a court following charges of a domestic violence related offense or as a condition of a protective order issued pursuant to KRS Chapter 403; and

(c) Notification of the referring court if an offender is determined not to be eligible for a provider's services including the reasons therefore and any referrals made in accordance with Section 9(2) of this administrative regulation no later than five (5) days after the decision.

(2) An offender shall be provided with all of the following information prior to receiving assessment or treatment services:

(a) The limitations on confidentiality including the duties of providers to warn and protect intended victims of threats to harm under the provisions of KRS 202A.400, the requirements to report abuse in accordance with KRS 209.030, and the fact that information disclosed to the provider or other clients may be used against them in civil or criminal proceedings;

(b) The relationship of the provider to the referring court including duties to make reports pertaining to the client to the courts, prosecutors, probation and parole officers, law enforcement, the victim, and any other named party or agency that might be involved in the coordination of the client's services;

(c) The offender's responsibility for paying fees for services and policies regarding noncompliance with payment of fees;

(d) The expected length of treatment participation and the terms for discharge from the program including grounds for involuntary discharge;

(e) An explanation of the requirements of Section 6 of this administrative regulation;

(f) An explanation of the rights set forth in this subsection;

(g) A description of the services that will be provided including requirements for participation; and

(h) Notification that, at the discretion of the court, failure to comply with program requirements may result in a citation for contempt of court; and

(i) An explanation of procedures for victim participation in screening, admission and treatment services.

Section 9. Assessment and Admission Procedures. (1) If an offender is determined to be eligible for domestic violence services offered by the provider an assessment of the offender's treatment needs shall be performed. The assessment shall include consideration of the offender's:

(a) History of abusive behavior including degree of harm and type of violent conduct;

(b) Criminal history;

(c) Risk of harm to self and others;

(d) Medical history;

(e) History of mental or emotional disorder;

(f) current mental status;

(g) The presence of any cooccurring disorders such as mental illness or substance abuse or dependence;

(h) The offender's ability to benefit from English language services and from group settings; and

(i) May include a review any relevant public records, police reports and other available collateral sources of information on the offender.

(2) A provider may interview a victim subject to the provisions of Section 7 [6] of this administrative regulation and consider information provided by a victim in the assessment if an offender consents for a victim to participate in an assessment.

(3) If, upon assessment, a provider determines that the offender is unlikely to benefit from services due to a high risk of lethality or

other factors a provider shall refer the offender to services more likely to benefit the offender.

(4) A provider may refer an offender to mental health or substance abuse treatment services as a prerequisite for admission or completion of a domestic violence offender treatment program.

(5) A provider shall notify the referring court no later than five (5) days after making a determination based on an assessment if the offender shall be admitted or not, and referrals made, if any.

(6) An offender shall be admitted for domestic violence treatment upon providing a written consent for treatment and agreeing writing to comply with all program rules and guidelines and providing written authorization for a provider to release information to all the referring or service coordinating parties identified above

Section 10. Treatment Procedures. (1) A provider shall make individual and group services available to clients at least once weekly.

(2) A program shall offer separate groups for male and female offenders.

(a) Group services may involve a minimum of two (2) clients but shall not exceed twelve (12) clients at any time unless two (2) providers facilitate each group session.

(3) If two (2) providers facilitate a group, it may include a total of fifteen (15) participants.

(4) Group services shall be scheduled in at least one and one-half (1 1/2) hour sessions.

(5) A client shall participate for a minimum period of twenty (20) weeks and a recommended period of fifty (50) weeks.

(6) Noncourt-referred clients may participate in group services with court-referred clients.

(7) The provider shall establish a core curriculum for group participation that covers the essential features of domestic violence including:

(a) Definition of domestic violence in its various forms, including physical, sexual, psychological and environmental abuse;

(b) Exploration of the effects of domestic violence on victims and witnesses to the domestic violence;

(c) Discussion of the legal dimensions of domestic violence;

(d) Description of the cycle of violence and other dynamics of domestic violence;

(e) Instruction of clients about their responsibility for the domestic violence behavior;

(f) Confrontation of the client's use of power, control and coercion in intimate relationships;

(g) Confrontation of rigid sex role stereotypes;

(h) Challenge of the client's pattern of aggressive reactions in conflict situations with victims;

(i) Exploration of the actual and perceived role of alcohol and drug abuse in the domestic violence;

(j) Exploration of constructive and nonviolent methods for expressing anger and resolving conflict in relationships, including the use of "time outs", stress management, anger reduction and constructive verbal methods for resolving conflict;

(k) ~~Encouragement of the client's contribution to restitution to the victim and family members;~~

~~(l) Development of relapse prevention techniques; and~~

~~(l) [(m)] Promotion of aftercare services where indicated.~~

(8) If group services for female offenders are offered, the curriculum required by subsection (7) of this section may be amended to relate specifically to female offenders.

(9) A provider shall execute all duties to warn and protect if intended victims have been threatened by a client of the program under the provisions of KRS 202A.400.

(10) A provider shall notify the victim of the discharge or termination of a client.

(11) A provider shall not offer or provide marital counseling or family therapy to any client or victim until the client has successfully completed the program and has demonstrated at least six (6) months of nonviolent behavior in the relationship.

(12) A provider shall not offer or provide marital counseling or family therapy to any client or victim if there is a foreseeable risk of harm to the victim resulting from the marital services or if a provider believes that the victim may be agreeing to participate because of coercion or threat from the offender.

Section 11. Involuntary Discharge from a Program. (1) A provider shall dismiss from the program any offender that:

- (a) Fails to attend more than ten (10) percent of scheduled appointments; or
- (b) Fails to actively participate in services or complete assignments; or
- (c) Fails to assume financial responsibility for services as ordered by the court; or
- (d) Violates any provision of a court order; or
- (e) Reports a reoccurrence of domestic violence that, in the provider's professional judgment, poses a threat to the safety of a victim.

(2) A provider shall notify the referring court no later than five (5) days after a decision to discharge an offender from the program and shall specify the reason for the discharge.

Section 12. Monitoring. (1) The cabinet shall:

(a) Investigate signed written complaints received about providers if the complaints allege a failure to comply with the provisions of this administrative regulation; and

(b) Refer any complaints against providers which relate to unethical practice or practice which may be outside the practice of a provider to the appropriate licensure or certification board.

(2) The cabinet may evaluate a certified provider's adherence to the provisions of this administrative regulation on its own initiative.

(3) Monitoring by cabinet staff may include any of the following activities:

(a) Interviewing offenders or victims if they consent to be interviewed;

(b) Reviewing service records maintained by providers on offenders that have been referred by a court in accordance with this administrative regulation;

(c) Direct observation of services provided to offenders unless an offender objects to being observed;

(d) Interviewing judicial, correctional, or police officials, and other agency personnel that interact regularly with a certified provider in relation to offender services.

(4) If the cabinet determines that a certified provider has failed to comply with provisions of this administrative regulation the cabinet shall notify the provider in writing of its determination and may:

(a) Require the provider to submit a corrective action plan; or

(b) Impose a corrective action plan upon the provider; or

(c) Revoke a provider's certification in accordance with Section 3 of this administrative regulation.

(5) The cabinet shall notify an autonomous provider that supervises an associate provider if it determines that an associate provider has failed to adhere to the provisions of this administrative regulation and the autonomous provider shall be responsible to assure that corrective action is taken.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

ELLEN M. HESEN, Attorney

APPROVED BY AGENCY: October 6, 1998

FILED WITH LRC: October 6, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Littlefield

(1) Type and number of entities affected: This regulation will affect the fifty-nine (59) judicial districts in the state.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No new revenue is needed. Monitoring of compliance with the regulation will be carried out by existing personnel.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: N/A No public hearing has been held yet.

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Treatment of perpetrators of domestic violence requires specialized expertise. The only method the department is authorized to use for establishing standards is the promulgation of administrative regulations in accordance with KRS Chapter 13A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The implementation of this regulation will protect victims of domestic violence who are currently at risk of serious harm by ineffectively treated perpetrators.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation will result in imminent danger to the health and safety of victims and potential victims of ineffectively treated perpetrators of domestic violence.

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions? N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied to standards for certification. Standards for certification as an associate require less education training and experience than that required for certification as an autonomous provider. In addition, requirements for supervision are imposed for associate providers and not for autonomous providers.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None applicable.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 1998

EXECUTIVE BRANCH ETHICS COMMISSION
(Amendment)

9 KAR 1:040. Initial and updated registration statements and registration cards for executive agency lobbyists, [and] lobbyist employers and real parties in interest; expenditure statements; financial disclosure forms; termination forms; [and] Executive Agency Lobbying Handbook; and enforcement procedure.

RELATES TO: KRS 11A.211, 11A.216, 11A.221, 11A.231, 11A.233(1), 11A.241(4), (5), 11A.990

STATUTORY AUTHORITY: KRS 11A.110(3), (4), 11A.241(4), (5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.241(4) requires the Executive Branch Ethics Commission to prescribe the initial registration statement and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. This administrative regulation establishes these forms. KRS 11A.241(6) requires the commission to publish a handbook that explains the provisions of KRS 11A.201 to 11A.246. This administrative regulation establishes that handbook. KRS 11A.990 states that a lobbyist who fails to file a registration statement shall be subject to a civil penalty. This administrative regulation establishes procedures for enforcing this penalty.

Section 1. ~~[Definitions. "Regular and substantial basis" means executive agency lobbying activity of more than one (1) time per year regarding a decision that involves state expenditures that exceed \$5,000 per year.~~

Section 2. ~~[Initial Registration Statement. (1) The initial registration statement required by KRS 11A.211 shall be filed on the "Initial Registration Statement" form incorporated by reference in Section 4 of this administrative regulation.~~

(2)(a) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:

1. Has been engaged; or
2. Is responsible.
- (b) Subject matters shall include:
 1. An award of grant for social services;
 2. A lease for office space or equipment;
 3. A contract to provide food, clothing, or other consumable products;
 4. Any other subject matter.

(3)(a) The signature on the "Initial Registration Statement" which is filed with the commission shall be an original signature in ink other than black.

(b) The forms incorporated by reference in this administrative regulation may be reproduced by an executive agency lobbyist or his employer.

Section 2. ~~[3:] (1) The updated registration form required by KRS 11A.211(2) shall be filed on the applicable updated registration forms incorporated by reference in Section 3 [4] of this administrative regulation.~~

(2) The notice of termination required by KRS 11A.211(4) shall be filed on the Termination Notification As Executive Agency Lobbyist Form incorporated by reference in Section 3 [4] of this administrative regulation.

Section 3. Enforcement Procedure. (1)(a) Within ten (10) days of the due date of the Updated Registration Statement, the commission staff will determine those executive agency lobbyists, employers of executive agency lobbyists, and real parties in interest who have not filed an Updated Registration Statement by the due date. Commission staff will send a letter to the delinquent individuals or entities by certified mail within fifteen (15) days of the statement due date.

(b) If the individual or entity does not file within fifteen (15) days from the day the certified letter was served, the commission will impose a \$1,000 fine, payable within ten (10) days, unless the

commission receives evidence indicating the filing has been received.

Section 4. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

- (a) "Executive Agency Lobbyist/Employer or Real Party in Interest Initial Registration Statement (Rev. 090196 [030+95])";
- (b) "Updated Registration Statement - Executive Agency Lobbyist (Rev. 090196 [030+95])";
- (c) "Updated Registration Statement - Employer of Executive Agency Lobbyist (Rev. 090196 [030+95])";
- (d) "Updated Registration Statement - Real Party in Interest (Rev. 090196)";
- (e) "Termination Notification as Executive Agency Lobbyist (Rev. 090196 [030+95])";
- (f) ~~[(e)]~~ "Executive Agency Lobbying Handbook (Rev. 090196 [030+95])"; and
- (g) ~~[(f)]~~ "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist (9/93)".

(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 30, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Wednesday, November 25, 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 November 18, 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 agency lobbyist.

(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: The reporting and paperwork requirements are the same as what is currently required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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 executive branch lobbyist will be treated the same.

**UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)**

12 KAR 2:041. 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 250.491 to 250.631, regarding commercial feeds. KRS 250.541 defines adulterated commercial feeds and adulterated materials exempted from the definition of commercial feeds and states how they may be adulterated by additives. KRS 250.551(1) and (2) prohibits the manufacture and distribution of adulterated products as animal feeds. This administrative regulation establishes requirements to ensure the safety and effectiveness of commercial feeds containing additives. [To assure that commercial feeds which contain additives are safe and effective when used according to label directions.]

Section 1. Before [Prior to] approval of a registration application or [and/or approval of a] label for commercial feed containing [which contains] additives (including drugs, other special purpose additives, or nonnutritive additives), the distributor shall, upon request by the director, [may be required to] submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

Section 2. Satisfactory evidence of safety and efficacy of a commercial feed includes [may be]:

(1) The use of [When the commercial feed contains such] additives that conform [the use of which conforms] to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, [or which] are "prior sanctioned", [or] "informal review sanctioned," or "generally recognized as safe" (GRAS) according to the Food and Drug Administration for the [such] use; [or]

(2) A [When the] commercial feed that is itself a drug as defined in KRS 205.501(7) if it [and] is generally recognized by the Food and Drug Administration as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug

Administration under Title 21 USC 360(b).

(3) A commercial feed used to impart immunity if the constituents have been approved for that purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended.

(4) A direct-fed microbial product if it meets the particular fermentation product definition and the microbial content statement is limited to the following: "Contains a source of live (viable), naturally occurring microorganisms." This statement shall appear on the label.

(5) An enzyme product if it meets the particular enzyme definition of the Association of American Feed Control Officials and is guaranteed according to 12 KAR 2:018. [When one (1) of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended.

(4) ~~When the commercial feed is a direct-fed microbial product; and~~

(a) ~~The product meets the particular fermentation product definition; and~~

(b) ~~The microbial content statement, as expressed in the labeling, is limited to the following: "Contains a source of live (viable) naturally occurring microorganisms". This statement shall appear on the label.~~

(5) ~~When the commercial feed is an enzyme product; and~~

(a) ~~The product meets the particular enzyme definition defined by the Association of American Feed Control Officials; and~~

(b) ~~The enzyme is stated with a corresponding guarantee expressed in accordance with 12 KAR 2:018.]~~

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: October 2, 1998

FILED WITH LRC: October 7, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 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 November 19, 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 or pet food 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. Incorporates existing national regulatory processes for FDA and USDA approved additives.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(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: There are no effective 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: Lower the risk to public health through greater feed safety.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Food safety risk would be increased.

(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? Additives approved by USDA and FDA are available for use by all size firms, and this administrative regulation applies equally to all firms distributing feed with additives in Kentucky.

UNIVERSITY OF KENTUCKY
Agricultural Experiment Station
Division of Regulatory Services
(Amendment)

12 KAR 3:012. Uniform labeling format.

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 requires that all commercial feeds, including pet foods, be labeled and states the information that shall be on the label. This administrative regulation establishes (To establish) a uniform format for presentation of labeling information for pet foods and delineates (delineate) criteria for (declaring) product claims.

Section 1. The quantity statement and product name shall ~~(must)~~ be shown on the principal display panel of a pet food label. All other required information may be placed elsewhere on the label but shall be (sufficiently conspicuous as to render it) easily read by the average purchaser under ordinary conditions of purchase (and sale).

Section 2. The quantity statement shall conform ~~(be made in conformity)~~ with the United States Fair Packaging and Labeling Act and its ~~(the)~~ regulations (promulgated thereunder).

Section 3. (1) The information (which is) required (to appear) in the guaranteed analysis shall be listed in the following order:

(a) Crude protein (minimum percentage);

(b) Crude fat (minimum percentage);

(c) Crude fiber (maximum percentage);

(d) Moisture (maximum percentage).

(2) Additional guarantees shall follow moisture.

Section 4. The label of a pet food shall specify the name and address of the manufacturer, packer, or distributor (of the pet food). The statement shall ~~(of the place of business should)~~ include the street address, if any, (of such a place) unless the ~~(such)~~ street address is

shown in a current city directory or telephone directory of the city named ~~(represented)~~ on the label as the manufacturer's or distributor's address.

Section 5. If a person manufactures, packages, or distributes a pet food in a place other than his principal place of business, the label may state either address ~~(the principal place of business in lieu of the actual place where each package of such pet food was manufactured or packaged or is to be distributed)~~, if it ~~(such statement)~~ is not misleading (in any particular).

Section 6. A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

Section 7. The (use of the) word "proven" shall not be used in connection with label claims for a pet food (is improper) unless scientific or other empirical evidence substantiating ~~(establishing)~~ the claim (represented as "proven") is available.

Section 8. No statement shall appear upon the label of a pet food that ~~(which)~~ makes false or misleading comparisons between that pet food and any other (pet food).

Section 9. Personal or commercial endorsements are permitted on pet food labels if they ~~(where said endorsements)~~ are factual and not (otherwise) misleading.

Section 10. If (When) a pet food intended for retail sale is enclosed in an outer container or wrapper (which is intended for retail sale), all required label information shall ~~(must)~~ appear on the ~~(such)~~ outside wrapper or container.

Section 11. The words "dog food," "cat food" or similar designations shall ~~(must)~~ appear conspicuously upon the principal display panels of the pet food labels.

Section 12. The label of a pet food shall not (contain an unqualified representation or) claim (directly or indirectly) that the pet food, (therein contained) or (a) recommended feeding of it ~~(thereof)~~, is (or meet the requisites of) a complete, perfect, scientific or balanced ration for dogs or cats unless an affidavit is provided upon request of the director substantiating that the (such) product or feeding:

(1) Meets the ~~(Contains ingredients in quantities sufficient to meet the)~~ nutrient requirements for all life stages established by the Association of American Feed Control Officials (AAFCO) Dog or Cat Food Nutrient Profiles, as the case may be, or some other AAFCO recognized authority on animal nutrition. (To the extent that the product's ingredients provide nutrients in amounts which substantially deviate from those nutrient requirements estimated by (such) a recognized authority on animal nutrition, or in the event that no estimation has been made by a recognized authority (on animal nutrition of the requirements of animals for one (1) or more stages of said animals' lives), the product's stated ~~(represented)~~ capabilities shall ~~(in this regard must)~~ have been demonstrated by adequate testing.)

(2) Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment in accordance with the testing procedures established by AAFCO, meets the criteria of the ~~(such)~~ testing procedures for the appropriate life stage (or stages).

Section 13. Labels for products formulated ~~(which are compounded)~~ for or (which are) suitable for only a limited purpose, such as ~~(i.e., a product designed for the)~~ feeding of puppies, (i) may state (contain representation) that the ~~(said pet food)~~ product, or its recommended feeding, (thereof, is or) meets the requirements ~~(requisites)~~ of a complete, perfect, scientific or balanced ration for dogs or cats only if:

(1) Accompanied by ~~(in conjunction with)~~ a statement of the limited purpose for which the product is intended or suitable positioned (as, for example, in the statement "a complete food for puppies"). Such representations and such required qualification therefore shall be juxtaposed on the same panel and in the same size, style and color print; and

(2) An affidavit is provided upon request of the director substanti-

ating that the [Such-qualified-representations may appear on pet food labels only if:

(a) The pet food meets [contains ingredients in quantities sufficient to meet] the nutrient requirements established by the AAFCO Dog or Cat Food Nutrient Profiles, [as the case may be;] or some other AAFCO recognized authority on animal nutrition, [for such limited or qualified purpose;] or

[(b) The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and] has had its capabilities for the limited or qualified purpose [in this regard] demonstrated by adequate testing.

Section 14. Except as specified by 12 KAR 3:017(1), the name of any ingredient on the label, other than in the product name:

(1) Shall not be given undue emphasis so as to create the impression that it is present in a larger amount than is the fact;

(2) Shall constitute at least three (3) percent of the total ingredients (exclusive of water sufficient for processing) when preceded by the designation "with" or a similar term;

(3) Shall be in the same size, style and color print; and

(4) If the names of more than one (1) ingredient are shown, they shall appear in the order of their predominance by weight in the product.

Section 15. The label of a dog or cat food, other than one (1) prominently identified as a snack or treat, shall bear on either the principal display panel or the information panel (as those terms are defined in 21 CFR 501.1 and 501.2, respectively), in type of a size reasonably related to the largest type on the panel, a statement of the nutritional adequacy or purpose of the product. The statement shall consist of one (1) of the following:

(1) A claim that the pet food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy (gestation, lactation, growth, maintenance, or complete for all life stages) as established in Sections 12 and 13 of this administrative regulation. The claim shall be stated as one (1) of the following:

(a) (Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____. (Blank is to be completed by using the stage of the pet's life, i.e., gestation, lactation, growth, maintenance or all life stages); or

(b) Animal feeding tests using AAFCO procedures substantiate that (name of product) provides complete and balanced nutrition for _____. (Blank is to be completed by using the stage of the pet's life tested, i.e., gestation, lactation, growth, maintenance or all life stages.)

(2) A nutrition or dietary claim for purposes other than those listed in Sections 12 and 13 of this administrative regulation, if the claim is scientifically substantiated.

(3) The statement, "this product is intended for intermittent or supplemental feeding only", if the product does not meet either the requirements of Sections 12 and 13 of this administrative regulation or any other special nutritional or dietary need.

(4) The statement "use only as directed by your veterinarian", if it is intended for use by or under the supervision or direction of a veterinarian. The label shall also make a statement in accordance with subsection (1) or (3) of this section.

Section 16. Claims on pet food labels stating "improved" or "new" shall be substantiated by the manufacturer and are limited to six (6) months of production. Claims stating preference or comparative attribute claims shall be substantiated by the manufacturer. They are limited to one (1) year of production, after which the claim must be removed or resubstantiated.

Section 17. Dog and cat foods labeled as complete and balanced for any or all life stages, except those pet foods labeled in accordance with Section 15(4) of this administrative regulation, shall list feeding directions on the label. These directions shall be expressed in common terms and appear prominently on the label. Feeding directions shall, at a minimum, state, "feed (weight or unit of product) per (weight unit) of dog (or cat)".

Section 18. Incorporation by Reference. (1) "Official Publication", (1998 Edition). Association of American Feed Control Officials, is in-

corporated 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. [Except as specified by 12 KAR 3:017, Section 1(1), the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, shall constitute at least three (3) percent of the total ingredients (exclusive of water sufficient for processing) when preceded by the designation "with" or like term, shall be in the same size, style and color print and if the names of more than one (1) such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

Section 15. The label of a dog or cat food, other than one prominently identified as a snack or treat as part of the designation required upon the principal display panel under Section 11 of this administrative regulation, shall bear, on either the principal display panel or the information panel (as those terms are defined in 21 CFR 501.1 and 501.2, respectively), in type of a size reasonably related to the largest type on the panel, a statement of the nutritional adequacy or purpose of the product. Such statement shall consist of one (1) of the following:

(1) A claim that the pet food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation, lactation, growth, maintenance, and complete for all life stages, as those categories are set forth in Sections 12 and 13 of this administrative regulation. The claim shall be stated as one (1) of the following:

(a) (Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____. (Blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words "All Life Stages.")

(b) Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for _____. (Blank is to be completed by using the stage or stages of the pet's life tested, such as gestation, lactation, growth, maintenance or the words "All Life Stages.")

(2) A nutrition or dietary claim for purposes other than those listed in Sections 12 and 13 of this administrative regulation if the claim is scientifically substantiated.

(3) The statement: "This product is intended for intermittent or supplemental feeding only", if a product does not meet either the requirements of Sections 12 and 13 of this administrative regulation or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

(4) The statement: "Use only as directed by your veterinarian", if it is a pet food product intended for use by, or under the supervision or direction of a veterinarian and shall make a statement in accordance with subsection (1) or (3) of this section.

Section 16. The use of claims on pet food labels stating improvement or newness shall be sufficiently substantiated by the manufacturer and limited to six (6) months production. The use of claims stating preference or comparative attribute claims shall be sufficiently substantiated by the manufacturer and limited to one (1) year production after which the claim must be removed or resubstantiated.

Section 17. Dog and cat foods labeled as complete and balanced for any or all life's stages as provided in Section 15(1) of this administrative regulation, except those pet foods labeled in accordance with Section 15(4) of this administrative regulation, shall list feeding directions on the product label. These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state "Feed (weight/unit of product) per (weight unit) of dog (or cat)".

C. ORAN LITTLE, Dean and Director
PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: October 2, 1998

FILED WITH LRC: October 7, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 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 November 19, 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 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 brings Kentucky's regulation into conformity with the U.S. Fair Packaging and Labeling Act relative to statement of net contents on the label, designates that a crude protein, crude fat, crude fiber and moisture be stated as percent as is common labeling practice rather than amount, adopts nationally recognize and currently used Association of American Feed Control Officials Nutrient Profiles as the basis for demonstrating nutritional adequacy of pet foods for dogs and cats, establishes six-month limit for labeling products as "new" or "improved," and requires feeding directions for dog and cat foods labeled as complete and balanced. These changes are consistent with current national labeling practices.

2. Second and subsequent years: By maintaining uniformity in labeling a continued saving will be realized by manufacturing firms.

(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: This administrative regulation adopts nationally recognized labeling practices, which alternative methods would not do.

(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 government-

tal policy which may be conflict, overlapping, or duplication: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used.) No. Labeling requirements of this administrative regulation apply equally and equitably to all firms that manufacture pet food for distribution in Kentucky.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:017. Brand and product names.

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. This administrative regulation establishes the conditions under which [To provide for informative use of] brand and product names may be used [without being misleading].

Section 1. [(1)] No flavor designation shall be used on a pet food label unless the [designated] flavor is detectable by a recognized test method or is [one (1) the presence of which provides a characteristic] distinguishable by the pet. Any flavor designation on a pet food label shall [must either] conform to the name of its source as shown in the ingredient statement [or the ingredient statement shall show the source of the flavor]. The word "flavor" shall be printed in the same size type and equally conspicuous [with an equal degree of conspicuousness] as the ingredient term[s] from which the flavor [designation] is derived. Distributors shall supply verification of the designated or claimed flavor upon request of the director.

[(2) Distributors of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the director.]

Section 2. The designation "100 percent" or "all" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one (1) ingredient. However, [for the purpose of this provision,] water sufficient for processing, required de-characterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

Section 3. The terms [term] "meat" and "meat by-products" shall be qualified to designate the animal or animals from which the meat and meat by-products are derived, unless they [the meat and meat by-products] are from cattle, swine, sheep, or [and] goats. [For example, "horsemeat" and "horsemeat by-products".]

Section 4. The name of the pet food shall not be derived from one (1) or more ingredients of a mixture to the exclusion of the other ingredients, [and shall not be one (1) representing any components of a mixture of a pet food product unless all components or ingredients are included in the name] except as specified by Sections 1, 5, and 6 of this administrative regulation. If [; provided, that] if any ingredient or combination of ingredients is intended to impart a distinctive characteristic that [to the product which] is important [significant] to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the name of the pet food if:

(1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a significant [material] bearing upon the price of the product or upon acceptance of the product by the purchaser; or

(2) It does not imply [constitute a representation] that the ingredient or combination of ingredients is present to the exclusion of other ingredients; and

(3) It is not [otherwise] false or misleading.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 5. If ~~[When]~~ an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes ninety-five (95) percent or more of the total weight of ~~[all ingredients of]~~ a pet food ~~[mixture]~~, the name or names of the ~~[such]~~ ingredient~~(s)~~ or ingredients may be ~~[form]~~ a part of the product name. ~~If [of the pet food; provided; that where] more than one (1) ingredient is part of the [such] product name, [then] all of the [such] ingredient names shall be in the same size, style and color print. [For the purposes of this provision,] Water sufficient for processing shall be excluded when calculating the percentage of the ingredients; [named ingredient(s);] however, the [such] named ingredients shall constitute at least seventy (70) percent of the total product.~~

Section 6. If ~~[When]~~ an ingredient or a combination of ingredients constitutes at least twenty-five (25) percent but less than ninety-five (95) percent of the total weight of ~~[all ingredients of]~~ a pet ~~[dog or cat]~~ food ~~[mixture]~~, the name or names of the ~~[such]~~ ingredient or ingredients may form a part of the ~~[product]~~ name of the pet food if each of the ingredients constitutes at least three (3) percent of the product weight excluding sufficient water ~~[used]~~ for processing ~~but [and] only if the product name also includes a primary descriptive term such as "dinner", "platter", or similar designation so that the product name describes the contents of the product without being [in accordance with an established law, custom or usage or so that the product name is not] misleading. If the names of more than one (1) [such] ingredient are shown, they shall appear in the order of their [respective] pre-dominance by weight [in the product]. All [such] ingredient names and the primary descriptive terms [term] shall be in the same size, style and color print. [For the purpose of this provision,] Water sufficient for processing shall be excluded when calculating the percentage of the ingredients; [named ingredient(s);] however, the [such] named ingredients [ingredient(s)] shall constitute at least ten (10) percent of the total product.~~

Section 7. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food unless it is in compliance with Sections 1, 4, 5, or 6 of this administrative regulation.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: October 2, 1998

FILED WITH LRC: October 7, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 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 November 19, 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 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. This administrative regulation adopts clarifying language for currently accepted national labeling practices for pet foods.

2. Second and subsequent years: Continuous saving will be realized because of uniformity in labeling nationwide.

(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: This method benefits the pet food industry by adopting nationally recognized labeling practices.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: 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 administrative regulation applies equally to all pet food manufacturers who distribute their products in Kentucky. Uniformity in labeling is equally appropriate to all sizes of firms.

UNIVERSITY OF KENTUCKY Agricultural Experiment Station Division of Regulatory Services (Amendment)

12 KAR 3:042. Statement of caloric content.

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. This administrative regulation provides [To provide] a uniform procedure for determining the caloric content of dog and cat foods and expressing it [expression of the caloric content] on product labels.

Section 1. If the label of a dog or cat food bears ~~[may bear]~~ a statement of caloric content, all of the following requirements shall be met; [provided:]

(1) The caloric statement shall be separate ~~[and distinct]~~ from the guaranteed analysis and shall appear under the heading "Calorie Content". ~~[; and]~~

(2) The statement shall be ~~[measured]~~ in terms of metabolizable energy (ME), on an as-fed basis, and expressed [must be express] as "kilocalories per kilogram" (kcal/kg) of product or [; and may also be expressed] as kilocalories (kcal) per familiar household measure (e.g., cans, cups, pounds). ~~[; and]~~

(3) An affidavit shall be provided upon request of the director [accompany the request for label review or registration], substantiating that the caloric content was determined by paragraph (a) or (b) of this subsection:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(a) [By] Calculation using the [following-] Modified Atwater[?] formula:

$$ME \text{ (kcal/kg)} = 10 ((3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE))$$

where CP = % crude protein as fed, CF = % crude fat as fed, NFE = % nitrogen-free extract (carbohydrate) as fed, and the percentages of CP and CF are the arithmetic averages from proximate analyses of at [a] least four (4) production batches of the product[;] and the NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF). The results of all the analyses used in the calculation shall [must] accompany the affidavit, and the claim on the label shall [or other labeling must] be followed parenthetically by the word "calculated".

(b) [In accordance with a] Testing using a procedure established by the Association of American Feed Control Officials. The summary data used in the determination of calorie content shall [must] accompany the affidavit. The value stated on the label shall not exceed or understate the value determined by the Modified Atwater formula by more than fifteen (15) percent.

(4) Comparative claims shall not be false, misleading or given [give] undue emphasis and shall [must] be based on the same methodology for all [both] products compared.

C. ORAN LITTLE, Dean and Director

PAUL C. VANBOOVAN, Office of Legal Counsel

APPROVED BY AGENCY: October 2, 1998

FILED WITH LRC: October 7, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 27, 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 November 19, 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: About 200 manufacturers of dog and cat foods 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: The change in this administrative regulation makes available a voluntary option to manufacturers of dog and cat food to label the calorie content of their products. Labeling changes for those choosing to participate will result in a small cost.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs to the agency will be small because manufacturers will be required to self-substantiate caloric values and

the number of firms choosing to label caloric content is expected to be small.

2. Continuing cost or saving: No appreciable costs.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The small amount needed will come from registration and inspection fees paid to the agency by manufacturers.

(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 be inappropriate.

(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 option provided by this administrative regulation is equally available to all manufacturers of dog and cat foods.

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 2:050. Conciliation.

RELATES TO: KRS 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with Acts 1992, Chapter 288, Section 46, which became effective July 14, 1992. The purpose of the amendment to this administrative regulation is to create an incentive for candidates and their treasurers to attend the training sessions conducted by the registry under KRS 121.130(1). It is necessary to promulgate this amendment to enable the registry to encourage voluntary participation in the training sessions, in an effort to maximize the dissemination of information to candidates, treasurers, depositories and the general public, as required under KRS 121.130(1).

Section 1. Negotiations. (1) Upon a registry finding of probable cause, the general counsel and executive director shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(2) During conciliation negotiations, the general counsel and executive director may consider as a mitigating factor the attendance by a candidate or treasurer at one (1) or more training sessions sponsored by the registry, directly preceding the election during which the violation occurred. Based upon this and any other mitigating factors, the general counsel and executive director may reduce the proposed fine.

(3) A conciliation agreement shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director and approved by the registry.

(4) [(9)] If the probable cause to believe finding is made within forty-five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(5) [(4)] If a conciliation agreement is reached between the registry and the respondent, the general counsel shall send a copy of the signed agreement to both complainant and respondent.

Section 2. Public Disclosure of Registry Action. (1) If the registry makes a finding of no reason to believe or no probable cause or otherwise terminates its proceedings, it shall make public its determination and the basis for the determination no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(2) If a conciliation agreement is finalized, the registry shall make the agreement public.

(3) Except as provided in subsections (1) and (2) of this section, a complaint filed with the registry, any notification sent by the registry, any investigation conducted by the registry, or any findings made by the registry shall not be made public by the registry without the written consent of the respondent until a written response has been received or the expiration of the fifteen (15) day response period required by Section 3 of 32 KAR 2:030. Upon receipt of a response or the expiration of the fifteen (15) day period, the complaint, response, and materials related thereto, exclusive of materials exempted by KRS 61.878(1), shall be open for public inspection.

(4) Except as provided in subsections (1) and (2) of this section, an action by the registry or by any person, and information derived in connection with conciliation efforts shall not be made public by the registry until a final action with regard to a conciliation attempt is taken.

(5) This administrative regulation shall not be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to applicable Rules of Evidence or Rules of Civil Procedure.

DONALD L. COX, Chair

ROSEMARY F. CENTER, General Counsel

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 12, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on Monday, November 23, 1998. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. 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 regulation. Send written notification of intent to be heard at the public hearing or written comments to: Rosemary F. Center, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-2226, FAX (502) 573-5622.

REGULATORY IMPACT ANALYSIS

Contact Person: Rosemary F. Center

(1) Type and number of entities affected: Kentucky Registry of Election Finance.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None; Attendance at training remains voluntary. Registry presently tracking attendance, so no additional paperwork requirements will occur.

1. First year following implementation: See above.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: Indirect savings of fewer unknowing errors.

3. Additional factors increasing or decreasing paperwork: None

(b) Reporting and paperwork requirements: None (See 2(c)).

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Registry's budget.

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

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons by alternatives were rejected: Other alternative methods to encourage attendance at training sessions, including locating sessions throughout state and offering several sessions through year, have already been implemented.

(8) Assessment of expected benefits: If regulation succeeds in encouraging attendance at training sessions, expected benefit will be more effective internal administration of campaigns and fewer unknowing errors in reporting or violations.

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: N/A

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if 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: No additional comments.

(11) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected (all candidates who voluntarily attend the training sessions offered by the registry may take advantage of the regulation's effect).

ATTORNEY GENERAL'S OFFICE Department of Law Consumer Protection Division (Amendment)

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

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

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

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

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

(1) "Merchant" as defined by 1998 Ky. Acts ch. 581, sec. 1(7); or
(2) "Telemarketer" as defined by 1998 Ky. Acts ch. 581, sec. 1(11); or

(3) "Telemarketing company" as defined by 1998 Ky. Acts ch. 581, sec. 1(13). ["Material change" in reported information required by

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

KRS Chapter 367 (SB 168, sec. 7) means any additions or deletions of factual matter which would have a significant consequence in the evaluation of the application if it were contained in the original filing; such as but not limited to:

(1) Any association with any officer, director, trustee, general or limited partner, sole proprietor, owner, or person having management responsibility in the applicant's business activities whose past occurrences would have been required to have been reported in an original application pursuant to KRS 367.4697;

(2) Filing of any bankruptcy petition by applicant;

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

(4) Any change in sales presentations, scripts, sales literature, or similar documentation, which significantly changes the predictions of value of goods or service offered, or the likelihood of profit in any investment opportunity offered, which would have been required to have been originally reported pursuant to KRS 367.46971-1.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3)(a) Information required pursuant to this section shall be filed

on "Commonwealth of Kentucky Telephone Solicitation Merchant Registration Statement."

(b) Information required pursuant to this section shall be filed with the Attorney General, Division of Consumer Protection. [A surety bond shall be maintained pursuant to KRS 367.46981-1.]

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

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

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

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

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

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

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

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

ALBERT B. CHANDLER III, Attorney General

TODD LEATHERMAN, Director, Consumer Protection Division

APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1998, at 10 a.m. at the Office of Attorney General located at 1024 Capitol Center Drive. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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: Todd Leatherman, Director, Consumer Protection Division, Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 696-5389, fax number (502) 573-8317.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Leatherman

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

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

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

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

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

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

(4) Effects on the promulgating administrative body:

- (a) Direct and indirect costs or savings: Not applicable.
- (b) Continuing costs or savings: The information in 4a above will be true for continuing years.
- (5) Additional factors increasing or decreasing costs: None applicable.
- (6) Reporting and paperwork requirements: None Applicable.
- (7) Assessment of anticipated effect on state and local revenues: Not applicable.
- (8) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.
- (a) Necessity of proposed regulation if in conflict: Not applicable.
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
- (10) TIERING: Was tiering applied: No. Not applicable to situation as state statute requires uniformity.

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amendment)

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

RELATES TO: KRS 150.025(1), 150.320(1), 150.330, 150.340, 150.360, 150.603(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate an administrative regulation restricting the methods for the taking of wildlife. This administrative regulation allows the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service.

Section 1. Definitions. (1) "Migratory game bird" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, or cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. (1) A person shall not hunt a migratory game bird except on a date established in this administrative regulation.

(2) A person may hunt:

(a) Dove beginning on:

1. September 1 for thirty (30) consecutive days;

2. The first Saturday in October for twenty-four (24) consecutive days; and

3. Thanksgiving Day for six (6) consecutive days.

(b) Woodcock beginning on the third Saturday in October for forty-five (45) consecutive days.

(c) Common snipe: beginning on:

1. The third Wednesday in September for forty-seven (47) consecutive days; and

2. Thanksgiving Day for sixty (60) consecutive days.

(d) [(1) Doves: September 1 through September 30; October 4 through October 27; and November 27 through December 2:

(2) Woodcock: October 18 through December 1;

(3) Common snipe: September 17 through November 2 and November 27 through January 25.

(4) Wood duck and teal beginning on the third Wednesday in September for five (5) consecutive days. [September 17 through September 21.]

(e) [(5) Virginia and sora rails, common moorhen and purple gallinule: beginning on September 1 for seventy (70) consecutive days. [September 1 through November 9.]

Section 3. Bag and Possession Limits. A person shall not exceed

the following limits:

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, three (3); possession limit, six (6).

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal:

(a) Daily limit, four (4), which shall not include more than two (2) wood ducks;

(b) Possession limit, eight (8), which shall not include more than four (4) wood ducks.

(7) A person shall leave the head or one (1) fully feathered wing attached to a migratory game bird, except a dove, being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird except during a time established in this section.

(1) Doves:

(a) From 11 a.m. until sunset during the September and October portions of the season; and

(b) From one-half (1/2) hour before sunrise to sunset during the November and December portions of the season.

(2) Other species listed in this administrative regulation, from one-half (1/2) hour before sunrise to sunset.

Section 5. Shot Requirements. A person hunting wood duck or teal shall not use or possess a shotgun shell:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. [Youth Hunting Day. (1) A person who has not reached his 16th birthday may hunt duck, coot or merganser on October 11.

(2) A person at least eighteen (18) years old shall accompany the juvenile hunter and:

(a) Shall not hunt duck, coot or merganser;

(b) May hunt another species for which there is an open season;

(3) The bag limits for the youth hunting day shall be:

(a) Ducks: six (6), which shall not include more than:

1. Four (4) mallards, no more than two (2) of which shall be hen mallards;

2. Three (3) pintails;

3. Two (2) wood ducks;

4. Two (2) redheads;

5. One (1) canvasback; or

6. One (1) black duck.

(b) Fifteen (15) coots; and

(c) Five (5) mergansers, no more than one (1) of which shall be a hooded merganser.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) On a wildlife management area owned or controlled by the department:

(a) Except as provided in this section, all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck or teal on an area closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting;

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove on the Ballard, Barlow Bottoms, Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River or Westvaco Wildlife Management Area shall not use or possess a shotgun shell containing lead shot.

(3) Ballard Wildlife Management Area. A person shall not hunt a migratory game bird after October 13, except as provided in 301 KAR 2:221.

(4) Central Kentucky Wildlife Management Area.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(a) A person shall not hunt a migratory game bird after October 13, except as provided in 301 KAR 2:221.

(b) A dove hunter shall not carry a firearm except during shooting hours.

(5) Grayson Lake Wildlife Management Area.

(a) A migratory game bird hunter shall check in and out daily at a designated check station.

(b) A person shall not hunt:

1. Within the no wake zone at the dam site marina;

2. On Deer Creek Fork; or

3. On or from the shores of Camp Webb or the state park.

(6) Land Between the Lakes. A person shall not hunt dove, woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) Dove after September 30 [~~October 13~~], except on tracts 2, 3, 6, and 7 [~~during the November and December portions of the season~~].

(b) Woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) On a tract designated by a number followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. A migratory game bird hunter shall check in and out daily.

(9) A person shall not hunt a migratory game bird on the main block of Robinson Forest.

Section 8. Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field on department property after considering the following:

(a) Terrain of the field;

(b) Topography of the field; and

(c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign shall be posted in a field advising a hunter:

(a) Of the recommended hunter density; and

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

SCOTT PORTER, Tourism General Counsel

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: October 14, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Agency Contact: John Wilson

(1) Type and number of entities affected: An estimated 90,000 persons will participate in the migratory bird hunting proposed by this administrative regulation.

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

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

which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. Direct costs involve the purchase of a state hunting license, a federal migratory bird hunting and conservation stamp and a state waterfowl stamp if hunting waterfowl. Indirect costs would be determined by the hunter, depending on his level of participation. U.S. Fish and Wildlife Service approved nontoxic shot is required for all waterfowl hunting. Approved nontoxic shot costs approximately \$2 to \$7 more per box of 25 shells, dependent on shot material selected, than does lead shot.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no anticipated impact on the cost of doing business.

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

1. First year following implementation: This administrative regulation imposes no reporting or paperwork requirements.

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

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing reporting on, and enforcing the proposed administrative regulation.

(a) Direct and indirect costs or savings: Primary costs are associated with enforcement of the administrative regulation.

1. First year: This administrative regulation will not impose additional costs or create additional savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paper work requirements.

(4) Assessment of anticipated effect on state and local revenues: A positive effect could be expected on state revenues since hunters are required to purchase a hunting license and pay other state taxes on items purchased in connection with hunting and the hunting trip. The average migratory bird hunter in Kentucky will expend about \$228 a season on food, lodging, transportation and equipment. This will add about \$20,520,000 to the income of local businesses.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Revenue from the sale of hunting and fishing licenses and will be used for implementation and enforcement of this administrative regulation.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: The U.S. Fish and Wildlife Service requires that any harvest of migratory game birds be through a regulated hunting season that is held within a specific time frame. Therefore, the only available alternative to regulated hunting is to close the season which was rejected since migratory birds are a renewable resource and involved species are at population levels that permit regulated hunting for the benefit of Kentucky.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is intended to conserve populations of migratory birds, a positive impact on environmental welfare. It also allows utilization of these populations as a recreational resource, having a positive effect on the health and well-being of those who participate.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Reduction in the potential recreational opportunity and the loss of conservation of migratory birds.

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

(a) Necessity of proposed regulation if in conflict: Not applicable

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied? No. Only one class of citizen, the hunter, is impacted by this administrative regulation. Disregarding physiography, distribution of the species sought by hunters is assumed to be uniform, thus negating the need to recognize tiers. Tiering according to physiography is impractical and unnecessary as a means of species protection or provision of hunter opportunity.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or administrative regulation constituting the federal mandate. 50 CFR Part 20.

2. State compliance standards. State seasons and bag limits are within federal frameworks.

3. Minimum or uniform standards contained in the federal mandate. Woodcock - season frameworks between the Saturday nearest September 22, 1997, and January 31, with a 45 day maximum season. Bag limits may be a maximum of three per day with six in possession. Wood duck and teal - season frameworks allow five days in September. Bag limits may total four per day with not more than two of these being wood ducks. Possession limit is eight of which not more than four may be wood ducks. Dove - season frameworks allow either 70 or 60 days between September 1 and January 15. Bag limits may be either 12 per day with 24 in possession for the 70 day season or 15 per day with 30 in possession for the 60 day season. Common snipe - season frameworks allow a 107 day season between September 1 and February 28. Bag and possession limit is 8 and 16, respectively. Virginia and sora rails - the season may not exceed 70 days with a season framework between September 1 and January 20. Bag and possession limit of 25 per day, singly or in aggregate. Common moorhen and purple gallinule - the season may not exceed 70 days with a season framework between September 1 and January 20. Daily bag limit of 15, singly or in aggregate. Possession limit is twice the daily bag limit.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:050. Definitions.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-120 and 224.60-130 require the Office of the Petroleum Storage Tank Environmental Assurance Fund to adopt administrative regulations to establish the policy guidelines and procedures to administer the Petroleum Storage Tank Environmental Assurance Fund. This administrative regulation defines essential terms used in connection with the administrative regulations in this chapter.

Section 1. Definitions. (1) "Abandoned" means a prior owner, of the tank, has relinquished all connections with or concern in ownership with no intention to return or claim again and that the current owner seeking assistance from the fund acquired the property where the tank is located without knowledge of the tank's existence. Physical acts by the owner or operator, such as applying for assistance, will be considered in determining the applicants knowledge of the tank's existence.

(2) "Assets" shall have the meaning in KRS 224.60-120(3);

(3) "Bodily injury and property damage" shall have the meaning in KRS 224.60-115;

(4) "Cabinet" shall have the same meaning as in KRS 224.60-115(2);

(5) "Cathodic protection" means a technique to prevent corrosion

of a metal surface by making that surface the cathode of an electrical chemical cell;

(6) "Claim" shall have the meaning in KRS 224.60-115(4);

(7) "Closed" means a tank which ceased to operate prior to December 22, 1988;

(8) "Contract" means the legally binding, written agreement for performance of corrective action entered into by an owner or operator and a contracting company [contractor] certified pursuant to 415 KAR 1:116 [1:114];

(9) "Corrective action" shall have the meaning in KRS 224.60-115(4) [(5)];

(10) "Corrective action plan" means a remediation proposal, approved by the cabinet, employing corrective action technologies to obtain site closure, as required, in writing, by the cabinet;

(11) "Corrosion protection" means a method of corrosion protection that complies with the requirements of 401 KAR 42:030;

(12) "Currently exist" means an existing petroleum storage tank that has or does contain petroleum, and includes a petroleum storage tank that has been permanently closed by filling with an inert solid material;

(13) "Currently in use" means a petroleum storage tank which contains petroleum or petroleum products and is in use for commercial purposes, storage of petroleum, or is in compliance when temporarily closed under the requirements of cabinet administrative regulations;

(14) "Drinking water supply" means a groundwater source or a surface water source of a private water supply, a public water system, or a semipublic water system as defined in 401 KAR 8:010;

(15) "Eligibility" means compliance with the criteria for eligibility established in this chapter;

(16) "Entry level" means the amount of financial responsibility determined by the Office of the Petroleum Storage Tank Environmental Assurance Fund to be paid by the owner or operator of a petroleum storage tank prior to being eligible for participation in the fund;

(17) "Extent of environmental harm" means the extent of horizontal and vertical contamination due to a release from a petroleum storage tank, including contamination of a surface or underground drinking water supply, the potential for exposure posing a threat to human health or the environment, and the amount of contamination released;

(18) "Facility" shall have the meaning in KRS 224.60-115(6) [(7)];

(19) "Federal regulation" shall have the meaning in KRS 224.60-115(7) [(8)];

(20) "Financial ability" means the ability of a petroleum storage tank owner or operator to pay the entry level to the fund based upon a consideration of the assets and income of the owner or operator;

(21) "Fund" means the [Office of the] Petroleum Storage Tank Environmental Assurance Fund.

(22) "Guarantor" shall have the meaning in KRS 224.120(4);

(23) "Maintenance" means the normal operational upkeep to prevent a petroleum storage tank system from releasing petroleum or petroleum products;

(24) "Maximum contaminant level" means the maximum permissible level of a contaminant in water established pursuant to the regulations of the cabinet or applicable federal regulations;

(25) "Motor fuel" shall have the meaning in KRS 224.60-115(11) [(12)];

(26) "Net worth" shall have the meaning in KRS 224.60-120(3);

(27) "Newly discovered tanks" mean petroleum storage tanks at a facility that would not have been discovered by the owner or operator by the exercise of ordinary diligence;

(28) "Occurrence" shall have the meaning in KRS 224.60-115(12) [(13)];

(29) "Office" shall have the meaning in KRS 224.60-115(13);

(30) "Operation" with respect to a UST or UST system means a UST or UST system currently being used for the storage and dispensing of petroleum or petroleum products;

(31) "Original invoice" means the original or a duplicate original of an invoice;

(32) "Permanently closed" means a UST or UST system that was closed after December 22, 1988 pursuant to the requirements of cabinet administrative regulations;

(33) "Petroleum storage tank" shall have the meaning in KRS 224.60-115(16);

(34) "Petroleum storage tank operator" or "operator" shall have the meaning in KRS 224.60-115(17);

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(35) "Petroleum storage tank owner" or "owner" shall have the meaning in KRS 224.60-115(18);

(36) "Ranking system" means the system for determining financial ability and extent of environmental harm established by these administrative regulations;

(37) "Release" shall have the meaning in KRS 224.60-115(20);

(38) "Release detection" means a method of determining whether a release of petroleum has occurred from a petroleum storage tank system into the environment or into the interstitial space between the petroleum storage tank system and a secondary barrier or secondary containment around it that complies with the requirements of 401 KAR 42:040;

(39) "Retail facility" means a facility that sells petroleum products to the general public from petroleum storage tanks;

(40) "Repair" means to restore a petroleum storage tank or system component that has caused a release of petroleum to comply with the administrative regulations of the cabinet;

(41) "Secretary" means the Secretary of the Public Protection and Regulation Cabinet.

(42) "Statistically significant increase" means that use of a statistical procedure approved by the cabinet demonstrates that a level of a petroleum constituent in a drinking water supply significantly exceeds background;

(43) "Temporary closure" means taking a UST or UST system out of operation pursuant to the requirements of 401 KAR 42:070;

(44) "Third party" shall have the meaning in KRS 224.60-115(22);

(45) "Upgrade" means the addition or retrofit of some system such as cathodic protection, lining, or spill and overflow controls to improve the ability of a petroleum storage tank system to prevent the release of product, or the replacement of tanks with new tanks.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience the cost and savings outlined above savings include the cost of remediation and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or opera-

tors will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was 1.45 million dollars. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) All changes in definitions were required by the passage of HB 282 (1998).

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains definitions for terms used in 415 KAR Chapter 1, as required in KRS 224.60-115.

(5) Geographical and environmental impact

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide definitions for programs that provide reimbursement up to one million dollars for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended definitions were required by HB 282.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation is definitional in nature so tiering was not necessary.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance

dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third-party damages. Excepting the required entry level imposed on the owner/operator, extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the Office of the Petroleum Storage Tank Environmental Assurance Fund to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This administrative regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of a facility with petroleum storage tanks containing motor fuels in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the office [fund], pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:060 (1993), prior to the effective date of this administrative regulation may be eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certification of eligibility prior to the effective date of this administrative regulation shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040. Facilities that are permanently or temporarily closed in compliance with 401 KAR 42:070 must have maintained compliance with release detection requirements prior to the permanent or temporary closure of the system; [or be permanently closed in compliance with 401 KAR 42:070 or temporarily closed in compliance with 401 KAR 42:070;]

(c) Not have a release for which corrective action is required at the time of certification;

(d) Have corrosion protection as required by 401 KAR 42:030;

(e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150;

(f) Have tanks "in operation" on or after the compliance dates set forth in 401 KAR 42:090 and be mandated by 401 KAR 42:090 to demonstrate financial responsibility as specified under 401 KAR 42:090; and

(g) Have demonstrated to the office financial responsibility; ~~as required;~~ in the amount of the entry level [to the fund] established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

(a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; and

(b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and

(c) The owner or operator has a release into the environment from a petroleum storage tank that requires corrective action. The necessity for corrective action shall be established by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for reimbursement of corrective action cost [fund participation].

(d) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the Office of the Petroleum Storage Tank Environmental Assurance Fund a completed Eligibility and State Financial Responsibility Affidavit form dated July 1998 ~~[June 1996 hereby incorporated by reference. Copies of this form may be obtained and inspected at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday].~~ The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the office [fund].

(3) A certificate of eligibility is valid after the transfer of the covered facility, provided the new owner of the facility submits to the office [fund] a completed Eligibility and State Financial Responsibility Affidavit form for that facility within sixty (60) days of the transfer of the facility. The current certificate of eligibility shall be valid until a final decision is issued by the office [fund] on the new certificate of eligibility, unless the new owner fails to submit a complete Eligibility and State Financial Responsibility Affidavit in accordance with this section.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

(1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery; and

(2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and

(3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at \$500 [~~\$1,000~~] per occurrence for taking corrective action and \$500 for compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$2,500 [~~\$5,000~~] per occurrence for taking corrective action and \$2,500 [~~\$5,000~~] per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$12,500 [~~\$25,000~~] per occurrence for taking corrective action and \$12,500 [~~\$25,000~~] per occurrence for compensating third parties for bodily injury and property damage.

(4) These entry levels shall apply to all applicants who apply for fund assistance on or after July 16, 1998. For all other applicants, the entry level will be set in an amount prescribed by the administrative regulation in effect at the time of the discovery of a release requiring corrective action.

(5) If the corrective action at a facility is completed in a timely manner, as described in this paragraph, the office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section. "Completed in a timely manner" as used in this paragraph shall mean:

(a) For corrective actions involving only soil remediation - 180 days from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet that is approved without additional measures being required;

(b) For corrective actions involving remediation of both soil and groundwater, or only groundwater - twenty-four (24) months from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet that is approved without additional measures being required.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the office [fund] on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the office [fund];

(c) A guarantor with a controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the office [fund] in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky

agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the office [fund] if the owner or operator has certified to the office [fund] the following:

1. The owner or operators' annual year-end financial statements; and

2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the office [fund] within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time, prior to a release, the office [fund] determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the office [fund] shall notify the owner or operator of the noncompliance.

(2)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation and a release occurs during the period of noncompliance.

(b) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third-party liability. The owner or operator will be responsible for the payment of the entry level, notwithstanding 415 KAR 1:070, Section 5(4).

(3)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved Application for Assistance or a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance.

(b) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third-party liability.

(4) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has intentionally submitted false or inaccurate information to the office, or made a false statement, representation, or certification in an application, payment request, or any other documentation submitted to the office. Any cost incurred by, or paid from, the fund which is based on false or inaccurate information, false statements, representations or certifications shall be recovered by the office from the person who asserted the false or inaccurate information, false statements, representations or certifications.

(5) Any person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 providing false or inaccurate information or making false statements, representations or certifications on any application, payment request or other documentation submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery of payment by the office as provided for in

subsection (4) of this section.

(6) ~~[fund, and shall be required to repay any monies falsely received:~~

(5) The office [fund] shall have the right to recover the money paid to an owner or operator, or a contractor when:

- (a) The amount was paid due to an error of the office [fund]; or
- (b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or
- (c) A person has obtained payment from the office [fund] by fraud or intentional misrepresentation.

(7) ~~[(6)]~~ An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation may also be eligible to participate in the petroleum storage tank account.

(8) ~~[(7)]~~ Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000 to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. The \$500,000 reserved for the cabinet's emergency abatement actions shall be renewed in that amount annually. [When funds are withdrawn for emergency abatement actions by the cabinet, the fund shall replace the amount immediately.]

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the obligation of a claim shall cause the unobligated balance of the fund to be less than \$1,500,000, the office [fund] shall immediately suspend the obligation of claims until the unobligated balance is greater than \$1,500,000. Obligations submitted for approval by the office [fund] at the time of suspension shall be obligated in accordance with the date of initial submission of the obligation when the suspension is lifted.

Section 12. Incorporation by Reference. (1) The "Eligibility and State Financial Responsibility Affidavit". (October, 1998). Public Protection and Regulation Cabinet is incorporated by reference.

(2) This form may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the office are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regula-

tion will affect approximately 15,000 facilities with underground storage tanks containing motor fuels.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience the cost and savings outlined above savings include the cost of remediation and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with a certification of financial assistance that satisfies federal requirements.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The amendments made in the regulation are required by statutory changes brought about by HB 282 (1998).

Alternatives:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are required by 40 CFR 280 Subpart H to demonstrate financial responsibility for corrective action and third-party compensation resulting from petroleum contamination. The proposed amended regulation meets the requirements of 40 CFR 280 Subpart H. The amendments will allow for a more efficient administration of the account, which will result in increased reimbursement to the public and less waste.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to one million dollars for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute, as amended in 1998. The regulation reduces the entry level and will benefit applicants by reducing that expenditure.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the technical compliance level, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates an underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third-party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the Office of the Petroleum Storage Tank Environmental Assurance Fund to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does

not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases of motor fuel from petroleum storage tanks removed from the ground after January 1, 1974 or tanks closed in place after January 1, 1974 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases of motor fuel from petroleum storage tanks currently existing and closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative regulation are met; and

(d) Costs of corrective action for releases of motor fuel from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted a completed Eligibility and State Financial Responsibility Affidavit form to the office [fund] to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020; and

(e) Confirmed by analytical sample results the need for corrective action at the facility. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for reimbursement of corrective action cost [fund participation].

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action required by law and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b) of this Administrative Regulation. An owner or operator of a facility of the class described in Section 1(1)(b) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of motor fuel is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a) 1. A release of motor fuel is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed in writing by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of motor fuel is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed in writing by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$500 [\$1,000] per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$2,500 [\$5,000] per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$12,500 [\$25,000] per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(b) or (c) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply to all applicants who apply for fund assistance on or after July 16, 1998. For all other applicants, the entry level will be set in an amount prescribed by the administrative regulation in effect at the time of the discovery of a release requiring corrective action. [shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.]

(6) If the corrective action at a facility is completed in a timely manner, as described in this subsection, the office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section. "Completed in a timely manner" as used in this subsection shall mean:

(a) For corrective actions involving only soil remediation: 180 days from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet which is approved without additional measures being required.

(b) For corrective actions involving remediation of both soil and groundwater, or only groundwater: twenty-four (24) months from the time of the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet which is approved without additional measures being required.

Section 6. Ineligibility. (1)(a) The office [fund] may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator, his agents, employees, or contractors willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) The owner or operator of a facility placed in the petroleum storage tank account pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a) and (b).

(2) An owner, operator with an approved Application for Assistance may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has submitted false or inaccurate information to the office, or made a false statement, representation, or certification in an application, payment request, or any other documentation submitted to the office. Any cost incurred by, or paid from, the fund which is based on false or inaccurate

information, false statements, representations or certifications shall be recovered by the office from the person who asserted the false or inaccurate information, false statements, representations or certifications.

(3) Any person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 providing false or inaccurate information or making false statements, representations or certifications on any application, payment request or other documentation submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery of payment by the office as provided for in subsection (2) of this section.

(4) [fund, and shall be required to repay any monies falsely received.

(5) The office [fund] shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the office [fund]; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for site investigation or corrective action at the written direction of the cabinet may be payable from the petroleum storage tank account if contamination requiring corrective action is substantiated by analytical sample results and the eligibility requirements of this regulation are met.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for the remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: These amendments incorporate the statutory changes made by HB 282 (1998). The entry level for the accounts have been reduced fifty percent and a provision concerning the fraudulent submission of documents has been added. These were statutory in nature and no alternatives existed.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account. The account provides for reimbursement to facilities that are not eligible for reimbursement from the Financial Responsibility Account due to noncompliance with the applicable state and federal regulations pertaining to underground petroleum storage tanks. The amendments will allow for a more efficient administration of the account, by reducing the required entry level and making provision for action against fraud.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal

through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to \$1,000,000 for corrective action. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute by reducing entry levels and offering an incentive for the timely completion of corrective action. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank that are out of compliance or exempt from the requirements of 40 CFR 280 Subpart H, may be eligible for reimbursement of corrective action cost from this fund account. Excepting the required entry level imposed on the local government, extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank
Environmental Assurance Fund
(Amendment)

415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the office [fund] for reimbursement or payment of the costs of corrective action.

Section 1. Application for Assistance. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for assistance with the office [fund].

(2) Application shall be made on the Application for Assistance form dated October 1998 [~~June 1996, hereby incorporated by reference. This form may be inspected and obtained at the Office of Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.~~]. The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for reimbursement of corrective actions costs from the fund [participation].

(3)(a) If the owner or operator meets the requirements of subsection (2) of this section the office [fund] may approve the Application for Assistance and establish the amount to be obligated by the appropriate account.

(b) Reimbursement pursuant to an approved Application for Assistance is restricted to documented costs approved by the secretary or the secretary's designee.

(c) The approved Application for Assistance may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the secretary [fund].

(4) The office may amend an approved Application for Assistance to provide an additional obligation of funds to guarantee payment of eligible corrective actions costs if:

(a) A written request and supporting documentation is submitted to the office by the eligible owner or operator;

(b) It is demonstrated to the office that an additional obligation of funds is necessary to guarantee payment of eligible costs of corrective action;

(c) The office determines that the additional costs of corrective action are necessary to comply with the written directions and administrative regulations of the cabinet;

(d) The office notifies the eligible owner or operator in writing that an additional obligation of funds has been approved.

Supporting documentation shall fully explain the need for the additional corrective action and set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the additional corrective action including, but not limited to, the costs of personnel, sampling and laboratory testing, excavation, haulage, treatment or disposal of contaminated soil or water, and other expenses necessary to comply with the requirements of 401 KAR Chapter 42. The office may request additional information and documentation to determine that the additional costs of corrective action are eligible, necessary and reasonable. Additional requested information and documentation shall be provided to the office by the owner or operator within thirty (30) days of the receipt of request unless otherwise agreed to in writing by both parties within the thirty (30) day period. A request by the office for additional information and documentation shall be made by certified mail. If the owner or operator fails to provide the requested additional information and documentation, the office shall deny the owner's or operator's request for an additional obligation of funds. Payment shall not exceed the amount obligated by the office, and the office shall not reimburse any additional corrective action costs incurred prior to approval. [The fund may amend the approved Application for Assistance upon appli-

cation by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the written directions and administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund.]

(5) Payment under the terms of the approved Application for Assistance may be made when the eligible owner or operator submits a claim form, and a certification that the costs were reasonable [consistent with the bid] and necessary to comply with the administrative regulations of the cabinet at 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

(6) The office [fund] may request additional information and documentation from the applicant to verify eligibility or account placement. Failure by the applicant to provide the requested information and documentation within sixty (60) days of the receipt of the request shall cause the application to be denied. The office [fund] may grant an extension of thirty (30) days for good cause demonstrated by the applicant. Denial of the Application for Assistance under this subsection shall not prevent the owner or operator from reapplying once the requested information becomes available.

Section 2. Submittal of Claim. (1) A petroleum storage tank owner or operator eligible for participation in the office [fund] shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the Claim Request form and Listing of Invoices form dated October 1998, [~~dated June 1996, hereby incorporated by reference. These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.~~]. The claim shall contain:

(a) Original invoices for all costs for which payment is sought;

(b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;

(c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed except for initial abatement and free product recovery as required by 401 KAR 42:060 and laboratory analysis substantiating the necessity of off-site disposal of contaminated soil; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) Reimbursement sought through the use of the Soil Disposal/Treatment Claim form, dated October 1998, shall be limited to the following:

(a) Cost for transportation and disposal of contaminated soil at a contained landfill or treatment facility, permitted by the cabinet's Solid Waste Branch; and

(b) Material cost, including transportation, for backfill material;

(3) Reimbursement sought through use of the Capital Equipment Claim form, dated October 1998, shall be limited to the purchase price, less determined salvage value, as approved under Section 8(1)(m) of this administrative regulation;

(4) The office [fund] may require additional information and documentation to determine the eligibility, necessity and reasonableness of a cost or costs contained in a request for payment.

(5)(a) Claims received by the office shall be reviewed in accordance with the following unless an extension of time is agreed to by the applicant and the office, and subject to Section 5(1) of this administrative regulation:

1. Claim Request forms shall be reviewed within ninety (90) days of receipt;

2. Soil Disposal/Treatment Claim Request forms shall be reviewed within thirty (30) days of receipt, if the costs have been obligated and preapproved, if necessary, prior to submittal;

3. Capital Equipment Claim Request forms shall be reviewed within thirty (30) days of receipt, if costs have been obligated and preapproved, if necessary, prior to submittal;

4. Soil Disposal/Treatment Claim Request or Capital Equipment Claim Request submitted prior to securing an obligation or preapproval shall be reviewed within ninety (90) days of the receipt of an

obligation and, if necessary, a preapproval.

~~[(3)(a) The fund shall review a claim requesting payment within ninety (90) days of its receipt by the fund, unless an extension of time is agreed to by the applicant, and subject to subsection (5) of this section;]~~

(b) If the claim is determined to be deficient, the office [fund] shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the office [fund] within fifteen (15) days of the notice of receipt by the applicant. The office [fund] may grant the applicant a thirty (30) day extension if the written request is received within fifteen (15) days of receipt of the notice of deficiency;

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the office [fund] staff, that portion of the claim shall be denied.

(6) ~~[(4)]~~ The office [fund] shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment.

(7) ~~[(5)]~~ The claim may be submitted with the application for assistance but will not be considered received for review until the application has been approved by the secretary or the secretary's designee. If a claim request exceeds the amount currently obligated for the facility, the claim will not be considered received for review until a sufficient additional obligation has been approved by the secretary.

(8) ~~[(6)]~~ An owner or operator of a facility with an approved Application for Assistance shall submit to the office [fund], a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(9) Prior approval of certain cost may be required under the terms of 415 KAR 1:110. If prior approval of a cost is required pursuant to 415 KAR 1:110, and not received by the owner or operator, in writing, prior to that cost being incurred, the office shall not reimburse any portion of that cost.

Section 3. Contracts. (1) An owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a contract from a certified contractor or contracting company to be eligible for reimbursement or payment from the fund. The contract shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, excavation, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an Application for Assistance.

(3) An owner or operator who has submitted an application for assistance received prior to this administrative regulation shall be required to submit a copy of a contract setting forth the scope of the services to be performed and detailing the unit costs to be eligible for continued reimbursement or payment from the fund. If a contract is changed or revised, a copy of that contract must be submitted to the office.

Section 4. Signatures. (1) A claim form or an Application for Assistance shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The person certified pursuant to 415 KAR 1:114 who is responsible for overseeing the corrective action and an authorized representative of the contracting company certified pursuant to 415 KAR

1:116 shall also sign a Claim Request form or an Application for Assistance.

(3) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification, or I am the person certified under 415 KAR Chapter 1 and my (our) certification is in good standing.

(4) [(3)] The owner or operator signing the certification shall submit documentary evidence as requested by the office [fund] to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) The office [fund] shall review all claims with approved Applications for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account in accordance with Section 2(5)(a) of this administrative regulation (the order in which they are received).

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied; and

(d) The applicant has complied with Section 11 of this administrative regulation.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the office [fund] to determine eligibility for payment and compliance with the administrative regulations of the office [fund].

(2) Requests for payment covering cost incurred by an owner or operator under an approved Application for Assistance may be submitted to the office [fund] thirty (30) days following initiation of corrective action required by law. Subsequent requests for payment may be made at thirty (30) day intervals thereafter until completion of the authorized activities. All requests for payment, except a final request for payment, must equal or exceed \$1,000 to be processed for payment. Claims shall not be submitted for reimbursement until the value of the claims meet or exceed the applicant's entry level. Any request not meeting the requirements of this section will be returned unprocessed to the applicant.

(3) All payments shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee.

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the office [fund], payment shall be made by a check written to the eligible owner or operator, or to a designated third-party. A designation made by power of attorney may be revoked at any time by notice to the attorney-in-fact and to the office [fund].

(b) A request for an interim partial payment shall be accompanied by documentation required by Section 2(8) ~~[(6)]~~ of this administrative regulation;

(c) A request for final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) A request for one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible and Ineligible Costs. The office's [fund's] reim-

bursement for costs of corrective action shall be made in accordance with the requirements of 415 KAR 1:110 and limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation required by law under the provisions of KRS Chapter 224 and administrative regulations pursuant thereto, as the result of a motor fuel release into the environment from a petroleum storage tank. The office [fund] may require the submission of a report of analytical laboratory results to substantiate the need for corrective action and may require other information and documentation needed to determine the reasonableness and necessity of corrective action. For corrective action to be necessary for office [fund] purposes, contamination exceeding the levels for which the cabinet will allow closure must be established by the applicant.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

(b) ~~Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;~~

(c) Performance of site checks, and site investigation to assess the extent of contamination caused by a motor fuel release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(d) ~~Preparation of corrective action plans;~~

(e) Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(f) Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system where a release has occurred at the facility or at the written direction of the cabinet;

(g) Restoration or replacement of a private or public drinking water supply;

(h) Removal, treatment, and disposal of contaminated liquids, other than those liquids and sludges contained in the tank, and soils resulting from corrective action;

(i) The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(j) The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if accepted by the cabinet for the facility and prior approval is received from the office pursuant to 415 KAR 1:110;

(k) Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(l) Attorney fees integral to the performance of off-site corrective action, such as preparation of off-site access agreements; and

(m) Other costs requested by the applicant and approved by the office [fund], demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(n) Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director of the office, in accordance with Section 12 of this administrative regulation.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on regulatory administrative regulations;

3. Consultation on office [fund] administrative regulations;

4. Preparation or submittal of office [fund] documentation; and

5. Any other services determined by the office [fund] not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan except as allowed under 415 KAR 1:116;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for normally expected overhead items and in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services;

(s) Preparation and implementation of corrective action plans once a written notice of closure is issued by the cabinet;

(t) Payment from the fund shall only be made for the costs of corrective action required by the cabinet's administrative regulations or at written direction of the cabinet and shall not be made for costs to upgrade the facility. Payment from the fund will not be made for any work or portion of that work performed at a facility where the results of laboratory analysis do not confirm the need for corrective action;

(u) Cost of any party or parties employed to act as a surrogate or stand-in for the owner or operator of the facility;

(v) Preparation of fund documentation or client invoices that will be submitted to the office for reimbursement;

(w) Except as provided in 415 KAR 1:130, cost related to the removal, or actions incidental to the removal of a tank system. Those costs include, but are not limited to, those costs listed in 415 KAR 1:130(5);

(x) Cost of resampling and laboratory tests performed under Section 11(4)(b) of this administrative regulation and cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS Chapter 224.60-130(2)(a);

(y) Additional costs relating to compliance with a local program operating under KRS 224.60-105(4), to the extent that those costs are required to comply with corrective action standards more stringent than required by the cabinet; and

(z) Any other services or cost determined by the office to not be a reasonable and necessary cost of corrective action.

Section 9. Delegation to Executive Director. The secretary may delegate responsibility for the approval of a claim, an Application for Assistance, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the office [fund] shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the office [fund] for the performance of corrective action from the person responsible or liable for the release.

Section 11. Field Audits. (1) The office shall be authorized to enter and inspect any facility seeking or intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action.

(2) Refusal to allow office employees entry and inspection of a facility shall make the facility ineligible for fund participation. All monies previously paid to the owner or operator of the facility shall be repaid to, or recovered by, the fund.

(3)(a) After April 1, 1999, office personnel shall be present on site during all tank removal activities, except as provided in paragraph (d) of this subsection;

(b) An owner or operator shall contact the office, through certified mail, to schedule a date to have a field auditor on site during tank system removal activities. The certified mail notice must be received at least fourteen (14) days prior to commencement of the removal;

(c) If the field auditor cannot be present on site on the day scheduled by the notice in paragraph (b) of this subsection, he may,

by written notice, require the owner to reschedule the removal to a proposed date. This notice must be mailed by the office no later than ten (10) days prior to the date scheduled by the owner;

(d) If the field auditor fails to issue notice to reschedule the tank removal, or is not present on the day set by the notice, the removal may proceed without penalty;

(4)(a) Office personnel may collect soil or water samples and shall have full access to all areas or wells to collect such samples. Office personnel may require the owner or operator splitting of samples with the office for analytical testing. Failure to allow sample collection, or to split samples, shall make the facility ineligible for fund participation.

(b) If analytical results taken by the office differ significantly from the analytical results submitted by the applicant, the office may require the applicant to resample the area or wells in question. Such resampling will not be reimbursed by the fund. Any remaining discrepancies in analytical results of the resampling will be resolved with the applicant having the burden to prove the validity of their analytical results.

(5) Venue for entry and inspection orders shall be in Franklin Circuit Court.

Section 12. Preapproval for Capital Equipment Rental or Purchase. (1) An owner or operator who has been directed by the cabinet to initiate remedial actions that will require the purchase of equipment costing in excess of \$1,000, must obtain prior approval of the purchase from the fund to be eligible for reimbursement. The request is to be submitted on the Capital Equipment Preapproval Purchase or Rental Request form, dated October, 1998;

(2) The office may approve the purchase or rental of remediation equipment and establish the amount to be reimbursed. The approved request may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount approved by the office;

(3)(a) The request to purchase the equipment shall contain:

1. Three (3) bids obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment to be purchased and an anticipated salvage value provided by the supplier or manufacturer;

2. If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer's or supplier's decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

3. A cost benefit analysis substantiating purchase vs. rental of the equipment;

4. A copy of the warranty supplied by the equipment supplier or manufacturer;

5. Shipping, installation, training and start-up costs. These costs shall be separated from the actual equipment costs;

6. The purchase of new equipment will be considered by the fund at 100 percent of the invoice price for the most economical (least expensive life cycle cost) system bid received by the owner or operator. Reimbursement is limited to the original purchase price less the anticipated salvage value, including applicable sales tax. The office will not reimburse for markup. If an election is made to purchase the equipment with a greater life cycle cost, any cost above the most economical bid price will be the responsibility of the owner or operator. All unscheduled maintenance costs covered by the new equipment warranty supplied by the equipment supplier or manufacturer are the responsibility of the owner or operator;

(b) If the owner or operator chooses to begin remediation prior to acceptance of the Corrective Action Plan, three (3) bids must be submitted to the office prior to the purchase of the equipment, however, the cost of the equipment will not be reimbursable until such time as the cabinet accepts the Corrective Action Plan. The bids will remain on file at the office until the Corrective Action Plan is accepted, at such time, the owner or operator may request reimbursement for the purchase by submittal of a completed claim form;

(4)(a) The request to purchase used or reconditioned equipment shall contain:

1. Three (3) bids for new equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or

certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

2. If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer or supplier's decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

3. The name, address and phone number of the previous owner of the equipment proposed for installation;

4. A description of the equipment including all pertinent specifications necessary to compare the proposed equipment with the bids for the new equipment;

5. The remaining economic life of the used equipment;

6. A projected salvage value for the used or reconditioned equipment after the proposed usage;

7. Shipping, installation, training and start-up costs. These costs shall be separated from the actual equipment costs;

(b) The purchase of used or reconditioned equipment will be reimbursed at a lump sum rate of the sum of the purchase plus a maximum of fifteen (15) percent markup less the anticipated salvage value, not to exceed the reimbursement ceilings that follow. Reimbursement for the purchase, including markup, of used equipment shall not exceed sixty-five (65) percent of the most economical new system bid received by the owner or operator and submitted to the office for consideration. The economic life of reconditioned equipment shall be considered to be the same as new equipment. Reimbursement for the purchase of reconditioned equipment, including markup, shall not exceed eighty (80) percent of the most economical new system bid received by the owner or operator and submitted to the office for consideration. Reimbursement will not be considered for parts and labor associated with unscheduled maintenance or equipment component replacement for the duration of the expressed limited warranty period specified by the supplier and or manufacturer or for 180 days whichever is greater;

(5) Rental of remediation equipment may be approved by the office. This option may be suitable in circumstances where a lengthy remediation is not anticipated. The fund will only reimburse for the actual usage of the equipment. At no time will the rental rate exceed the purchase price. Usage is considered to be the actual active utilization of the remediation equipment and does not include idle equipment maintained at a fund covered facility for the convenience of the contractual parties. The request to rent the equipment shall contain:

(a) Three (3) bids for new equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

(b) If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer or supplier's decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

(c) Shipping installation, training and start-up costs. These costs shall be separated from the actual equipment.

Section 13. Incorporation by Reference. (1)(a) The Application for Assistance (October, 1998), Public Protection and Regulation Cabinet, is incorporated by reference;

(b) Claim Request (October, 1998), Public Protection and Regulation Cabinet;

(c) Invoice Listing (July 1996), Public Protection and Regulation Cabinet;

(d) Soil Disposal/Treatment Claim Request, (October 1998), Public Protection and Regulation Cabinet; and

(e) Capital Equipment Purchase and Rental Request, (October 1998), Public Protection and Regulation Cabinet;

(2) These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the Office are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks. The amended regulation will no longer reimburse for the cost of tank system removals. That cost will be borne by the applicant.

2. Continuing costs or savings: Tank owners or operators will continue to experience the cost and savings outlined above savings include the cost of remediation and third-party liability expenses.

3. Additional factors increasing or decreasing costs: Note any effects upon competition: There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 282 required these amendments. Additional changes were made to improve the efficiency of claims processing.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows. Being less stringent would cause undue delays in the processing and payment of claims

2. More stringent: The fund cannot be more stringent than the statute allows. More stringent standards would cause fewer reimbursements and defeat the statutory goal of assisting the owners

and operators of petroleum storage tanks.

3. Present proposal: The amended regulation contains the claims procedures to be followed by owners or operators eligible to participate in the fund. These procedures outline what cost are eligible and provide the proper balance of oversight and usability.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement mechanisms for payments up to \$1,000,000 for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no statute, administrative regulations, or government policy in conflict with the amended regulation

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute and increases the fund's ability to protect its resources and provide more money to the regulated community.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No, the regulation applies the same procedures to all applicants. This is seen as fair and results in the same cost being eligible or noneligible for all parties.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. There are no standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will impose no different claim procedure from that imposed on a nongovernmental entity.

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(Amendment)

415 KAR 1:090. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly required the Office of the Petroleum Storage Tank Environmental Assurance (require the) Fund to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the office [fund] shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account 415 KAR 1:070 shall not be classified pursuant to this administrative regulation for reimbursement if:

(1) The owner or operator is an individual, owning or operating five (5) or fewer tanks, whose average adjusted gross income for the five (5) year period, prior to applying for assistance from the office [fund], is less than \$50,000; or

(2) The owner or operator has tanks that were abandoned or closed prior to December 22, 1988. This subsection includes facilities under the direction of the implementing agency pursuant to 401 KAR 42:080 at the time the release is detected but does not include those owners and operators that are organizational units of the executive branch of the Commonwealth of Kentucky.

Section 2. Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080 and the administrative regulations adopted by the cabinet establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring, domestic use well head protection area, as defined in 401 KAR 42:080, a drinking water supply, or a utility conduit in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 1 of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080, for releases of petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, a drinking water supply or a utility conduit; or

(c) Third, where areas outside the facility's property boundary have been impacted by a release, but has not contaminated a domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area, drinking water supply, or a utility conduit and has not been determined to be a source of fumes in occupied buildings.

(3) The owner or operator of the facility shall submit information to the office [fund] to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, (October 1995), as established in 401 KAR 42:080 or its superseding administrative regulation.

Section 3. Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the office [fund] shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they do not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit the last five (5) years of income tax returns for the person, partnership or corporation.

(2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, an individual partnership or corporation whose average adjusted gross income for the five (5) year period is less than \$50,000, a public entity with an annual revenue and income of less than \$100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose average adjusted gross income for the five (5) year period is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000;

(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than \$100,000 or a public entity with an annual revenue and income of more than \$250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The office [fund] may require that additional information be submitted to determine the financial ability of an applicant.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 5. (1) The office [fund] shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the office [fund] is inaccurate or misrepresented, or based on a false statement, representation, or certification in an application, payment request, or any other documentation submitted to the office. Any cost incurred by, or paid from, the fund which is based on false or inaccurate information, false statements, representations or certifications shall be recovered by the office from the person who asserted the false or inaccurate information, false statements, representations or certifications.

(2) Any person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 providing false or inaccurate information or making false statements, representations or certifications on any application, payment request or other documentation submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery by the office described in subsection (1) of this section.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims paid second;

(3) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid third;

(4) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fourth;

(5) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fifth;

(6) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid sixth;

(7) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid seventh;

(8) An owner or operator of facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid eighth;

(9) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid ninth;

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid 11th;

(12) Claims in categories (1) through (11) of this section shall be paid in order of their category ranking. Within each category the claims shall be paid by the date of receipt of the claim;

(13)(a) All other claims of nongovernment entities for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net

income more than \$100,000 is not required to submit income tax returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14)(a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4(2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The office [fund] may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

3. Additional factors increasing or decreasing costs: Note any effects upon competition: There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: HB 282, amending KRS 224.60, required these amendments.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation delineates the method by which sites will be ranked and the order in which claims will be paid. Clarification of certain language will make the regulation easier to understand.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide ranking for reimbursement up to \$1,000,000 for corrective action. The ranking is based on financial ability and environmental harm. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, the potential environmental harm, and the financial ability of the applicant.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will delineate the priority of reimbursement of local government from the Petroleum Storage Tank Account.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:100. Third-party claims.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the fund to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to receive reimbursement or payment for third-party claims. This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

Section 1. Applicability. Third-party claims are limited to bodily injury and property damage. Owners or operators are eligible to receive reimbursement or payment for third-party claims if they have been issued a certificate of eligibility pursuant to the provisions of 415 KAR 1:060 [(1994)] and have maintained compliance with the eligibility requirements of 415 KAR 1:060. This administrative regulation applies only to third-party claims for bodily injury and property damage, which are asserted against an owner or operator as a result of release into the environment from a petroleum storage tank at a facility eligible for participation in the financial responsibility account. Claims for property damage shall only be paid to the extent that the damages are not addressed by the performance of corrective action. Third-party claims shall be paid only to the extent specified in 401 KAR 42:090.

Section 2. Notice to the Office [Fund]. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall notify the office [fund] of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third-party, or the receipt of an assertion of a claim in writing by a third-party.

(2) Third-party claims shall only be paid on the basis of a final and enforceable judgment, or pursuant to an agreement reviewed and approved by the secretary.

(3) Settlement of claims.

(a) No settlement of a third-party claim shall be made by an owner or operator without the prior approval of the office [fund]; and

(b) The office [fund] shall not pay a final and enforceable third-party judgment or reimburse an owner or operator for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator which was not submitted to the office [fund] for consideration or after approval by the office [fund].

Section 3. Payment of Claims. (1) Payment of claims shall be limited to actual damages caused by the release of petroleum.

(2) Payment shall be made to the third-party after approval of

payment by the secretary.

(3) The amount of payment of all third-party claims caused by a release shall not exceed \$1,000,000.

(4) The office [fund] shall acquire by subrogation the right of the third-party to recover the amount of damages paid to the third-party from the person responsible or liable for the release.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: A recent statutory change required the amendment of this regulation.

Alternative:

1. Less stringent: The amendments do not alter the intent or function of the regulation.

2. More stringent: The amendments do not alter the intent or function of the regulation.

3. Present proposal: The amendments represent the change in cabinet and corresponding name change.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to \$1,000,000 third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to compensate injured parties will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute and avoids confusion in the regulated public.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation applies in the same manner to all owners and operators in the Financial Responsibility Account that have third-party actions brought against them.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that involves the storing of motor fuels in petroleum storage tanks will be affected by this regulation.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government third-party damages in the same manner as non-governmental entities.

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(Amendment)

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Reimbursements and Payments by the Fund. (1) The fund shall not reimburse owners and operators more than the amounts specified in this administrative regulation for corrective action services performed by certified contractors and companies, except as provided in subsections (7) and (9) of this section. All cost items in this section are restricted to a maximum fifteen (15) percent markup above actual cost, unless specifically excluded. The markup is allowed only on the costs of corrective action services performed by subcontractors and other vendors but only to the extent the actual cost, plus the markup, do not exceed the maximum allowable cost for that cost item. For the purpose of this administrative regulation, actual cost shall mean the cost charged by the person performing the activity or service, and not the cost charged by additional subcontractors. [Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund shall not pay more than the following amounts for the performance of corrective action by certified contractors, except as provided in subsections (2) and (4) of this section. All items in this section are subject to a maximum fifteen (15) percent contractor markup above actual cost, unless specifically excluded. The contractor markup is allowed only for subcontractor or vendor services. The markup is allowed only to the extent that the cost plus the markup do not exceed the maximum cost for that item.]

(2) The office is authorized to request additional information and documentation related to actual costs incurred by a certified contractor, certified company, subcontractor or other vendor providing corrective action services and related materials, instruments and equipment. Failure to provide the requested additional information and documentation shall result in the denial of the payment claim as provided for in 415 KAR 1:080, Section 2(4) and (5). All payment claims submitted to the office after the effective date of this administrative regulation shall be subject to the requirements of this subsection.

(3) The use or employment of a subcontractor, including a subsidiary company, or other vendor by a certified contractor or certified company to increase profitability on the cost of corrective action is prohibited. Payment claims denied by the office under this subsection may be appealed pursuant to 415 KAR 1:120 with the owner, operator, certified contractor, or certified company having the burden to prove the validity of the payment claim.

(4) If the combined cost of preremedial corrective actions will exceed \$15,000, all expenses beyond the \$15,000 level, for which the owner or operator will seek reimbursement from the fund, shall be preapproved by the office prior to the owner or operator incurring costs beyond the \$15,000 level. For the purpose of this subsection, preremedial corrective actions shall include initial responses pursuant to KRS 224.60-135, actions necessary to monitor, assess and evaluate a release, including site investigations, and the preparation of a corrective action plan if required by the cabinet. The following procedures shall apply to this requirement:

(a) The owner or operator shall submit a written request and supporting documentation to the office which explains the need for continuing preremedial actions and sets forth the unit costs, in compliance with the requirements of subsection (6) of this section, for

continuing preremedial actions, including, but not limited to, the costs of personnel, initial response, sampling and laboratory testing and other expenses necessary to complete the preremedial actions. The supporting documentation must also include evidence that the cabinet has determined that the preremedial actions are necessary to protect human health and the environment, and that the continuation of the preremedial actions is necessary to comply with the requirements of 401 KAR Chapter 42;

(b) The office may request additional information and documentation if needed to determine if the costs of continuing preremedial corrective actions are eligible, necessary and reasonable. A request for additional information and documentation shall be made by certified mail or electronic mail, if available;

(c) The owner or operator shall provide the additional information and documentation within thirty (30) days of receipt of the request unless otherwise agreed to in writing by both parties within the thirty (30) day period. If the owner or operator fails to provide the additional information and documentation, the request for additional funds to continue the preremedial actions shall be denied by the office;

(d) If the owner or operator complies with the requirements of this subsection and the proposed cost are preapproved, the office shall obligate the additional funds to continue the preremedial actions, and shall notify the owner or operator of the obligation in writing;

(e) A denial by the office under the provisions of this subsection may be appealed by the owner or operator pursuant to 415 KAR 1:120; and

(f) Except for applications filed pursuant to 415 KAR 1:130, the requirements of this subsection shall apply to all Applications for Assistance filed with the office on or after the effective date of this administrative regulation.

(5) If the combined costs of remedial corrective actions will exceed \$35,000, all expenses beyond the \$35,000 level, for which the owner or operator will seek reimbursement from the fund, shall be preapproved by the office prior to the owner or operator incurring additional costs beyond the \$35,000 level. For the purpose of this subsection, remedial corrective actions include actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial preremedial corrective action is taken, actions taken to restore or replace potable water supplies, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred. The following procedures shall apply to this requirement:

(a) The owner or operator shall submit a written request and supporting documentation to the office which explains the remedial actions to be performed and the need for the additional costs beyond the \$35,000 level. This request may be incorporated into, or submitted as, part of the request for additional preremedial funds under subsection (4) of this section. Supporting documentation shall also set forth the unit costs, in compliance with subsection (6) of this section, for continuing remedial actions or increasing the obligation for remedial actions, including, but not limited to the costs of personnel, sampling and laboratory testing, excavation, haulage, treatment or disposal of contaminated soil or water, and other expenses necessary to comply with the requirements of 401 KAR Chapter 42. Evidence must also be provided that the cabinet has determined that the remedial actions are necessary to protect human health and the environment, and are necessary to comply with the requirements of 401 KAR Chapter 42;

(b) The office may request additional information and documentation if needed to determine if the costs of continuing remedial corrective actions are eligible, necessary and reasonable. A request for additional information and documentation shall be made by certified mail or electronic mail, if available;

(c) The owner or operator shall provide the additional information and documentation within thirty (30) days of receipt of the request unless otherwise agreed to in writing by both parties within the thirty (30) day period. If the owner or operator fails to provide the additional information and documentation, the request for additional funds to continue the remedial actions shall be denied by the office;

(d) If the owner or operator complies with the requirements of this subsection, and the proposed cost are preapproved, the office shall obligate the additional funds to continue the remedial actions,

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

and shall notify the owner or operator of the obligation in writing:

(e) A denial by the office under the provisions of this subsection may be appealed by the owner or operator pursuant to 415 KAR 1:120; and

(f) Except for applications filed pursuant to 415 KAR 1:130, the requirements of this subsection shall apply to all Applications for Assistance filed with the office on or after the effective date of this administrative regulation.

(6) The range of amounts to be paid by the fund for the cost of corrective action are as follows:

(a) Pavement removal and replacement, including labor equipment and material costs:

Asphalt	
Removal	
Includes the cost of loading:	
Asphalt pad, for each 3 inches of thickness, per square yard	\$2.75 to \$3.25
Asphalt curbing, per linear foot	\$2.40 to \$2.90
Replacement	
Asphalt pad, for each 4 inches of thickness, per square foot	\$3.50 to \$4.25
Cost of additional thickness to be projected.	
Asphalt curb and gutter, per linear foot	\$5.10 to \$6
Concrete	
Removal	
Includes the cost of loading:	
Concrete pad, per square yard	
4 inches thick	\$2 to \$3
6 inches thick	\$4 to \$5
9 inches thick	\$8.20 to \$10
10 inches or more thick	\$26 to \$31
With rebar	add 15%
Concrete curbing, per linear foot	\$4.50 to \$5.50
Replacement	
Concrete, 4 inches thick, per square foot	\$2 to \$2.80
With rebar	add 15%
For each additional inch, per square foot	\$0.20 to \$0.30
(Transportation of the first 100 total tons of per one (1) way mile, per ton. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.	\$0.20 to \$0.30]
Transportation [after the first 100 total tons] of asphalt or concrete, to disposal facility[, per one (1) way mile, per ton]. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.	\$0.15 to \$0.20
Disposal fee, per ton	Actual cost at point of disposal plus maximum 8% markup, not to exceed \$32.50
If disposal fees are submitted for reimbursement using the Soil Disposal/Treatment Claim form, no markup shall be allowed	

(b) Disposal and replacement of contaminated soil, including labor and equipment costs:

Excavation and stockpiling or loading directly into trucks, per ton. Necessity of stockpiling must be demonstrated to justify reimbursement.	\$3.50 to \$4
For less than 100 total tons, add fifty (50) percent.	
Stone backfill material, per ton	Actual cost from quarry plus maximum 8% markup, total not to exceed \$10 per ton

Soil backfill material, per ton, includes excavation, loading, weighing, permitting and restoration of borrow site	Actual cost plus 8% markup not to exceed \$4
Install, [and] compact, and grade backfill, per ton [includes purchase of materials, equipment and labor]	\$1.50 to 2.50 [\$11 to \$17]
Transportation of backfill, per ton, per one (1) way mile.	Minimum \$3 per ton or \$0.15 to \$0.20
Transportation of [the first 100 total tons of] contaminated soil to disposal facility[, per ton, per one (1) way mile]. Mileage must be documented. If closest disposal facility is not used, reasonableness of cost must be justified.	Minimum \$3 per ton or \$0.15 to \$0.20 per ton, per one (1) way mile [\$0.20 to \$0.30]
[Transportation after the first 100 total tons of contaminated soil to disposal facility, per ton, per one (1) way mile. Mileage must be documented. If closest disposal facility is not used, reasonableness of cost must be justified.	\$0.15 to \$0.20]
Disposal fee per ton	Actual cost at point of disposal plus maximum 8% markup, not to exceed \$32.50
If disposal fees are submitted for reimbursement using the Soil Disposal/Treatment Claim form, no markup shall be allowed	

(c) Treatment of soils and disposal of drummed waste including labor costs:

Treatment of contaminated soil by thermal desorber, landfarming, or other methods, per ton. Cost includes design, permitting, monitoring, construction, transportation, environmental compliance, reporting, closure of facility, labor, equipment, markup, and all other costs necessary for treatment of the material. Quantity of material treated to be determined by survey, accurately measured dimensions, weight tickets or other method approved by the fund. Reimbursement for treatment shall not exceed that required for transportation and landfill disposal	Actual cost at point of treatment with a maximum 8% markup, not to exceed \$40 per ton [39]
If disposal fees are submitted for reimbursement using the Soil Disposal/Treatment Claim form, no markup shall be allowed	
Transportation and disposal of drummed tank waste, per drum	Disposal cost shall be actual cost at point of disposal plus a maximum 8% markup. Total transportation and disposal cost not to exceed \$575

(d) One (1) of the following methods shall be used to determine the total reimbursable cost for disposal of contaminated water removed prior to the implementation of an approved CAP:

Pumping, and treatment of contaminated water in a mobile facility and discharge, including all equipment, labor, mobilization, transportation permitting, and other associated charges, per gallon	\$0.55
Disposal of contaminated water or tank contents in wastewater treatment plant or a recycling facility, per gallon	Actual cost at point of disposal plus maximum 8% markup
Pumping and transportation of contaminated water or tank content to approved facility, including truck, driver and travel time, per gallon, minimum \$250 [200]	\$0.15 [0.07]

(e) Labor rates, per hour: Labor rates include all fringes and bene-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

fits, and contractor's overhead and profits. All labor rates include cost of standard office equipment and standard tools of the profession.

Carpenter	\$25 to \$35
Cement finisher	\$25 to \$35
Electrician	\$25 to \$30
Electrical contractor	\$30 to \$40
Equipment operator	\$20 to \$35
Laborer	\$15 to \$22
Master plumber	\$30 to \$40
Journeyman plumber	\$20 to \$35
Apprentice plumber	\$20 to \$30

(f) Professional and technical labor rates, per hour: Labor rates include all fringes and benefits, and contractor's overhead and profits. Reimbursement of labor rates shall be based upon the task performed by an employee rather than the qualifications of the employee.

Certified contractor	\$75 to \$90
Professional engineer	\$70 to \$80
Engineer-in-training	\$45 to \$55
Geologist	\$45 to \$55
Registered geologist	\$70 to \$80
Drafting/CAD person including computer time	\$25 to \$35
Senior environmental technician, requires an associate degree in an environmental related field or a minimum of five (5) years of environmental experience	\$35 to \$45
Environmental technician, trained in sample collection	\$25 to \$30
Environmental specialist, must have a college degree in chemistry, biochemistry, biology, soil science, agronomy, or other appropriate college degree or experience as may be approved by the executive director	\$45 to \$55
Secretarial or clerical	\$15 to \$20
Mileage, per mile for automobile or pickup truck	\$0.27 [0.25]
Mileage, per mile for utility truck	\$0.30
Overnight lodging - must be demonstrated to be necessary	Actual cost at lodging facility, not to exceed \$60 [55] per night
Meals - when overnight stay is necessary	
Breakfast	\$6 [4]
Lunch	\$7 [5]
Supper	\$14 [11]
Soil gas analysis for VOC (equipment charge), per day	\$150

(g) Environmental exploration - includes equipment, material and labor costs unless otherwise stated. All drilling charges shall be based upon unit prices outlined in this section. Other charges for the drill rig or rig time are not reimbursable:

1. Mobilization and demobilization of drilling equipment (includes rig, two (2) man crew, labor for gathering of equipment, tools, travel time and initial off-site steam cleaning):

Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200	\$2 to \$3.
Air rotary rig, per mile, minimum of \$350	\$3.50 to \$4

2. Installation of PVC monitoring well, including decontamination of down hole materials and grout or backfill materials, and development of well. Construction using other materials, such as stainless steel screens may be reimbursed if the alternative construction was ordered by the cabinet.

Two (2) inch diameter well per linear foot	\$14 to \$16.
Four (4) inch diameter well per linear foot	\$15 to \$20.

Necessity for construction of a four (4) inch diameter well must be established.

3. Construction of monitoring well surface completion (includes concrete pad, protective casing or manhole, locking cap, lock, etc.) including any labor, equipment, and material costs. If any component listed is not installed, surface completion cost is not allowed: \$250 each.

4.a. Drilling in unconsolidated material per linear foot including decontamination, water supply as necessary, and backfill of the void with bentonite or bentonitic slurry. Backfill by other methods are not reimbursable unless determined to be in accordance with cabinet administrative regulations.

Hollow stem auger less than five (5) inch inside diameter	\$12 to \$16 [5 to \$9]
Greater than five (5) inch inside diameter	\$18 to \$21 [8 to \$11]
Continuous flight augers:	
Four (4) inch nominal outside diameter	\$9 to \$11 [5 to \$7]
Six (6) inch nominal outside diameter	\$12 to \$14 [6 to \$8]

b. For continuous split spoon sample collection add five (5) dollars per linear foot.

c. For split spoon sample collection at five (5) foot intervals add three (3) dollars and fifty (50) cents per linear foot.

d. Random split spoon sampling, per sample: \$13 to \$20.

5. [Standby time: maximum \$150 per day:

6-] Drilling in rock (per linear foot): \$18 to \$25.

6. [7-] For all drilling costs, for depths greater than sixty (60) feet, add two (2) dollars and forty (40) cents per linear foot.

7. [8-] Well abandonment including all material, equipment and labor costs, per linear foot.

Overdrilling to depth of well and backfilling with concrete grout, per linear foot	\$17 to \$22
Removal of casing to below ground surface and backfilling of casing in place with cement grout, per linear foot	\$5 to \$7.50

8. [9-] Preparation and submittal of well records, per well - \$30 to \$40.

9. [10-] a. Direct push sampling including personnel, decontamination, materials, supplies, and backfilling of void: [- per day: \$900 to \$1100-]

Probing of less than 50 linear feet per day	\$700
Probing of 51-100 linear feet per day	\$1200
Probing of greater than 100 linear feet per day, add \$4 per linear foot for each foot over 100 feet	

b. Mobilization and demobilization of direct push sampler, including equipment, labor and supplies, per mile: \$0.27 [0.30 to \$0.40].

c. Installation and construction of direct push piezometers or monitoring wells including labor, decontamination, all down hole materials and development. Charges are in addition to allowable daily charges:

Well with constructed filterpack, per linear foot	\$ 6 to \$ 8
Well packed with prepacked screen, per linear foot	\$11 to \$ 13

d. Construction of surface completion for direct push well or piezometer. Surface completion shall consist of concrete pad, protective casing or manhole, locking cap, locks, including any labor, equipment and material cost. If any component listed is not installed, surface completion cost is not allowed: \$200 each.

10. [11-] Equipment, materials and supplies. Equipment charges are not reimbursable for the time before travel to the site begins or after return from the site:

Air compressor, less than 190 CFM, per day	\$65 to \$75
Air compressor, 190 CFM or greater, per day	\$140 to \$165
Backhoe, trailer and accessories, per hour	\$50 to \$55
Concrete saw, per day	\$25 to \$35
Concrete saw (push type), per day	\$70 to \$80
Conductivity meter, per day	\$15 to \$20
Disposal drum, each	\$30 to \$35
Explosimeter, per day	\$30 to \$35
FID, OVA, per day	\$80 to \$95
Generator, per day	\$50 to \$55
Grout unit, per day	\$45 to \$75
Jackhammer, per day	\$50 to \$75
PID/HNu, per day	\$60 to \$75
Power auger, per day	\$40 to \$50

Sampling supplies including gloves, spoons, tools, bailers, ropes, chain of custody, sample preservatives, decontamination and other materials or supplies incidental to the collection of samples	\$12 per well, \$2 per soil sample
Self-contained steam cleaning unit, per day	\$100 to \$125
Steam cleaner, per day	\$50 to \$75
Survey equipment, per day	\$30 to \$35
Trackhoe, trailer and accessories per day [hour]	\$80 to \$100
Water level indicator, per day	\$10 to \$12
Water trailer (500 gal.), per day	\$50 to \$75
Water truck (800 gallon capacity or greater), per day	\$125 to \$175
Copies, per page	\$0.05
Faxes, per page	\$1.25

11. [42:] The fund will only reimburse for one (1) environmental professional to assist during drilling activities in the collection of in visual inspection of samples, logging of boreholes or monitoring wells or other task.

[43- Mobilization and demobilization of heavy equipment including backhoe, trackhoe and dump trucks, including labor, per event - \$200:]

(h) Sampling analysis, not including labor to take sample; including sampling containers [materials, transportation of sample, and chain-of-custody]:

Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene)	
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$45 to \$60 [75 to \$88]
Polynuclear Aromatic Hydrocarbons	
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	\$155 to \$190 [215]
Total recoverable oil and grease	
Method SW 3540 or 3550 in conjunction with 846 9071	\$37 to \$46
Total lead	
Method SW 846 7421 or 6010	\$23 to \$30
Water Samples	
BTEX (benzene, toluene, ethylbenzene, xylene)	
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$45 to \$60 [72 to \$84]
Polynuclear Aromatic Hydrocarbons	
Method 3510 or 3520 in conjunction with SW 846, 8100, 8270 or 8310	\$161 to \$190
Total recoverable oil and grease	
Method 3510 or 3520 in conjunction with SW 846 1664 or 9070	\$35 to \$46 [48]
Total Lead	
Method SW 846 7420 7421 or 6010	\$23 to \$30 [29]
Sludge and Cleaning Liquid Samples	
Toxicity Characteristic Leading Procedure	
Metals	\$230 to \$265
Volatiles	\$290 to \$320
Acid/base/neutrals	\$375 to \$415
Pesticides and herbicides	\$290 to \$315
Ignitability	
SW846 Method 1010	\$25 to \$35
Paint Filter Test	
SW846 Method 9095	\$15 to \$28
pH	\$12 to \$20

(i) Mobile laboratory fees at unit cost exceeding those found in paragraph (g) of this subsection may be eligible for reimbursement in conformance with the criteria established in Section 4 of this administrative regulation.

(j) Legal services.

Attorney:	
Sole practitioner, per hour	\$40
Partner or principle in firm, per hour	\$75
Associate in firm, per hour	\$60
Paralegal, per hour	\$30

(7) [(2)] An amount in excess of the maximum amount set forth in subsection (1) may be approved by the fund if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(8) [(3)] Original invoices and supporting documentation shall be submitted to the fund along with any payment request under this section to verify that the cost incurred is necessary and reasonable. The fund may require additional documentation, including invoices from any vendor providing services, equipment or materials as part of corrective action, when required to determine the reasonableness or necessity of a payment request.

(9) [(4)] Upon agreement of the owner or [f] operator and the office [fund], the office [fund] may reimburse for work, testing, [and] equipment and materials in a manner other than that prescribed in Section 1 of this administrative regulation. Approved methods shall be task orders, firm fixed price or pay-for-performance as provided in "Pay for Performance Cleanups", United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996. [This document is hereby incorporated by reference. This document may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the Fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.] Any such agreement shall be reflected in a memorandum of agreement and set forth the method of reimbursement, the amount to be reimbursed and the rate or schedule of payment.

(10) Beginning on January 2, 2000, and every two (2) years thereafter, [(5) At the beginning of each calendar year] the secretary shall direct the staff to review the appropriateness of the range of amounts established by this administrative regulation. The staff shall:

(a) Establish a mailing list of persons who want to comment on this issue;

(b) Solicit comments and information from interested persons and persons who contract to perform corrective action;

(c) Conduct a public hearing to receive comment on the cost of corrective action; and

(d) Submit a report to the secretary by July 1 of the [each] calendar year recommending changes or revisions to the ranges of amounts established by this administrative regulation.

Section 2. Range of Amounts to be Paid for Items Not Listed in Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

(a) Original invoices from manufacturers or retailers shall be supplied to the fund, with supporting documentation, if required;

(b) Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above actual cost, which includes rentals or purchases;

(c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and

(d) Out-of-state travel expenses, including but not limited to air fare, shall not be reimbursed unless demonstrated to be necessary for the performance of corrective action (example: expertise not available within state);

(e) The cost is eligible, reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 3. Eligibility Criteria for Persons who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:114 and employed or contracted by companies certified according to 415 KAR 1:116.

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 1 of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by the office staff.

Section 4. Certification of Contractor Costs. (1)(a) The fund may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The fund shall establish the date by which the proposals are to be submitted.

(2) The fund shall specify in the notice of the request for proposals the information to be submitted by the individual or company. At a minimum, the information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the fund;

(3) The fund shall review all proposals received after the date established for submittal of proposals. Proposals are to be submitted for the purpose of assisting the fund in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the fund, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) The staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the fund verifies that the individual or company complies with the requirements of subsection (4) of this section, the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request. The list of approved contractors shall be sent to all fund applicants and owners or operators participating in the fund.

(6) If the fund verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the

schedule of fees unless the individual or company demonstrates to the satisfaction of the fund that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the fund by an owner or operator for the costs of corrective action performed by an approved certified contractor or certified company shall be reviewed by the office staff to determine that the costs were necessary.

Section 5. ~~[The provisions of]~~ This administrative regulation shall apply to all cost incurred ~~[at facilities where the tank system is removed or closed in place]~~ on or after the effective date of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following document is incorporated by reference: "Pay for Performance Cleanups", United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996.

(2) This form may be obtained, inspected and copied at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for the corrective action cost resulting from a release into the environment. Amendments to reflect price adjustments in the industry will result in a more true reflection of necessary cost to achieve site closure.

2. Continuing costs or savings: Tank owners or operators will continue to experience a more accurate rate of reimbursement associated with corrective action.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The fund contends these amendments reflect reasonable cost associated with corrective action for a release for a petroleum storage tank. Any alternatives would not meet the statutory mandate of the fund.

Alternative:

1. Less stringent: The fund could allow the owner or operator to set the amounts to be reimbursed, but such an arrangement contains the potential for abuse and the waste of taxpayer money.

2. More stringent: The fund could set more stringent cost amounts that do not reflect the current market for corrective action. To do so, however, would lead to a reduction in the number of available contractors willing to accept fund reimbursement to perform corrective action.

3. Present proposal: The amended regulation contains cost that represent the current reasonable cost for the performance of corrective action and reflect market prices. A recent reorganization and name change is also reflected in the regulation.

(5) Geographical and environmental impact

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to \$1,000,000 for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation represents changes in cost and accurately reflect the cost, per unit, to achieve site closure.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. Tiering was not applied since the cost of corrective action to be reimbursed under the amended regulation is on a per unit basis. Since the amount to be reimbursed depends on the amount expended, smaller businesses are not unduly effected.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum

storage tanks to demonstrate financial ability to perform corrective action on a release to the environment caused by a petroleum storage tank. A state assurance fund reimbursing the cost of corrective action is one method of making this demonstration.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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.

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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that requires the agency to own or operate petroleum storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government cost reimbursement in the same manner as non-governmental entities.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank
Environmental Assurance Fund
(Amendment)

415 KAR 1:114. Contractor certification.

RELATES TO: KRS 224.60-110, 224.60-130

STATUTORY AUTHORITY: KRS 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130

requires the office [fund] to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation sets forth the criteria for obtaining certification to be eligible to contract to perform corrective action for a release from an underground petroleum storage tank. This administrative regulation is necessary to set minimum standards for determining technical competency and proficiency in the performance of corrective action and general knowledge of cleanup standards required to obtain closure from the Underground Storage Tank Branch, health and safety standards, and Petroleum Storage Tank Environmental Assurance Fund administrative regulations.

Section 1. Definitions. (1) "Certified contractor" means an individual certified by the office [fund] as qualified to engage in the performance or supervision of corrective action at a facility in the event of a release from a petroleum storage tank system.

(2) "Company" means a person, other than an individual, engaged in the business of performing corrective action for a release from a petroleum storage tank system and who employs one (1) or more certified contractors.

(3) "Interim contractor" means an individual who is not a certified contractor and is identified by a company to replace a certified contractor in accordance with Section 8 of this administrative regulation.

(4) "Participation in" means direct and substantial involvement in each aspect of corrective action, including site characterization, preparation of site investigation reports, preparation of proposed corrective action plans, and implementation of corrective action plans approved by the cabinet.

(5) "Supervise" means having the authority and responsibility for the performance of corrective action at a facility in the event of a re-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

lease from petroleum storage tank system, and having the ability to exercise independent judgement and direct the activities of employees or subcontractors in the performance of corrective action to achieve compliance with the administrative regulations of the cabinet.

(6) "Cabinet" is defined by KRS 224.60-115(2).

Section 2. Applicability. (1) Beginning March 1, 1995, costs for actions performed by a person who contracts to perform corrective action for a release from a petroleum storage tank system shall be eligible for reimbursement or payment from the fund if:

(a) They are performed or supervised by an individual who is certified by the office [fund];

(b) They are performed in compliance with 401 KAR Chapter 42; and

(c) The costs are necessary and reasonable, and performed in compliance with 415 KAR Chapter 1;

(d) This requirement shall apply only to applications approved after March 1, 1995.

(2) Certified contractors shall perform or supervise corrective action, such as, site checks, site investigations, and preparation of corrective action plans, in accordance with the administrative regulations of the cabinet.

(3) To be eligible for reimbursement from the fund, the person who contracts to perform corrective action shall designate the certified contractor responsible for supervision of the corrective action prior to incurring costs by giving written notice to the owner or operator of the facility and the office [fund]. If the certified contractor changes, a new notice shall be given.

(4) A person or company who installs, repairs, closes, or removes an underground storage tank, not involving the performance of corrective action, shall not be subject to this administrative regulation.

Section 3. Application Requirements. (1) An applicant for certified contractor shall:

(a) Submit an application to the office [fund] on the Certified Contractor Application form; and

(b) Submit verification of experience by participation in the performance of corrective action at facilities where a release occurred from a petroleum storage tank system; and

(c) Complete the examination requirements of this administrative regulation.

(2) An application to take the certified contractor examination shall be denied if the applicant:

(a) Fails to provide the information required by the application form; or

(b) Fails to comply with the experience requirements of this administrative regulation; or

(c) Makes a misrepresentation or submits false information in the application.

(3) An applicant, that has been assigned a testing date and time, shall request a change in their testing schedule in writing to the office [fund]. If the request for a rescheduled testing date falls into another testing quarter, the applicant must reapply to the office [fund].

(4) An applicant requesting to resit the certified contractor examination shall reapply to the office [fund].

Section 4. Experience Requirements. (1) An applicant shall demonstrate participation in, as defined in Section 1(4) of this administrative regulation, the performance of corrective action at a minimum of six (6) petroleum storage tank facilities within three (3) years immediately prior to making application.

(2) Technical training approved by the office [fund] shall reduce the experience requirement of participation in the performance of corrective action to a minimum of four (4) facilities.

(3) A professional engineer registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

(4) A certified professional geologist registration in Kentucky shall reduce the experience requirements of participation in the performance of corrective action to a minimum of two (2) facilities.

Section 5. Examination Requirements. An applicant for certified contractor shall take and pass a written examination administered by the office [fund] in compliance with this section.

(1) The examination for certification shall be a written multiple choice examination covering all aspects of:

(a) Corrective action for a release from a petroleum storage tank system - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to performing corrective action where a release has occurred from a petroleum storage tank system; and

(b) Applicable occupational health and safety and public health and safety requirements - the examination shall test the applicant's knowledge of codes, standards, laws, regulations, current technology, and industry recommended practices with respect to applicable occupational health and safety and public health and safety requirements; and

(c) Knowledge of the reporting requirements, documentation requirements and procedures of the regulatory agency (Underground Storage Tank Branch) and the Office of the Petroleum Storage Tank Environmental Assurance Fund - the examination shall test the applicant's knowledge of codes, laws and regulations with respect to these two (2) governmental agencies.

(2) A minimum score of seventy-five (75) percent on the examination shall be considered passing.

(3) Examinations shall be given, at a minimum, quarterly through December 31, 1997, and semiannually thereafter.

(4) An application to take the examination shall be filed with the office [fund] at least ten (10) working days in advance of the testing date to take the examination.

(5) All examinations shall be graded and the applicants shall be notified within fifteen (15) working days. Examination papers shall not be returned to or reviewed by the applicant, however, the applicant may review their test response sheet by appointment.

(6) The office [fund] shall furnish the applicant with instructions for taking the examination upon receipt of a completed application. Instruction sheets shall refer the applicant to appropriate laws, regulations and industry publications.

Section 6. Certification and Renewal Procedures. (1) The office [fund] shall issue a certificate to each individual who successfully complies with this administrative regulation. The certificate shall be renewed biannually.

(2) An application for renewal shall be submitted to the office [fund] on the Certified Contractor Application for Renewal form.

(3) The renewal of a certificate shall be denied if an applicant:

(a) Fails to provide the information required by the Certified Contractor Application for Renewal form; or

(b) Makes a misrepresentation or submits false information in the application for renewal; or

(c) Failed to participate in or supervise a corrective action during the two (2) years period prior to renewal; or

(d) Fails to maintain a professional registration.

(4) An applicant denied the opportunity to take the certification test or denied the renewal of their contractor certification may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

(5) The office [fund] may require that a certified contractor take and pass a written examination to renew a certification if there has been a significant change in the laws, codes or industry recommended practices with respect to performing corrective action or procedures, reporting requirements and document requirements to be submitted to the Underground Storage Tank Branch or the Office of the Petroleum Storage Tank Environmental Assurance Fund since the date of original certification.

(a) The office [fund] may waive this requirement for professional engineers and certified professional geologists registered in Kentucky if the applicant has submitted proof of successful completion of pertinent training.

(b) The determination to waive this requirement rests solely in the office [fund].

Section 7. Revocation or Suspension of Certification. (1) A certificate issued pursuant to this administrative regulation may be suspended or revoked if the certified contractor:

(a) Negligently, incompetently, recklessly or intentionally violated any provision of this administrative regulation or any required federal, state or local regulation, code or standard relating to corrective action;

or

(b) Recklessly or intentionally caused or permitted a person under the contractor's supervision to perform corrective action in violation of standards of the State Fire Marshall or the cabinet; or

(c) Obtained the certification through fraud or misrepresentation;

(d) Fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards; or

(e) Knowingly or intentionally submits false information, documentation or payment request to owners, operators, or the office [fund].

(2) The secretary shall have authority to revoke or suspend a certification. The secretary shall then cause a letter to be issued notifying the certified individual of the office's [fund's] action.

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 8. Interim Contractor. (1) A company engaged in the performance of corrective action at a facility shall immediately notify the office [fund] in writing of the extended absence of a certified contractor due to an emergency or unanticipated circumstances. The notice shall provide the following information:

(a) Name and qualifications of the individual replacing the certified contractor; and

(b) The length of time for which the company seeks to have the interim contractor fulfill the obligations of the certified contractor.

(2) The office [fund] shall evaluate the qualifications of the designated interim contractor and shall notify the company of the determination in writing within fifteen (15) days of receipt of the company's notice. The determination shall:

(a) Approve or deny the company's request for designation of the interim contractor;

(b) Specify conditions as appropriate to the facility and the interim contractor's qualifications.

Section 9. (1) The following forms are incorporated by reference:

(a) "Certified Contractor Application Form (June 1996)"; and

(b) "Certified Contractor Application for Renewal Form (June 1996)".

(2) These forms may be obtained, inspected and copied at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m., eastern time, Monday through Friday.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 400 contractors in the Commonwealth of Kentucky who perform corrective action due to releases from petroleum storage tanks.

(a) Direct and indirect costs or savings to those affected:

1. Effect on cost of living and employment: None

2. Effect on cost of doing business: There will be an indirect cost to the contractor due to the need to have persons certified by the Fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

3. First year: There will be an indirect cost due to the need to have persons certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply biannually for renewal of the certification.

5. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fund will experience direct costs due to the need to prepare and administer the test for certification of contractors; receive, review and maintain applications for certification; and to identify the proper materials for the certification process.

2. Continuing costs or savings: The fund anticipates continuing costs due to the need to upgrade the test on a periodic basis, to identify new materials concerning performance of corrective action, and to process applications for renewal.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process applications for certification and applications for renewal. The fund will provide applicants with information with which they must be familiar to obtain certification.

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

(4) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected: The amendments relate to a recent reorganization and resulting name change.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows. Less stringent decertification standards would not protect the public from fraud.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The proposed regulation reflects a recent reorganization and the resulting name change.

(6) Economic impact: None

(7) Benefits of the regulation: The amended regulation conforms to the statute and avoids confusion in the regulated public.

(8) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: This regulation overlaps and supplements 815 KAR 30:060, Underground Petroleum Storage Tank Installer/Remover Certification Regulation of the State Fire Marshal. This amendment will not effect the Fire Marshal's regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict. 815 AR 30:060 applies only to the installation and removal of underground storage tanks. This regulation will not duplicate or conflict with those requirements. This regulation is more comprehensive in that it requires a knowledge of all actions necessary to properly perform corrective action due to a release from a petroleum storage tank.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks and more certified individuals.

(b) Environmental: The effect of this regulation is to provide qualified individuals to provide the services for which the fund reimburses. A positive effect on the environment is expected.

(10) Any additional information or comments: There is no additional information.

(11) Tiering statement: Was tiering applied: No. This regulation applies to all individuals contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
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 standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.
3. State the aspect or service of local government to which this administrative regulation relates. None
4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified contractor in the performance of corrective action if reimbursement will be sought from the fund.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:120. Hearings.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(f) requires the Office of the Petroleum Storage Tank Environmental Assurance Fund to hear complaints brought regarding the payment of claims from the fund. This administrative regulation establishes hearing procedures to be followed in the hearing of those complaints.

Section 1. Definitions. (1) "Administrative hearing" means a formal adjudicatory proceeding conducted by the agency on the record to adjudicate the legal rights, duties, privileges or immunities of a named person at which each party is given the opportunity, after proper notice, to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(2) "Administrative action" means the formal administrative adjudicatory proceeding before the agency from the filing of the pleading commencing the formal administrative proceedings until the time for all

administrative appeals has run regarding the claims made in the commencing document.

(3) "The agency" means the Office of the Petroleum Storage Tank Environmental Assurance Fund.

(4) "Docket coordinator" means the person responsible for receiving and filing pleadings in administrative hearings. The docket coordinator shall be located at the office of the Office of the Petroleum Storage Tank Environmental Assurance Fund at 911 Leawood Drive, Frankfort, Kentucky 40601.

(5) "Hearing officer" is defined in KRS 13B.010(7).

(6) The "notice" means the notice of hearing required by KRS 13B.050.

(7) "Party" is defined in KRS 13B.010(3).

(8) "Person" means any individual, corporate entity, state governmental agency, or unit of local, state or federal government, and shall include any "party" as defined in these administrative regulations.

(9) "Petition for hearing" means any written request by a person other than the agency for an administrative hearing before the agency, including any document which by law or administrative regulation commences an adjudicatory administrative proceeding, that is filed in accordance with these administrative regulations.

(10) "Petitioner" means any person requesting an administrative hearing to which these administrative regulations apply.

(11) "Pleading" means the petition for hearing or notice of hearing and complaint, the answer, and any other responsive pleading ordered by a hearing officer or authorized by law or administrative regulation.

(12) "Record" is defined in KRS 13B.130.

(13) "Preponderance of evidence" means substantial evidence of sufficient weight to establish that a factual allegation is more likely true than not.

(14) "Responsive pleading" means the answer or any document required or authorized by law, administrative regulation, or order of a hearing officer to be filed in response to a pleading.

(15) "Substantial evidence" means evidence that taken alone or in the light of all the evidence has sufficient probative value to induce conviction in the minds of reasonable persons.

Section 2. Reconsideration. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request in writing that the determination be reconsidered. The writing shall set forth the grounds for the request and shall be accompanied by any documentation or other competent evidence related to the disputed issue that was not previously considered by the staff. The right to request a reconsideration of the determination shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the office's [fund's] action. The request for a reconsideration must be received by the office, in writing, prior to the expiration of the thirty (30) day period. The staff shall evaluate the documents and other competent evidence after receipt of the request. The office [fund] shall reevaluate the claim if the documentation or evidence accompanying the request for reconsideration warrants reconsideration of a prior recommendation on the issue. If the reconsideration by the staff or the secretary fails to resolve the applicant's concerns the applicant may request a hearing on the determination pursuant to Section 3 of this administrative regulation.

Section 3. Commencement of Hearing. (1) Petition for hearing. Any person not previously heard in connection with a determination of the Office of Petroleum Storage Tank Environmental Assurance Fund or the secretary denying eligibility for participation in the fund or payment of any portion of a claim, who considers himself aggrieved by such determination may request a formal hearing in writing. The petition for hearing shall be in writing signed by the filing party, and shall contain a short and plain statement of the facts upon which the petition is based, a request for relief, including a hearing; and the filing party's name, address and phone number. The right to request a hearing shall be limited to a period of thirty (30) days after the applicant has had actual notice, or could have reasonably had notice, of the Office of Petroleum Storage Tank Environmental Assurance Fund's action. The request for a hearing must be received by the office, in writing, prior to

the expiration of the thirty (30) day period. The petition for hearing shall indicate on its face the name and address of each party to be served by the agency. Any doubts about whether a document constitutes a petition for hearing shall be resolved in favor of the filing party. Within fifteen (15) days of the filing of a petition, the agency shall issue a notice of hearing conforming to KRS 13B.050, and shall serve the notice and a copy of the petition on each person set forth on the face of the petition.

(2) Service of notice and complaint and petition. The agency shall serve the notice, complaint and copy of the petition by certified mail or personal delivery as set forth in Section 9 of this administrative regulation. If served by mail, the agency shall enter the date of mailing in the record and shall file the return receipt or returned envelope in the record when it is received by the agency.

(3) Answer.

(a) The agency shall file an answer to the allegations in that pleading within thirty (30) days of the service of the pleading.

(b) The answer shall specifically admit or deny in short and plain terms each and every allegation contained in the pleading and shall set forth all claims against other parties which arise out of the same transaction or occurrence that is the subject matter of the claims in the pleading and which fall within the agency's jurisdiction. If the answering party is unable to admit or deny an allegation in the pleading, it shall so state in his answer and this shall have effect of a denial. The answer shall be in writing, and shall include the agency's address and telephone number. Parties against whom claims are directed in an answer shall answer such claims within five (5) days after service of the answer.

(c) Filing after motion. Filing of a motion for more definite statement, motion for judgment on the pleadings, motion to dismiss or a motion for summary disposition shall toll the time to file a responsive pleading until five (5) days after the hearing officer rules on such motion.

(4) Notice of determination not to conduct hearing. Within five (5) days of the commencement of an administrative action, the agency shall notify the person commencing the action, in writing, of any determination by the agency not to conduct a hearing. The notice under this section shall give the factual, legal, and policy grounds for the agency's determination, and shall inform the petitioner of any right to appeal. Mere recitation of statutory or regulatory standards is not a sufficient summary of the grounds for the agency's action.

Section 4. Affirmative Defenses. (1) Every defense in law or fact to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, if one is required.

(2) Any matter constituting an avoidance or affirmative defense in an administrative action shall be set forth in a responsive pleading. Failure to plead an affirmative defense in a responsive pleading may constitute a waiver of that defense.

(3) The following defenses may at the option of the pleading party be asserted by motion before making a responsive pleading:

- (a) Lack of jurisdiction over the person;
- (b) Lack of jurisdiction over the subject matter;
- (c) Improper venue;
- (d) Insufficiency of process;
- (e) Insufficiency of service of process;
- (f) Failure to state a claim upon which relief can be granted; and
- (g) Failure to join a required party. Failure to plead any of the defenses listed in this subsection in a responsive pleading shall not constitute a waiver of that defense.

Section 5. Right of Counsel. (1) Any person who appears before the agency at any stage in a formal administrative hearing shall have the right, at their own expense, to be represented or advised by legal counsel. Nothing in these administrative regulations shall be construed to allow or permit representation of a person by a nonattorney, however, individuals may represent themselves without representation by counsel.

(2) Any attorney representing a party before the agency must file a written notice of entry of appearance in each case before he may practice in that case before the agency. Filing of a notice of entry of appearance shall constitute agreement by the attorney to be bound by the provisions of this section.

(3) An attorney of record in an administrative action before the

agency shall request permission to withdraw as counsel for a party in writing, with an affidavit from the moving attorney setting forth the grounds for withdrawal, certifying that the request to withdraw has been served upon the attorney's client, and an explanation why the withdrawal will not have a material adverse effect on the interests of the attorney's client.

(4) An attorney shall not withdraw from representing a person in an administrative action before the agency without permission of the hearing officer before whom he is practicing. Within ten (10) days of an administrative hearing, an attorney of record shall not be permitted to withdraw from an administrative action absent a compelling reason shown upon a written motion filed in the record.

(5) Intentional or repeated failure or refusal of an attorney to obey any of the requirements of this section shall be grounds for recommendation to the secretary that the attorney be barred from practice before the agency.

Section 6. Burden of Proof. (1) The party proposing the agency take action or grant a benefit shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the agency action or entitlement to the benefit sought.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

(4) Unless otherwise ordered by the hearing officer, the party with the burden of proof shall present its evidence first at a formal administrative hearing, followed by the opposing party. If new matters are raised in the presentation of the opposing party's evidence, the hearing officer shall afford the party with the burden of proof the opportunity to present rebuttal evidence. The hearing officer, may in his discretion, order the proof in any manner which will promote the orderly and prompt conduct of the hearing.

Section 7. Assignment and Duties of Hearing Officers. The agency shall designate a hearing officer for a formal administrative action in any manner consistent with KRS 13B.030 within ten (10) days of the commencement of the administrative action.

(1) If the agency elects to designate a hearing officer from the Division of Administrative Hearings in the Attorney General's Office under KRS 13B.030, it shall make that request in writing to the division within ten (10) days of the commencement of the administrative action.

(2) Assignment of a hearing officer from the Division of Administrative Hearings of the Office of the Attorney General shall be made according to the administrative regulations governing the conduct of the Division of Administrative Hearings of the Office of the Attorney General.

(3) A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under these administrative regulations and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on an agency relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by KRS 224.60-130, Chapter 13B, or these administrative regulations, including, but not limited to the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents, or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of, and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law and recommended orders for the secretary; and
- (k) Take any action consistent with law to promote the orderly and

prompt conduct of the administrative action.

(4) The agency shall take no further action with respect to an administrative action, except as a party litigant, as long as the administrative action is assigned to a hearing officer.

Section 8. Hearing Officer Conduct. (1) Conflict of interest.

(a) At any time during an administrative action an assigned hearing officer's continued service would violate the standard set forth in KRS 13B.040(2)(a) or a canon of judicial ethics, that hearing officer shall disqualify himself and enter a written order withdrawing from an administrative action.

(b) At any point during an administrative action a party may move the hearing officer to recuse from an administrative action. The motion to recuse shall be in writing filed in the record and shall be supported by an affidavit setting forth specific facts which demonstrate one or more of the grounds for recusal set forth in KRS 13B.040(2)(b).

(c) Within ten (10) days of recusal of a hearing officer, the secretary shall request or assign another hearing officer by written order according to this administrative regulation.

(2) Ex parte contact.

(a) Unless otherwise allowed by KRS 13B.100, there shall be no ex parte contact between a hearing officer assigned to an administrative action, or any person working under the hearing officer's supervision, and any person with a direct or indirect interest in the outcome to that administrative action concerning the merits of the administrative action assigned to the hearing officer.

(b) This administrative regulation shall not prohibit ex parte contact with staff on purely procedural matters not at issue in the case. This section shall not prohibit communications with staff regarding the status of a case.

(c) Upon receiving an ex parte contact prohibited by this section, the hearing officer shall take every action required under KRS 13B.100, shall cause the parties to be notified of the contact, and shall inform the other parties to the action of their right to move for a recusal.

(d) The hearing officer may impose appropriate sanctions on a person who knowingly makes a prohibited ex parte contact, including, but not limited to deeming the person to have defaulted, striking all or part of that person's pleadings, claims, or defenses, denying any pending motions by the party, issuing a show cause order requiring the person to show why the hearing officer should not sanction the person, or taking such other actions as are appropriate.

Section 9. Service. (1) Unless the hearing officer otherwise orders, every order, every pleading subsequent to the document commencing the administrative action, every paper relating to discovery required to be served upon a party and every written motion, summons, notice, appearance, demand, and similar paper filed in the record shall be served upon each party to an administrative action.

(2) Service may be made by personal delivery of or by mailing a copy of the paper to the party served.

(a) Service by certified mail. Service may be accomplished by certified mail by placing a copy of the paper to be served in an envelope, addressing the envelope to the person to be served at his last known address, affixing adequate postage to and mailing the sealed envelope by certified mail, return receipt requested. Service by certified mail under this section is complete upon mailing. The agency shall immediately upon receipt mark all return receipts and returned mail served under this paragraph with the date the agency receives the receipt or the mail. The United States mail return receipt or returned mail shall be proof of the date of acceptance or refusal to claim a paper served by mail. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service. The proper address for the purposes of service by mail shall be the last known address of the person to be served. If the person to be served is a licensee or permittee of the agency, then the proper address for service of process shall include that person's last address of record in the agency's files.

(b) Service by regular mail. Service may be accomplished by regular mail in the same manner as for certified mail. Service by regular mail is effective upon mailing. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service.

(c) Service by personal delivery. Papers may be served by per-

sonal delivery by any person over eighteen (18) years of age authorized by law or administrative regulation to deliver them in person. Delivery within this administrative regulation means handing it to the party; or leaving it at the party's business address with the person in charge thereof; or, leaving it at the party's residence with a person eighteen (18) years of age or older residing therein. The person serving the papers in person shall fill out a certificate of service indicating the date and manner of service and whether service was offered and accepted or refused. The serving person shall return the endorsed certificate of service to the agency, which shall immediately file it in the record.

(3) Service on attorney. Whenever under these administrative regulations service is required or permitted to be made upon a party represented by an attorney of record in the administrative action, service may be made upon the attorney in the same manner as upon the represented party.

(4) Who is responsible for service. Unless the hearing officer orders otherwise, the person filing papers shall be responsible for serving those papers.

(5) Certificate of service. Whenever any pleading or other paper is served under these administrative regulations, the serving party shall file proof of the date and manner the filed paper was served upon the other parties to the administrative action. Proof of service shall be by a certificate signed by the person who served the paper, or by any other proof satisfactory to the hearing officer. The certificate of service shall identify by name the persons served.

Section 10. Filing of Papers. (1) Papers required to be filed. All papers after the petition required to be served upon a party shall be filed with the agency either before service or within a reasonable time thereafter.

(2) Method of filing. Pleadings and other papers shall be filed with the agency when they are received and endorsed by the agency. The agency shall endorse the date of receipt on every paper filed in an action immediately upon receipt.

(3) Facsimile filings. Papers may be filed with the agency by telefacsimile machine at the telefacsimile telephone number listed for the agency on the summons. Parties filing by telefacsimile machine shall include a certificate that the paper is being filed by fax and the original paper is being filed by mail and shall immediately after faxing such a paper mail the original paper to the agency. The filing date of a paper sent by facsimile shall be the date the agency receives the original, unless the original is received within five (5) business days of the facsimile, in which case the filing date shall be the date the agency received the facsimile.

(4) Signature required. All papers filed in an administrative action must be signed by the filing person. The signature of the filing person or his authorized representative constitutes a certificate that the signing person has read the paper and that to the best of his knowledge, information and belief formed after reasonable inquiry, it is not interposed for any improper purpose. If a paper is signed in violation of this subsection, the hearing officer may strike the paper from the record, deem the party to have failed to file the paper and take any action allowed as a consequence of such failure, strike all or part of any pleading, claim or defense asserted in the filing, or bar an attorney violating this subsection from future participation in that administrative action, and recommend that the secretary bar that attorney from appearing in future administrative actions before the agency.

Section 11. Venue. Administrative hearings shall be conducted at the office of the agency, unless the hearing officer rules that this would place an undue hardship on one of the parties. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 12. Time Computation. (1) Computation. In computing any period of time prescribed or allowed by order of the hearing officer or by administrative regulation, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than

seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(2) Enlargement. When by administrative regulation or by order of the hearing officer an act is required or allowed to be done by a specified time, the hearing officer may, before the specified time expires order the period enlarged or, may upon motion made after the specified period expires, permit the act to be done where the failure to act was the result of excusable neglect. The hearing officer may not enlarge a time frame established by statute.

(3) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceeding within a period prescribed by order of the hearing officer or by administrative regulation after the service of a notice or other paper upon the party by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons, notices and petitions by mail.

Section 13. Amended and Supplemental Pleadings. (1) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one (1) to which no responsive pleading is permitted, he may so amend it at any time within five (5) days after it is served. Otherwise, a party may amend his pleading only by leave of the hearing officer or by written consent of the adverse party filed in the record. Leave to amend shall be freely given to achieve just, timely and inexpensive determinations of matters before the agency.

(2) Response to amended pleading. A party shall file a response to an amended pleading within the time remaining for response to the original pleading or within five (5) days after service of the amended pleading, whichever period may be longer, unless the hearing officer orders otherwise.

(3) Relation back of amendments. Whenever the claim or defense asserted in an amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of filing of the original pleading.

(4) Supplemental pleadings. The hearing officer may upon his own initiative or upon motion of a party permit a party to file a supplemental pleading which sets forth transactions, occurrences or events which have happened since the date of a prior pleading. The hearing officer shall allow such supplemental filings upon reasonable notice and upon such terms as are just, and shall grant the adverse party leave to file a responsive pleading to the supplemented pleading.

Section 14. Prehearing Conferences and Orders. (1) General provisions. A hearing officer, upon the motion of any party, or upon the hearing officer's own initiative, may hold a prehearing conference in any administrative action assigned to him to consider any matter set forth in KRS 13B.070(1).

(2) Telephonic prehearing conferences. Prehearing conferences may be held by telephone upon agreement of all persons concerned. The persons to be involved in the telephonic conference shall place the conference call to the hearing officer.

(3) Prehearing conferences to be recorded. Any prehearing conference in which the hearing officer will hear or rule on motions, objections, or hear argument on or make intermediate rulings shall be recorded and made part of the record.

(4) Settlement conferences. A hearing officer may order a settlement conference to facilitate settlement discussions. The hearing officer assigned to the administrative action shall not be present during the course of a settlement conference in that administrative action. No statements or admissions made at the settlement conference for the purpose of settlement negotiations shall be admitted in evidence at a formal administrative hearing nor be used by the hearing officer in making any report and recommendation to the secretary. To facilitate the settlement conference, the hearing officer may order:

(a) That expedited discovery be had before the settlement conference;

(b) That the parties or their representatives appear at the settlement conference with settlement authority;

(c) That any party produce witnesses, documents or other discovery at the settlement conference.

(5) Prehearing conference orders. The hearing officer shall file a prehearing conference order in compliance with KRS 13B.070(2) after

each prehearing conference which sets forth the date, place and attendees of the prehearing conference and sets out any rulings made by the hearing officer at the prehearing conference.

Section 15. Consolidation and Severance. (1) Consolidation. A hearing officer, on motion of a party or on his own, may consolidate any cases assigned to his docket upon a finding by the hearing officer that the cases concern common questions of law or fact, or have an identity of issues or witnesses, and that consolidation is appropriate according to reasonable administrative practice.

(2) Severance. A hearing officer in his own discretion or on motion of a party, may sever consolidated cases or claims in an administrative action for a separate administrative hearing.

Section 16. Subpoenas. (1) Issuance. Upon motion of a party, the hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of any tangible items in the possession or under the control of witnesses.

(2) Motion for subpoena. A motion for issuance of a subpoena shall be in writing, filed with the agency at least five (5) days before the hearing. The motion shall set forth the need for the subpoena and shall specify the name and address of the person to be subpoenaed, and the name, address and phone number of the party requesting a subpoena. If the subpoena requests the production of tangible items, the motion shall describe those items with particularity. Attached to the motion, the party requesting the subpoena shall attach completed subpoenas on forms provided by the agency.

(3) Quashing subpoenas. Any person subject to a subpoena may, before the time for compliance set forth in the subpoena, move the hearing officer to quash the subpoena on the grounds that it was not lawfully issued, is unreasonably broad in scope, or requires production of evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or violates an evidentiary privilege recognized in the courts of this Commonwealth. The hearing officer shall rule expeditiously on any motion to quash.

Section 17. Motion Practice. (1) General provisions.

(a) All requests for relief from a hearing officer shall be in the form of a motion. Unless otherwise provided by law or administrative regulation, a person may move at any time during an administrative action, orally or in writing for any relief within the authority and jurisdiction of the hearing officer.

(b) Motions and responses. All motions filed with the agency going to the merits of an administrative action shall state the grounds and supporting authority for the motion and the precise relief requested. Any party properly served with a motion may, within fifteen (15) days of the date of service of a motion, file a response stating grounds and supporting authorities for opposing the motion. No motion or response longer than twenty-five (25) pages in length shall be filed without prior leave of a hearing officer.

(c) Format of written motions. All written motions filed under this section shall be on eight and one-half (8 1/2) inches by eleven (11) inches paper stock, shall be signed by the filing person and shall include the name, address, telephone number and telefax number of each person filing the motion. Motions shall not be side-bound or top bound with a binding that interferes with the inclusion of the papers or pleadings in the agency files, unless permitted by the hearing officer. All printed or typed motions shall be in type no smaller than ten (10) point nor closer than twelve (12) pitch. All written motions filed with the agency which are longer than fifteen (15) pages in length shall contain an introduction, a table of contents and authorities, an argument and a conclusion section in which the filing person asks for specific relief. Failure to comply with the requirements of this subsection may be grounds for denying a motion.

(d) Argument on motions. Any party making a motion may move for oral argument before the hearing officer on that motion. If the hearing officer grants oral argument on the motion, he shall record the oral argument and make the recording part of the record.

(2) Motion for more definite statement.

(a) If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite statement before filing a responsive pleading. The motion for more definite statement shall detail the defects complained of and shall set forth the details desired and

explain how the details desired cannot be reasonably understood from the pleading. A hearing officer may on his own initiative require a party to file in the record a more definite statement of his allegations, claims, defenses and requested relief.

(b) If the hearing officer grants a motion for a more definite statement, the nonmoving party shall file an amended pleading setting forth the claims in the original pleading more definitely within ten (10) days of the hearing officer's order, or within such time as the hearing officer may order. If the nonmoving party does not timely file an amended pleading, the hearing officer may, upon motion, strike the pleading to which the motion was directed or make such order as the hearing officer deems just.

(3) Motion for recommendation on the pleadings. After the time for filing any responsive pleading has passed, but within such time as not to delay a formal administrative hearing, any party may move for a recommendation on the pleadings. If, on such motion, matters outside the pleadings are presented to the hearing officer, the hearing officer shall treat and determine the motion as one for summary disposition.

(4) Motion for summary disposition.

(a) Time and form of filing. At any time after an administrative action commences, a party may move for summary disposition of a claim in his favor. In moving for summary disposition, the moving party shall support any factual allegations with affidavits or citations to deposition testimony, answers to interrogatories, responses to requests to admit, documents or with other citations to the record.

(b) Standard. The hearing officer may grant a motion for summary disposition and recommend the secretary rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

(c) Partial summary disposition. If the hearing officer grants a motion for summary disposition in part, the hearing officer shall, as part of his order granting summary disposition in part, set forth all facts that are not genuinely disputed. These facts shall be established for the purpose of any subsequent proceedings in the administrative action. Following a partial summary disposition, the hearing officer shall order such further proceedings as are appropriate.

Section 18. Directed Disposition. (1) Time and standard. At the close of the presentation of evidence by a party at an administrative hearing, an opposing party may move the hearing officer for a directed disposition to the secretary, stating the specific grounds therefor on the record. In ruling on the motion for directed disposition, the hearing officer shall consider all of the evidence in the record presented by the nonmoving party and shall draw all inferences therefrom in favor of the nonmoving party. If, after so considering the evidence, the hearing officer determines there is not substantial evidence appearing in the record upon which the secretary could grant the nonmoving party relief, the hearing officer shall grant the moving party's motion and shall recommend that the secretary deny the nonmoving party's request for relief.

(2) Motion for directed disposition not a waiver. A motion for a directed disposition is not a waiver of the right to an administrative hearing. A party who moves for a directed disposition at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having to reserve the right to do so and to the same extent as if the motion had not been made.

Section 19. Evidence. (1) General. The hearing officer shall admit evidence in the record in accordance with KRS 13B.090 and reasonable administrative practice.

(2) Separation of witnesses; cumulative testimony. The hearing officer may on his own motion or motion of a party, separate the witnesses while testimony is being offered, and may limit cumulative testimony by any witness.

(3) Proffers of proof. Upon the exclusion of evidence offered for the record, the hearing officer may allow proffers of the excluded proof to be placed in the official record in any expeditious manner, including but not limited to allowing such evidence in the form of testimony, affidavits, summaries, excerpts or documents. Proffers of proof shall be placed in the record outside the presence of the hearing panel, if any, and shall not be considered part of the record for the purpose of rendering a recommended order.

(4) Documentary evidence. The hearing officer may admit docu-

mentary evidence in the record in the form of a copy or excerpt if the original document is not available. Any party to the proceeding shall have the right to compare the copy or excerpt with the original prior to the copy or excerpt being admitted in to the record.

Section 20. Recording Proceedings; Transcripts; Exhibits. (1) Recording of proceedings. All testimony, proffers of proof, oral motions, objections and rulings thereon in an administrative action shall be recorded verbatim stenographically, electromechanically or by other means.

(2) Proceedings conducted by electronic means. Upon the filing of a signed written agreement of the parties, any administrative hearing may be conducted in whole or in part by telephone, television or other electronic means in accordance with KRS 13B.080(7). If any part of a hearing is conducted by electronic means for which there is a charge, each party shall bear a pro rata portion of the cost of conducting the proceedings electronically, or shall bear such costs as the hearing officer deems just. Any part of a hearing conducted by electronic means shall be recorded stenographically or by electromechanical means or by other means. Any electromechanical record of a hearing conducted by electronic means shall be filed in the record.

(3) Transcript of proceeding. A hearing officer may, in his discretion, order a transcript be made of all or a portion of any recording of an administrative action assigned to that hearing officer. The agency shall bear the cost of a transcript ordered by the hearing officer.

(4) Use of transcript. No party may cite to, quote or otherwise rely upon a transcript of a proceeding in any paper filed in the record, unless a complete copy of that transcript is also in the record. Any party may file a transcript cited, quoted or relied upon at the same time that party files the paper referring to the transcript. Failure to file a transcript as required by this subsection shall be grounds for denying a motion, or striking from the record all or part of a motion, memorandum, pleading or other paper violating this subsection.

(5) Exhibits. Following the close of the formal administrative hearing, the agency shall retain the record, including all exhibits introduced at the administrative hearing, for at least five (5) years. After five (5) years, or the time for all appeals has expired or the final appeal has been decided, the agency shall notify the parties to the administrative action that they must retrieve their exhibits by a date certain. If the parties do not retrieve their exhibits by the date set by the agency, the agency may dispose of the exhibits pursuant to the agency's records retention procedures.

Section 21. Default. (1) Default on failure to comply with order. If a party fails to timely comply with an order of a hearing officer or a requirement of these administrative regulations, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the secretary enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the secretary enter a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) Default on failure to appear at hearing. If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the secretary enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulting party.

(3) Default recommendation limits. Upon a party's failure to timely comply with a hearing officer's order, the hearing officer may recommend the secretary grant any relief to which the opposing party is entitled. Upon a party's failure to appear at a formal administrative hearing, the hearing officer shall recommend the secretary grant the relief requested in the appropriate pleading.

(4) Default set aside on good cause shown. A hearing officer may, before the time for filing exceptions with the secretary has run, set aside a recommendation by default under this section for good cause shown.

Section 22. Posthearing Procedures; Exceptions; Jurisdiction. (1) Posthearing memoranda. At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to

submit post-hearing memoranda or draft recommended orders for the secretary. If the hearing officer orders such filings, he may allow response times for each side. The hearing officer may in his discretion hear oral argument on posthearing filings. The record of the formal administrative hearing shall not close until after the time has run for all post-hearing filings.

(2) Posthearing order. As soon as practicable after the conclusion of the administrative hearing, the hearing officer shall file an order that memorializes the time, place and duration of the hearing of the administrative action and recites appearances by counsel and parties. The hearing officer shall order at the close of the hearing whether the hearing will be transcribed, and shall set this forth in the posthearing order. The posthearing order shall set a date for the final close of the record.

(3) Transmission of official record. Within five (5) days after the posthearing order is filed, or the transcript of the hearing is received by the agency if a hearing officer orders a transcript, the agency shall compile the official record, as defined in KRS 13B.130, and shall transmit a dated, certified copy of the record to the hearing officer. The hearing officer shall file a recommended order within sixty (60) days of the record's certified date.

(4) Exceptions. Any party filing exceptions to a hearing officer's recommended order as provided for in KRS 13B.110(4) shall file with their exceptions a draft final order for the secretary. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The party filing exceptions shall serve a copy on the hearing officer.

(5) Jurisdiction. The hearing officer shall retain jurisdiction over the administrative action until the time for filing exceptions under KRS 13B.110(4) has run. After that time, the administrative action shall be submitted to and within the sole jurisdiction of the secretary.

(6) The hearing officer shall within thirty (30) days of the closing of the hearing record, make a report and a recommended order to the secretary. The recommended order shall contain the appropriate findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, then the secretary may grant a reasonable extension. The hearing officer shall serve a copy of his report and recommended order upon all parties. The parties may file within fourteen (14) days of service of the hearing officer's report and recommended order exceptions to the recommended order. The secretary may remand the matter to the hearing officer for further deliberation, adopt the report and recommended order of the hearing officer, or refuse to adopt the report and recommended order of the hearing officer and issue its own written order based on the record as a whole.

(7) After completion of the hearing and filing of exceptions, the secretary shall notify the applicant in writing, certified mail with return receipt requested, of the final decision. If any extension of time is granted by the secretary for a hearing officer to complete his report, the secretary shall notify all parties at the time of the granting of the extension.

(8) The secretary shall not grant extensions of time to the hearing officer for more than thirty (30) days for any one (1) extension, and no more than two (2) such extensions shall be granted.

(9) A final order of the secretary shall be based on substantial evidence appearing in the record as a whole and shall set forth the decision of the secretary and the facts and law upon which the decision is based.

Section 23. Appeal Rights. Any person aggrieved by the secretary's final order shall have recourse to the Franklin Circuit Court.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998
FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$1,000, \$5,000 or \$25,000 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for clean up of leaks from underground petroleum storage tanks. Cost should not rise for the public.

2. Continuing costs or savings: The amendments should not raise cost to the public.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms, and maintain hearing files.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$3.2 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process hearing files.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) KRS Chapter 13B required this regulation. HB 282 (1998) required the amendments.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation provides the due process procedures provided for in KRS Chapter 13B.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: None

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: KRS Chapter 13b may have some overlapping provisions, but the regulations are consistent with the statutory provisions.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed

regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The regulation guarantees due process standards.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. Tiering was not necessary, and would violate due process standards.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements. The federal standard does not contain a hearing requirement.

2. State compliance standards. KRS Chapter 13B.

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 standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? 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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on owners/operators extensive savings will be realized by the local government.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amendment)

415 KAR 1:130. Small owners tank removal account.

RELATES TO: KRS 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(2)(a), (b), (j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(j) requires the office [fund] to establish an account to reimburse small owners for the reasonable cost of tank system removal. KRS 224.60-130(2)(a) and (b) require the agency to promulgate administrative regulations to establish and administer the fund. This administrative regulation establishes the eligibility requirements and the ranges of reimbursement for this account.

Section 1. Applicability. The provisions of this administrative regulation shall apply to an owner of a petroleum storage tank containing motor fuels who is required by state or federal law to remove or upgrade the tanks on or before December 22, 1998. This account

shall not be used if the owner intends to replace or upgrade the tank system.

Section 2. Eligibility. An owner shall be eligible for reimbursement from this account if:

(1)(a) The owner is an individual who:

1. Has a five (5) year average adjusted gross income of \$50,000 or less; and

2. Owns full or partial interest in ten (10) or fewer tanks;

(b) The owner is a partnership that:

1. Has a five (5) year average adjusted gross income of \$50,000 or less; and

2. The members of the partnership own full or partial interest in a total of ten (10) or fewer tanks;

(c) The owner is a corporation:

1. Has a five (5) year average total income of less than \$50,000; and

2. The shareholders of the corporation own full or partial interest in ten (10) or fewer tanks; or

(d) The owner is a nonprofit corporation;

(2)(a) The tanks are located on a facility that is or was involved in the retail sale or wholesale distribution of motor fuels. This subsection shall not apply if the owner is a nonprofit corporation;

(b) The tanks are registered with the Division of Waste Management, pursuant to KRS 224.60-105;

(c) The owner certifies that the retail sale or wholesale distribution of motor fuels at the facility will permanently cease upon removal of the tanks and that all known tanks at the facility are being removed or closed in place; and

(d) The owner has owned the tanks for more than one (1) year prior to the date of the application for this account;

(3) The discovery of previously unknown or abandoned tanks shall not effect the eligibility of an otherwise eligible owner; and

(4) It is not necessary for the tanks to be in operation prior to their removal.

Section 3. Account Use. (1) Funds in this account shall be used for reimbursing the reasonable and necessary cost of:

(a) The removal and disposal of petroleum storage tanks containing motor fuels;

(b) Disposal of contaminated backfill or contaminated water if required by law; and

(c) Any post removal or confirmation sampling required by the Division of Waste Management;

(2) This account shall not be used for replacing or upgrading the tank system.

(3)(a) If contamination requiring corrective action is found by analytical sample, the facility shall be eligible for the reimbursement of the cost of the tank system removal, but shall not be eligible for payment of corrective action cost from this account.

(b) Upon receipt by the office [fund] of a notice from the cabinet requiring corrective action at the facility, the owner shall be reimbursed for the tank system removal and then transferred for review under the financial responsibility account, 415 KAR 1:060, or the petroleum storage tank account, 415 KAR 1:070.

(4) If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in five (5) or fewer tanks, the eligible corrective action cost may be reimbursed from the office's [fund's] financial responsibility account, 415 KAR 1:060, or the petroleum storage tank account, 415 KAR 1:070, to be ranked pursuant to 415 KAR 1:090. The owner is required to file an application for assistance in accordance with 415 KAR 1:080 and adhere to the requirements of 415 KAR 1:080, 415 KAR 1:110 and 415 KAR 1:114.

(5) If a release requiring corrective action is confirmed from a tank system eligible for participation in this account, and the owner has interest in six (6) to ten (10) tanks, the eligible corrective action cost may be reimbursed from the fund's financial responsibility account, 415 KAR 1:060, or the petroleum storage tank account, 415 KAR 1:070, ranked for priority in accordance with 415 KAR 1:090, Section 1(1)(b) or 415 KAR 1:090(6). The owner is required to file an application for assistance in accordance with 415 KAR 1:080 and adhere to the requirements of 415 KAR 1:080, 415 KAR 1:110 and 415 KAR 1:114.

(6)(a) If obligations from this account exceed \$3,000,000 during any fiscal year, the secretary may suspend further obligations from this account. The suspension shall be in effect until the secretary determines that further obligations from this account will not threaten the solvency of the fund.

(b) This determination shall be made by the secretary by reviewing:

1. Fund receipts and expenditures;
 2. Audit reports;
 3. Actuarial studies;
 4. Projected revenue; and
 5. Projections on the number of tanks to be removed.
- (7) Obligations from this account shall cease on June 30, 2002.

Section 4. Application. (1) The owner shall file an application for participation in this account no less than forty-five (45) days prior to the removal of the tank or tanks. Application shall be made on the Application for Tank Removal Assistance form, dated May, 1997. In addition to a complete application, the owner shall provide the following information:

- (a) Verification of income level by five (5) years of income tax returns;
- (b) A copy of the Notice of Intent to Permanently Close Underground Tank System, filed with the cabinet;
- (c) Proof of tank registration with the cabinet;
- (d) A copy of the contract with a State Fire Marshal approved tank remover;
- (e) A site map delineating the facility boundaries and the location of all tank pits and areas to be impacted by the removal; and
- (f) Color photographs of the facility and the areas to be impacted by the tank removal.

(2)(a) Within 120 [forty-five (45)] days of the receipt of a complete application, the office [fund] will issue a letter notifying the owner of [its] eligibility and of the amount obligated for the removal, that they are eligible but that no funds are available for the remaining fiscal year, or notifying that the facility is not eligible for participation in this account.

(b) Removal of the tank system shall not begin until the approval of an obligation by the office [fund]. Failure to comply with this requirement shall result in the office [fund] denying the reimbursement.

Section 5. Removal Costs. (1)(a) Reimbursement from this account shall be determined from the lesser of two (2) dollars per gallon of tank capacity removed or the following table:

Size of Largest Tank in Pit (gallons)	Number of Tanks in Pit					Each Extra Tank up to 10
	1	2	3	4	5	
Less than 3,100	\$3,000	\$4,900	\$6,400	\$7,900	\$9,400	\$1,500
3,101 to 5,100	\$3,400	\$5,500	\$7,500	\$9,000	\$10,500	\$1,500
5,101 to 10,000	\$4,900	\$7,400	\$9,700	\$11,800	\$13,800	\$1,800
Greater than 10,000	\$5,400	\$8,600	\$11,800	\$14,000	\$16,900	\$2,200

(b) In addition to the cost listed above, the office [fund] shall reimburse a one (1) time amount, which shall not exceed \$2,000, for the preparation and submission of a Closure Assessment Report. This shall include the cost of a facility classification guide, if required by the cabinet. The office [fund] shall also reimburse a one (1) time amount of \$350 for the mobilization and demobilization of equipment.

(c) If more than one (1) tank pit is located on a facility, the reimbursement shall be calculated by adding the matrix value given for each pit, plus allowable subsection (3) of this section cost.

(2) The following costs shall be included in the costs listed in subsection (1)(a) of this section:

- (a) Tank system removal, cleaning and disposal;
- (b) Removal of twenty-five (25) feet of associated piping outside of the tank pit;
- (c) Removal of the pump island and canopy;
- (d) Drumming and disposal of cleaning material;
- (e) Backfilling to return the excavation to grade. Additional backfill

material may be reimbursed in accordance with subsection (3) of this section [replace tank volume];

- (f) Concrete or asphalt surface removal;
- (g) Equipment and materials necessary for the removal and closure of a tank system;
- (h) Preparation of any permit required for tank system removal or testing;
- (i) Excavation and loading of materials;
- (j) Collection of samples;
- (k) All labor charges relating to subsections (a) through (j) of this section.

(3) The following items are not included in subsection (1)(a) of this section costs and the costs, including labor, of these items may be added to the appropriate subsection (1)(a) of this section cost if necessary to achieve closure and the costs are reasonable:

- (a) Surface replacement;
- (b) Transportation, disposal and replacement of contaminated backfill;
- (c) Disposal of asphalt surface material;
- (d) Installation of up to three (3) monitoring wells, to the extent required by law. Cost of additional wells may be allowed if the additional wells are required in writing by the cabinet. An additional lump sum of \$500 shall be allowed for planning and reporting of the well installation and sampling;
- (e) Disposal or recycling of tank contents or waste;
- (f) Removal, transportation and off-site disposal of water, if required by law;
- (g) Laboratory analysis, to the extent required by law; and
- (h) All costs in this section shall be subject to the ranges set forth in 415 KAR 1:110.

Section 6. Claims. (1) Upon receipt of a notice from the cabinet that no further action is necessary at the facility or a notice from the cabinet of the need to perform corrective action, the owner shall submit a request for reimbursement. The owner shall submit the claim on the Claim Payment Request for Tank Removal form established by the office [fund], dated October 1998 [May 1997].

(2) In addition to the completed claim form, the owner shall submit the following in support of the request:

- (a) The Closure Assessment Report;
- (b) Original invoices in support of any costs claimed under Section 5(3) of this administrative regulation; and
- (c) A copy of the "no further action" notice or the notice requiring corrective action from the cabinet.

(3) The office [fund] shall review the claim requests for the following:

- (a) The number and size of tanks removed;
 - (b) Verification of proper costs from Section 5(2) of this administrative regulation; and
 - (c) Review of the necessity and reasonableness of any costs claimed under Section 5(3) of this administrative regulation.
- (4) The office [fund] may request supporting documentation in addition to that listed in subsection (1) of this section if necessary to verify the reasonableness or necessity of a cost.

(5) If circumstances necessitate the closure in place of tanks, rather than their removal, the costs incurred may be reimbursed from this account. The owners bears the burden of showing the necessity for the closure in place and the cost effectiveness of closure in place versus tank removal.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Application for Tank Removal Assistance (October 1998 [May, 1997]), Public Protection and Regulation Cabinet;
- (b) Claim Payment Request for Tank Removal (October 1998 [May, 1997]), Public Protection and Regulation Cabinet.

(2) These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the office [fund] are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect a small portion of the approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: Owners of petroleum storage tanks that meet the requirements of this account will be relieved of the cost of removing the tanks if the removal is required by state and federal law.

2. Continuing costs or savings: This proposed regulation should not increase cost to the public.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The regulation proposes to commit \$3,000,000 per year to this account.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to administer this program.

(b) Reporting and paperwork requirements: The fund is required to collect, review, maintain, and process review files.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected:

(a) HB 282 required the amendments to this regulation.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The present proposal complies with KRS 224.60-130, as amended by HB 167 (1996) and HB 282 (1998).

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state.

(b) Environmental: This regulation will benefit the environment as it provides a method for low income tank owners to remove potential environmental hazards.

(6) 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 conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: This regulation will benefit the environment as it provides a method for low income tank owners to remove potential environmental hazards. The amendments conform to the statutory changes.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. Tiering was applied. Account eligibility is determined by the owner's financial resources and number of tanks owned.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

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 standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Not applicable.

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

4. How does this administrative regulation affect the local government or any service it provides? Not applicable.

JUSTICE CABINET

Kentucky Department of Criminal Justice Training (Amendment)

503 KAR 3:010. Basic law enforcement training course recruit [trainee] conduct requirements; procedures and penalties.

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation prescribes conduct requirements of recruits [trainees] attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms and Operator's License Required. A recruit shall provide the uniforms required by the department and present a valid motor vehicle operator's license to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. The director or section supervisor shall remove from basic training a recruit who is not qualified to participate in the basic training course. The recruit shall receive no credit for the part of the course he has completed.

(2) Agency's request: A recruit shall be removed from basic training upon the department's receipt of a written request from the

recruit's agency. The recruit shall receive no credit for the part of the course he has completed.

Section 3. Gifts. Gifts from recruits to department staff members shall conform with the Executive Branch Code of Ethics (KRS Chapter 11A).

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit's failure to meet conduct or Honor Code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated.

(b) Suspension. The recruit is suspended from training for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(d) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(e) Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit and recruit's agency. The department shall give written notice to a recruit of any penalty imposed upon him. The recruit's agency shall be given written notice of any penalty imposed upon the recruit except a verbal warning, and shall be given verbal notice when a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements:

(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct, grooming.

(a) The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A

beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A recruit's hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.

(b) A recruit shall not wear obscene clothing, jewelry or other accessories while enrolled in a basic training course. Penalty: verbal warning or written reprimand.

(4) General conduct, alcoholic beverages and other intoxicants.

(a) A recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while enrolled in a basic training course. Penalty: written reprimand, loss of privileges, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning or written reprimand.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) Engage in dangerous, disruptive, disorderly, immoral, or obscene conduct, or possess obscene material while enrolled in a basic training class. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be:

1. Clean, pressed and in good condition;
2. Worn over a clean white tee-shirt, visible at the neck; and
3. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) The only collar pins a recruit may wear are ones provided by his agency. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training must be approved by the section supervisor or branch manager.

(c) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session.

(12) Training activities, dishonesty. A recruit shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course, when attending in Madison County, a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.

(c) A recruit shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his room is clean and free of trash, with beds made and the room ready

for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature of confidence to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(2) The class shall elect an Honor Code representative during the first week of basic training.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative will recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at four (4) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including a marked police vehicle

parked at a bar, tavern, lounge, nightclub, or other establishment with the primary purpose of serving alcoholic beverages, disorderly conduct, speeding, or behavior that gives rise to a citizen's complaint.

Section 9. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a recruit unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 16 of this administrative regulation. To have the authority to impose summary discipline, the staff member must have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit may be charged with misconduct serious enough to authorize expulsion.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall read the charges and explain them to the recruit if necessary.

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit admits the charges or denies the charges but waives a hearing:

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing.

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

[Section 1. Conduct. A trainee attending a basic training course conducted by the Department of Criminal Justice Training shall be subject to the following rules of conduct:

(1) Absences:

(a) For the purpose of this section, absence is defined as not being physically present in a class.

(b) Any absences of less than twenty (20) percent of the subject area, excused or unexcused, shall be made up by completion of an assignment in a manner approved by the section supervisor. Any absence, excused or unexcused, of twenty (20) percent or more, requires the trainee to repeat the area of instruction. Any test occurring

during an unexcused absence cannot be made up by the trainee.

(c) To be excused, absences shall be for legitimate reasons such as sickness, court appearances, or other emergencies. Written notice shall be given when possible before the absence or on the first day upon returning in unexpected absence.

(2) Academy uniforms.

(a) Cadet uniform of the day. A uniform of the day is required by the Department of Criminal Justice Training. Cleaning and maintaining the uniform is the trainees' responsibility. Daily inspections will be made and the trainee shall wear the uniform in the manner prescribed below.

(b) The uniform shall be clean and well pressed. Department collar pins will be worn centered on the collar parallel to the top edge and three-fourths (3/4) inch back from the vertical edge of the collar. The collar pins shall be cleaned and shined.

(c) The trainee name tag shall be centered on the left breast pocket flap.

(d) One (1) pen, the same color as the officer's collar pins, may be carried in the left breast pocket.

(e) The shirt sleeves shall not be worn rolled up nor any button on the shirt unfastened except the collar button.

(f) Each trainee shall wear a clean white high neck polo shirt with an unstretched collar under his uniform shirt.

(g) A plain buckle black belt approximately one (1) inch or more in width shall be worn with the trousers (with the exception of female trainee trousers).

(h) Black or navy blue socks shall be worn while in uniform.

(i) All trainees shall wear clean, shined black leather, plain-toed, police-type shoes, except as directed by class coordinator dependent on nature of course activity.

(j) Trainees shall wear the DOCJT visored utility cap as part of the designated basic training uniform.

(k) The visored utility cap shall be worn during roll call, inspection (excluding graduation), and all outdoor exercises.

(l) The visored utility cap, when worn, shall not be tipped backwards or worn to one side; it shall be worn either straight away or slightly forward.

(m) The brim or visor of the visored utility cap shall not be rolled or creased.

(n) The DOCJT tee shirt shall only be worn during physical training.

(3) Alcoholic beverages or other intoxicating substances.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages or controlled substances not therapeutically prescribed by a physician while on property utilized by the Department of Criminal Justice Training.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise the basic course supervisor of the use of controlled substances or medication whether or not it has been prescribed by a physician.

(4) Breaks.

(a) Each class may be allowed a ten (10) minute break per hour of instruction when possible. The course instructor shall designate the specific time and place for breaks.

(b) Basic trainees, attending class in the Stratton Building, are prohibited from taking breaks (including lunch time before or after eating) except in the following designated areas:

1. Lower level of breezeway (outside, between main building and gym);

2. Upper level of the Stratton Cafeteria; and

3. Second floor vending area — only when cafeteria is closed.

(5) Chain of command.

(a) All communications shall follow chain of command of the Department of Criminal Justice Training.

(b) Exceptions are permissible when necessary in conducting a training session.

(6) Conduct unbecoming an officer trainee.

(a) A trainee shall not conduct himself in a manner unbecoming an officer trainee.

(b) For the purposes of this section conduct unbecoming an officer trainee shall consist of, but not be limited to:

1. Inefficient or wasteful use of materials, supplies and equipment issued by the Department of Criminal Justice Training for the use by trainees;

2. Disorderly or boisterous behavior which is or may become disruptive to a training session;

3. Careless, negligent, or inattentive conduct which creates or may create a risk of injury to others during a training session;

4. Malingering or sleeping during a training class;

5. Wearing clothing that is so dirty or tattered as to present a sloven appearance;

6. Wearing clothing in a manner that is sexually revealing or suggestive; or

7. Aiding or abetting another in any of the foregoing.

(7) Dishonesty.

(a) A trainee shall not cheat or attempt to cheat on an examination, other evaluation or assigned project; alter or attempt to alter an examination score; deceive for profit or gain; or steal.

(b) A trainee shall not encourage, aid or abet any trainee in any of the foregoing proscribed conduct.

(8) Dormitory conduct.

(a) Basic training course trainees unless excepted shall reside in the dormitory designated by the Department of Criminal Justice Training during basic training and shall not travel to their homes except on weekends or holidays when school is not in session. Circumstances which would require emergency leave will be addressed by the training director on a case-by-case basis. A trainee who lives in Clark, Estill, Fayette, Garrard, Jackson, Jessamine, Madison or Rockcastle County may be permitted to commute to training if the trainee's chief or chief law enforcement officer so requests in writing and agrees to accept the condition that if such trainee is tardy for roll call three (3) times the trainee's privilege to commute shall be withdrawn and required to live in the dormitory for the remainder of the course.

(b) Basic training course trainees shall return to their dormitory rooms by 10:30 p.m., Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported through channels to the director, in writing.

(c) Backing into parking spaces is prohibited.

(d) Basic training course trainees shall observe "lights out" by 11 p.m. Sunday through Thursday except on nights prior to an academic test when the time will be extended to 12 midnight.

(e) Trainees living in the dormitory shall conduct themselves in an orderly manner. Any dangerous or disruptive behavior such as but not limited to rowdiness, loud noise, theft, immoral or obscene conduct shall not be committed.

(f) Each trainee will be responsible for cleaning his area. Each morning, prior to leaving for class, the trainee shall ensure his room is clean, free of trash, beds made and the room ready for inspection.

(g) Doors shall be locked whenever a room is unattended. While the room is unoccupied during training hours (8 a.m. — 5 p.m.), the window coverings shall be left open to their widest extension.

(h) The use of cooking appliances such as hot plates, electric skillets and ovens is prohibited.

(i) All dorm rooms and lockers are subject to inspection search for purposes of safety, sanitation and rule violations by the staff of the Department of Criminal Justice Training.

(j) The lobby of the dormitory is available to entertain visitors and guests and is not to be used as a group study area.

(k) A trainee residing at the dormitory shall:

1. Turn off all lights upon departure from the room;

2. Turn off air conditioner when leaving the room for a long period of time, including school hours and weekends while away; and

3. Turn off heating unit when leaving the room for a long period of time unless the temperature is near freezing — then leave the heater on low.

(l) A trainee shall not have any person of the opposite sex in his or her dormitory room without written permission of the class coordinator or higher staff member. No visitation shall be permitted after 10:30 p.m.

(m) Pets, animals or birds of any kind shall not be kept in rooms of the dormitory facilities.

(9) General classroom conduct.

(a) Trainees conducting themselves in a boisterous or disruptive manner which does or may interfere with the orderly presentation of

training materials or instruction is prohibited and may be removed from the classroom at the option of the instructor.

(b) The use of tobacco, drink or food products and the wearing of hats or caps is prohibited in all classrooms in which Department of Criminal Justice Training classes are being conducted. The use of head cover may be permitted by an instructor in outdoor classroom training sessions.

(c) As used in this section, classroom includes all indoor facilities and outdoor areas utilized by the Department of Criminal Justice Training for training purposes whether the facilities are regularly utilized by the department or periodically utilized such as state parks, hotels/motels, law enforcement agencies or colleges and universities.

(10) Gifts. A trainee, individually or as a participant in group action, shall not give or contribute toward the giving of a gift of value to a staff member or guest instructor of the Department of Criminal Justice Training while participating as a trainee in any course conducted by the Department of Criminal Justice Training.

(11) Grooming (personal):

(a) The training shall be clean shaven with sideburns no longer than the bottom of the ear lobe. Mustaches are permitted if they are neatly kept, but only if the trainee has the mustache upon arrival. Beards shall not be permitted without the trainee's written departmental approval. The trainee shall not have hair that is unkempt nor longer than medium length. The hair shall not be over the collar, with the exception of female trainees.

(b) Personal appearance shall be such as to project an image which will reflect favorably upon the trainee as well as the Department of Criminal Justice Training and the trainee's employing agency.

(c) Clothing, jewelry or other accessories which depict obscenities (either pictorially or written) or any symbol representing objects not considered in good taste (based on professional police standards, or which depict words considered abusive) cannot be worn while attending Department of Criminal Justice Training classes or while on Department of Criminal Justice Training or campus property.

(12) Improper charges to the Department of Criminal Justice Training:

(a) A trainee shall not charge any item or service to the Department of Criminal Justice Training without written approval of an authorized Department of Criminal Justice Training representative.

(b) A trainee shall not willfully or negligently damage, destroy, or fail to return property of the Department of Criminal Justice Training or university. Failure to comply with this administrative regulation shall result in a trainee having to replace or pay for the damaged, destroyed or lost property.

(c) A trainee cannot be considered to have successfully completed basic training, and will not be allowed to graduate, until he has returned all issued items or made satisfactory arrangements to pay for nonreturned items or damaged items.

(13) Insubordination:

(a) A trainee shall not be insubordinate.

(b) For the purpose of this section insubordination means:

1. A refusal to obey a lawful order from an instructor or other staff member of the Department of Criminal Justice Training authorized to convey the order;

2. Disrespectful conduct consisting of, but not limited to, use of vulgarity, rude remarks, obscene comments or gestures.

(14) Tardiness:

(a) Class shall begin and end promptly as scheduled unless otherwise specified. All trainees are expected to be punctual for class and school functions.

(b) Those who are late during the first ten (10) minutes of a class without justification shall be considered tardy.

(c) Arrival after ten (10) minutes will be considered an absence.

(15) Weapons, explosive substances, and other devices:

(a) Weapons:

1. Deadly weapons (as defined in KRS 500.080) or ammunition therefore shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training except those specifically authorized by the Department of Criminal Justice Training. Weapons specifically designated by the Department of Criminal Justice Training for training purposes and which are not provided by the Department of Criminal Justice Training shall only be brought directly to the facilities of the department at specific times and removed all as may be deemed appropriate by the department. Such

weapons may not be stored in trainee vehicles parked on property utilized by the Department of Criminal Justice Training.

2. Weapons specifically designated by the Department of Criminal Justice Training to be used for training purposes shall be stored in a vault to be provided by the department at all times when they are not being used directly in a training session and may be removed only for scheduled training, servicing, cleaning, or repair purposes. Servicing, cleaning, and repairs of weapons shall be effected (other than repairs which may require expertise of a qualified gunsmith) only at times, places and subject to such conditions and supervision as may be approved by the supervisor of the basic training section. Such activity shall only be conducted in the presence of a certified firearms instructor.

(b) Devices other than firearms:

1. Destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), "stun" guns, or fireworks (in all forms) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training.

2. Exceptions may occur for training purposes and then only as they may be provided by the department.

(c) Hazardous substances:

1. Hazardous substances (as defined in KRS 224.877) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training.

2. Exceptions may occur for training purposes and then only as they may be provided by the department.

(d) Confiscation:

1. Any instructor, supervisor, assistant director or director who observes any violation of this section, shall immediately confiscate the offending item or substance.

2. These items shall then be stored in a safe and secure facility of the Department of Criminal Justice Training pending appropriate disposition.

Section 2. Summary Action. (1) Recognizing that conduct of a trainee may constitute an immediate danger or a immediate threat of danger to self or others, an instructor, section supervisor, training assistant director, director or the commissioner, having knowledge of such conduct, may summarily discipline the trainee by reprimand, suspension from the particular training activity or by other appropriate action.

(2) Following such disciplinary action, the foregoing rules of procedure set forth in Section 4 of this administrative regulation shall be applicable.

Section 3. Penalties. (1) For the following violation:

(a) Alcoholic beverages or other intoxicating substances, i.e., being on property utilized by the Department of Criminal Justice Training while under the influence of alcoholic beverages or controlled substances not prescribed by a doctor, or if prescribed by a doctor participating in a training exercise while under the influence thereof to the extent that it endangers the trainee or other persons or property;

(b) Conduct unbecoming an officer trainee, i.e., willful, careless, negligent or inattentive conduct which causes injury or creates a grave risk of injury to another person or property;

(c) Dishonesty;

(d) Dormitory conduct, consisting of disorderly conduct proscribed by Section 1(7)(e) of this administrative regulation;

(e) Property loss or damage, i.e., willfully or negligently damaging, destroying or failing to return property of the Department of Criminal Justice Training or university;

(f) Weapons and explosives;

(g) A second violation of the rules described in Section 1(1)(b) of this administrative regulation. The following penalty may be imposed:

1. Expulsion from training with or without prejudice. (Such expulsion shall be deemed a course failure);

2. Loss of privileges (meals, housing or both);

3. Suspension from training. (Such suspension shall be deemed a failure for that portion of training);

4. Written reprimand (with a copy filed with trainee's employing agency);

5. Probation.

(2) For the following violations:

(a) Alcoholic beverages or other intoxicating substances, i.e., the

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

use or possession thereof not prescribed by a doctor on or about property utilized by the Department of Criminal Justice Training; possession of alcoholic beverages or intoxicating substances in a dormitory room shall result in loss of housing privilege;

(b) Conduct unbecoming an officer trainee except that which causes injury or damage to others or property per subsection (1) of this section;

(c) Curfew violation as proscribed by this subsection;

(d) Improper charges to the Department of Criminal Justice Training;

(e) Insubordination;

(f) Two (2) violations of other rules. The following penalty may be imposed:

1. Loss of privileges (meals, housing or both);

2. Suspension from training not to exceed five (5) days (such suspension shall be deemed a failure for that portion of training);

3. Written reprimand (with a copy filed with trainee's employing agency);

4. Probation;

(3) For all other violations not specifically noted in subsections (1) and (2) of this section the following penalty may be imposed:

(a) Written reprimand;

(b) Written warning;

(c) Probation.

Section 4. Who May Impose Penalties. (1) Instructor. An instructor may only impose a penalty consisting of a written warning.

(2) Supervisor. A supervisor may only impose a penalty consisting of a written warning, a written reprimand or a probation.

(3) Training director. The director of the training division may only impose a penalty consisting of a written warning, written reprimand, suspension from training, a loss of privileges or probation.

(4) Commissioner. The commissioner may impose a penalty consisting of any of the previously identified penalties, expulsion from training or probation.

Section 5. Complaint Process. (1) Complaint. any employee of the Department of Criminal Justice Training, guest instructor, guest or any basic course trainee having reasonable grounds for believing that a trainee has violated any of the rules of conduct identified herein or any violation of the law may file a complaint with the supervisor of the basic training section. This complaint should be but is not required to be in writing setting forth the facts upon which the complaint is based. If an instructor or the supervisor observes a violation of a rule for which only a penalty of a written warning or reprimand is provided a complaint need not be filed.

(2) Review of complaint.

(a) Upon receiving a complaint of a violation of these rules of conduct or of a violation of law the supervisor of the basic training section shall inquire into the matter and take such statements as may be advisable.

(b) After an inquiry into and review of the complaint the supervisor of the basic section may dispose of the complaint by the issuance of a written warning or reprimand or file charges.

(c) If the supervisor of the basic section deems it advisable to file charges the file together with the written request specifying the proscribed conduct shall be forwarded to the legal officer.

(3) Charges.

(a) Upon receipt of a request for charges, the legal officer shall review the request and the file to determine the sufficiency of the requested charge.

(b) The legal officer may make or cause further inquiry into the matter for additional information.

(c) The legal officer shall file such charges against a trainee as the legal officer believes is justified from the file and further inquiry or may deny the request for charges if the facts do not support any charges. If the legal officer declines to proceed with charges he shall notify the commissioner with a statement of reasons and the commissioner shall review the decision.

(4) Form.

(a) Charges shall be in writing.

(b) The proscribed conduct shall be particularly described so as to reasonably inform the trainee of the nature of the allegation.

(c) The charges form shall state the time, date and place the

trainee shall be required to appear and plead to the charges.

(d) The legal officer shall sign the charges form and have a copy served upon the trainee either in person or by mail.

Section 6. Summary Disposition. (1) At the appearance of the trainee the charges shall be read to the trainee and explained if need be.

(2) The trainee shall be advised of a proposed penalty to be assessed in the event the charges are admitted or in the event the trainee denies the charge but waives a hearing.

(3) The trainee shall be requested to enter a plea.

(4) If the trainee admits the charge he shall be permitted to make a statement of explanation.

(5) If the trainee admits the charge or denies the charge but waives a hearing, penalty shall be assessed and an order entered.

(6) If the trainee denies the charge and requests a hearing a date and place shall be forthwith determined and the trainee notified either in person or by mail.

Section 7. Hearing. (1) The hearing shall be open.

(2) A trainee charged with a violation shall have the right to be present at a hearing, to testify, to present evidence in his own behalf, present witnesses, and to question those testifying against him.

(3) Formal rules of evidence and procedures shall not be applicable.

(4) The hearing shall be recorded by audio means but need not be transcribed.

(5) Affidavits may be received provided a copy is served on the other side not less than five (5) days prior to the hearing.

(6) The legal officer shall prepare a finding of fact, conclusion of law and order at the conclusion of the hearing pursuant to direction of the staff member conducting the hearing.

Section 8. Review. (1) A penalty imposed by an instructor, supervisor or director shall be automatically reviewed by the next highest level in the chain of command.

(2) The review shall be made on the record only, i.e., on the audio recording of evidence, documents and statements introduced at the initial hearing.

(3) The review shall be limited to a determination of whether there are reasonable grounds for believing that the charge or charges have been sustained by the evidence and whether the penalty imposed is commensurate with the seriousness of the evidence.

Section 9. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the point (reasons) on which the appeal is based and shall be on a form provided by the Department of Criminal Justice Training. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the Commissioner of the Department of Criminal Justice Training by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the initial hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

COMMONWEALTH OF KENTUCKY JUSTICE CABINET

In the matter of: (Name)

NOTICE OF APPEAL

Comes _____ (name) who appeals from an Order of the Commissioner of the Department of Criminal Justice Training dated _____, 19____, a copy of which is annexed hereto and made a part hereof, and requests that said Order be reversed and held for naught.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

The basis and reasons for this appeal are as follows:

This the _____ day of _____, 19____.

NAME AND ADDRESS:

Served on the Department of Criminal Justice Training by mailing a true copy hereof to the Commissioner thereof by certified mail this the _____ day of _____, 19____.

NAME:}

JOHN W. BIZZACK, Commissioner
STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: October 14, 1998
FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., in Room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, Attorney, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Phone (606) 622-5897, Fax (606) 622-2740.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: All law enforcement or other officers participating in basic training and their agencies.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-1999 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Division of Finance (Amendment)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) program; KRS 157.360 bases SEEK funding upon average daily attendance; KRS 158.030, 158.100, and 159.030 require the age for compulsory school attendance; KRS 158.060 defines the school day and month and make-up of school days missed; KRS 158.070 defines the school term; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days [hours] equal to the greatest number of days [hours] missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

Section 2. (1) The local board of education shall file the adopted school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar. [may miss up to a total of five (5) hours each school year as a result of school days shortened due to emergency without making up those hours.]

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(3) A local board of education request for disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content [activities] included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305; [not included in the "Program of Studies for Kentucky Schools, Grades Primary-12", which have been approved for the current school year by the Commissioner of Education pursuant to 704 KAR 10:050;]

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods [each class], and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 6. (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning, one (1) time in the afternoon and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and main-

taining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure, parent or legal guardian signature and other information required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 7. (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of [instructional time in] the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of [one (1) to thirty-four (34) percent of instructional time in] the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of [instructional time in] the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of [eighty-five (85) to 100 percent of instructional time in] the regularly scheduled school day for his grade level.

(5) The percentages described in this section shall apply to the regularly scheduled school [instructional] day approved by the local board of education and are [is] applicable to entry level through grade level twelve (12).

Section 8. A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 9. A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school district shall be included in calculating the district's average daily attendance.

Section 10. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 11. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil that is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 12. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 13. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 14. The superintendent's annual attendance report shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320. Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 15. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 16. [45:] The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W6, W7, [W10:] W13, [W14:] W16 or W18 during the previous school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(11) R10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

(12) R11 - An expelled pupil received in the current school year, from a regional alternative facility not run by the expelling school district, prior to the completion of the expulsion period;

(13) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1;

(14) [42:] W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be R2;

(15) [43:] W03 - A pupil transferred to a nonpublic school in this

public school district. The reentry code to use with W3 shall be R3;

(16) [44:] W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W4 shall be R4, R5 or R7;

(17) [45:] W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(18) [46:] W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age, ~~has completed the required sixty (60) day waiting period pursuant to KRS 159.010~~ and has withdrawn. The reentry code to use with W6 shall be R6;

(19) [47:] W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W7 shall be R6;

(20) [48:] W08 - A pupil withdrawn due to death;

(21) [49:] W09 - A pupil graduated prior to the end of the school term or year;

(22) [20:] W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be R6 if the student returns to the expelling local school district in the current school year after the expulsion period has been completed. The reentry code to use with W10 shall be R10 if the student returns to the expelling local district in the current school year prior to completion of the expulsion period; [discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;]

(23) W11 - A pupil who has been expelled for behavioral reasons withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be R4 if the student returns in the current school year after the expulsion period has been completed. The reentry code to use with E11 is R11 if the student returns in the current school year prior to completion of the expulsion period;

(24) [21:] W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R6. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(25) [22:] W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W6, W7, W10, W13, [W14:] W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R6;

[23:] W14 - ~~A pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;~~

(26) [24:] W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(27) [25:] W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and

(28) [26:] W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be R6.

Section 17. (1) The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S - Suspension from school for one (1) full day; and

(b) N - Suspension from school for one-half (1/2) day

(2) Suspension shall be considered an unexcused absence.

Section 18. The following expulsion codes shall be used to indicate the expulsion status of pupils:

(1) XP1 - A student expelled from school during the current school year for behavioral reasons, being provided educational

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

services by the expelling local school district;

(2) XP2 - A student expelled from another local school district during the current school year for behavioral reasons, being provided educational services by a regional alternative facility not run by the expelling local school district;

(3) XP3 - A student expelled from school during the current school year for behavioral reasons, not being provided educational services.

(4) XE1 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by the local school district;

(5) XE2 - A student expelled from another local school district during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by a regional alternative facility not run by the expelling local school district; and

(6) XE3 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is not being provided educational services.

Section 19. [Section 16:] The following ethnic codes shall be used to indicate the ethnic origin of pupils until June 30, 2000:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(6) 6 - Other.

Section 20. (1) Beginning July 1, 2000, the following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) H - Hispanic or Latino - A person of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race; and

(2) N - Not Hispanic or Latino.

Section 21. (1) Beginning July 1, 2000, the following race codes shall be used to indicate the racial categories of pupils:

(a) W - White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(b) B - Black or African American - A person having origins in any of the black racial groups of Africa;

(c) H - Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

(d) A - Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam; and

(e) I - American Indian or Alaska Native - A person having origins in any of the original peoples of North America and South America (including Central America), and who maintains tribal affiliation or community attachment.

(2) More than one (1) racial category may be selected. Local school districts must be able to identify the number of students that have selected more than one (1) racial category as described in this section.

Section 22. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report prior to June 30 of each year.

(2) [Section 17:] The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file. The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [18:] The "Growth Factor Report" file layout, dated June 1, 1998;

(b) [July 1, 1996, and] The "Superintendent's Annual Attendance Report" file layout, dated July 1, 1996; and

(c) The "Student Dropout Questionnaire" dated June 1, 1998. [are incorporated herein by reference and may be obtained, copied and inspected]

(2) This material may be inspected, copied, or obtained at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILMER S. CODY, Commissioner

HELEN W. MOUNTJOY, Chair

KEVIN NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

from administrative regulation on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Amendments to the regulation are made to conform with current statutes.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Learning Programs Development
(Amendment)

704 KAR 3:035. Annual professional development plan.

RELATES TO: KRS 156.095, 156.0951, 156.101, 158.070

STATUTORY AUTHORITY: KRS 156.070, 156.095, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.095 and 156.0951 authorize the Kentucky Board of Education [State Board for Elementary and Secondary Education] to establish, direct, and maintain a statewide program of professional development training, with the [relevant] purpose of the [such-a] program being the improvement of instruction in the public schools; [and] KRS 158.070 requires the state board to promulgate [adopt] administrative regulations establishing [setting forth] guidelines and procedures to be followed for the approval of the four (4) days of the minimum school term which are mandated to be utilized by each local school district for professional development activities for the professional staff. This administrative regulation [implements these duties and powers. It] identifies the components of professional development planning and requires each school and local district to submit annually professional development plans by which they are to be guided in providing suitable professional development training programs and in requiring all instructional leaders to participate in a statewide training program implemented under KRS 156.101.

Section 1. Definitions. The following definitions shall apply to this administrative regulation:

(1) ["Professional development" means those experiences which systematically, over a sustained period of time, enable educators to acquire and apply knowledge, understanding, skills, and abilities to achieve personal, professional and organizational goals and to facilitate the learning of students.]

(2) ["Needs assessment" means the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas.]

(2) ["Professional development" means those experiences which systematically, over a sustained period of time, enable educators to acquire and apply knowledge, understanding, skills, and abilities to achieve personal, professional and organizational goals and to facilitate the learning of students.]

(3) "Professional development plan" means a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished relative to defined standards, goals, or objectives.

(4) "Professional development program" means a process of pro-

fessional development that is measurable by indicators. It may be composed of several initiatives.

Section 2. Each local school and district shall develop a process for professional development. This process shall lead to a plan that describes training activities which the school and district will provide for its certified staff within the goals as established in KRS 158.6451 and local needs assessment. The local district and school plans shall be submitted to the Department of Education prior to the implementation of the plans.

Section 3. Each school and local district shall have on file with the [State] Department of Education a professional development plan that meets the following six (6) standards:

(1) There is a clear statement of the school or district mission;

(2) There is evidence of representation of all persons affected by the professional development program;

(3) Application of needs assessment analysis is evident;

(4) Professional development objectives are focused on the school or district mission and derived from needs assessment;

(5) The professional development program and implementation strategies are designed to support school or district goals and objectives; and

(6) A process for evaluating professional development experiences and improving professional development initiatives is incorporated in the plan.

Section 4. (1) The professional development plan shall address any instructional improvement or training needs that are in accordance with the goals as established in KRS 158.6451.

(2) Professional development activities shall be related to teachers' instructional assignments and administrators' professional responsibilities. Activities shall support the local school's instructional improvement goals and objectives identified in the professional development plan.

(3) Activities for professional development credit of classroom teachers shall not supplant any of the six (6) hour instructional day.

(4) A district [Professional development activities shall not occur on snow days. Districts] may[, however,] report flexible professional development activities on unpaid, noncontact snow days. This shall require [situation involves] a district calendar change and the change shall be reported to the Department of Education [only, and it shall not result in activities on snow days].

(5) Professional development experiences that relate to an individual professional growth plan may be used to satisfy the requirements for certification or renewal options as established by the Kentucky Education Professional Standards Board in 704 KAR Chapter 20 [if approved by the university or college in which the individual is enrolled].

(6) Professional development grant dollars may be used for college or graduate course tuition reimbursement for a teacher in specific academic subject content areas in math, science, English/language arts, social studies, arts and humanities for which he is assigned to teach. The use of professional development funds for this purpose shall be specified in the district professional development plan approved by the school board or the school plan approved by the school council as to funds under its control. Particular content areas and grade levels which qualify for reimbursement may be specified based upon information about the level of academic preparation of the teacher employed, local student performance data, and instructional need. [Professional development credit shall not be awarded for college graduate courses that lead to a change in rank or certification status. Exceptions may be made by the local district for university courses that are clearly supportive of the professional development plan.]

(7) Professional development credit shall not be awarded for those activities that provide remuneration beyond travel, food, [and] lodging or tuition.

(8) A school district [Districts] implementing a flexible professional development schedule shall award professional development credit for any given academic school year within the professional development plan.

(9) Appropriate professional development experiences shall be those which address instructional improvement for the school district,

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

an individual school or a group of teachers in accordance with goals identified from the needs assessment.

(10) Activities which are not appropriate as professional development experiences [for professional development credit] shall include the following:

- (a) Organizational business meetings;
- (b) Compiling class rosters;
- (c) Scheduling;
- (d) Textbook adoption committee meetings;
- (e) Writing lesson plans;
- (f) Housekeeping duties;
- (g) Faculty meetings;
- (h) Extracurricular activities;
- (i) PTA/PTO meetings;
- (j) Sporting events;
- (k) Field trips; and
- (l) Parent-teacher conferences.

(11) Parent-teacher conferencing skill development shall be permissible as professional development.

Section 5. The Qualifications and Duties of the District Professional Development Coordinator. (1) Qualifications for the position of district professional development coordinator shall include:

(a) A staff member meeting the certification requirement for a professional development coordinator as established by the Education Professional Standards Board in 704 KAR 20:165;

(b) Experience in professional development planning; and

(c) A demonstrated ability to connect professional development with effective instructional practices and student achievement data.

(2) Duties of the district professional development coordinator shall include:

(a) Conducts the district needs assessment;

(b) Coordinates the intradistrict alignment of goals, objectives, and activities for professional development; [shall be as follows:

(1) Facilitates needs assessments for professional development and the development of goals and objectives for training programs and projects. Needs assessments and development of goals and objectives shall be carried out in conjunction with the school council or professional development committee of each school through regular meetings.]

(c) [(2)] Provides technical assistance to school councils, staff and [or] professional development committees in the alignment of professional development activities with school goals as identified through the local school planning process; [establishment of a school plan for professional development for the local district.]

(d) Disseminates professional development information to school councils, staff members, and professional development committees; [(3) Assists in developing a professional development plan for inclusion in the school improvement plan.]

(e) [(4)] Coordinates the planning, implementation and evaluation of the district professional development program which is aligned, supportive, and developed in conjunction with local [the] school plans; [and district professional development committees to include maintaining or verifying all professional development records, documentation and other pertinent records.]

(f) Upon request by a school council or school staff, provides technical assistance on the evaluation and coordination of school-based professional development activities;

(g) (5) Coordinates the establishment of local policies, procedures, timetables, preparation of necessary forms and letters, assignment of workshop sites and all other practical elements of professional development training, including fiscal management;

(h) Maintains, verifies and, when appropriate, submits district and school professional development records, documentation, and other pertinent information to the Department of Education;

(i) Explains [(6) interprets] the district's professional development programs' objectives, results, and needs to school professionals [professional development committees], district staff, the board members, civic and parent groups, teacher training institutions and others as requested; and [appropriate.]

(j) [(7)] Maintains a professional contact [continuous liaison] with the [Kentucky] Department of Education and other agencies involved [with the district] in providing [the provision of] professional development activities.

Section 6. [Additional standards for the school and district professional development planning process are in the document "Professional Development Planning Process", dated November 1994 which is hereby incorporated by reference and may be obtained from the Division of Professional Development, 17th Floor, Capital Plaza Tower, Frankfort, Kentucky, Monday through Friday, 8 a.m. -- 4:30 p.m.

Section 7. More than fifteen (15) percent of the [each local] district's professional development grant [funds] shall not be used for administrative purposes.

Section 7. [8:] When implementing professional development programs under KRS 158.070, a [each] local school or district shall adhere to its professional development plan.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Amendments to the regulation are made to conform

with current statutes.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(Amendment)

704 KAR 7:070. Guidelines for dropout prevention programs.

RELATES TO: KRS [156.031:] 158.148

STATUTORY AUTHORITY: KRS [156.031:] 156.035, 156.070, 158.148

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.031 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990; and] KRS 158.148 directs the Kentucky Board of Education [State Board for Elementary and Secondary Education] to establish criteria for the development of dropout prevention programs and [criteria for awarding grants to school districts which have high dropout rates and high numbers of dropouts. The state board is also directed to prescribe dropout prevention services and to develop] grant awards [funding criteria] based upon available appropriations from the General Assembly. This administrative regulation prescribes the criteria for operation and funding of dropout prevention programs and authorizes the Department of Education to enter into contracts with other agencies for the purpose of securing additional funds for dropout prevention programs.

Section 1. (1) A local board [Local boards] of education may operate dropout prevention programs for students at [ef] high risk for dropping out. A student is considered of high risk for dropping out if he [or she] meets one (1) or more of the following criteria:

(a) A student who is currently achieving two (2) or more grade levels below his [or her] age group;

(b) A student who has demonstrated poor academic skills, i.e., who has failed two (2) or more subjects in two (2) of the past four (4) school years;

(c) A student who is consistently absent or tardy and who has been absent twenty-five (25) or more unexcused days in the last two (2) school years and has an overall grade point average below a C;

(d) A student who has been suspended (in-school alternative to home suspension or home suspension) two (2) or more times during the past school year and has an overall grade point average below a C;

(e) A student who becomes pregnant;

(f) A student whose family has a history of dropping out [and/or whose family does not support the student in the completion of school];

(g) A student who little or no participation in school cocurricular activities;

(h) A student who is below grade level [two (2) or more grades behind] in reading or math skills;

(i) A student who shows indication of being socially isolated;

(j) Upon approval of the Department of Education, other indicators supported by strong evidence may also be utilized to identify students of high risk for dropping out.

(2) Funds shall be made available to eligible Kentucky school districts through contractual agreements whereby school districts agree to provide special services designed to prevent students of high risk from dropping out. State appropriated funds shall be utilized first in providing grant awards for dropout prevention programs. These funds may be supplemented by other special funds which may be available to the Department of Education through contracts or grants intended for this purpose.

(a) ~~[Eligibility for grant awards shall be based on the following criteria:~~

~~1. Twenty (20) dropout prevention programs shall be funded in districts whose dropout rates are among the highest twenty-five (25) districts in the state and who reported more than 100 student dropouts in any of the preceding three (3) school years.~~

~~2. Twenty (20) dropout prevention programs shall be funded in districts having high dropout rates but fewer than 100 dropouts per year.~~

~~3. Additional dropout prevention programs shall be funded in districts with dropout rates above the state average dropout rate or who report more than 100 dropouts each year, if special grant funds are available.~~

~~4.] Special contract or grant funds may [also] be used to fund the continuation of successful dropout prevention services in school districts demonstrating a reduction in their dropout rates or numbers.~~

~~(b) [Available dropout prevention funds, unless otherwise restricted by legislation or contract, shall be allocated for the use of eligible districts on a pro rata share basis. A percentage shall be determined for each eligible district by dividing the number of reported dropouts of each eligible district by the total number of dropouts for all eligible districts. The resulting percentage shall be used as a multiple with the total funds for distribution to determine the amount of funds to be made available for each eligible district. The number of dropouts to be counted for each district shall be the total dropouts reported by the districts' 1985 report on file in the State Department of Education.~~

~~(c) The Department of Education shall notify school districts of their eligibility to receive funds for a minimum of two (2) years to implement dropout prevention programs. [operation of dropout prevention programs based upon the rate or numbers of dropouts within each district during the 1984/85 school year.]~~

~~(c) A school district [(d) School districts] may apply for [such] funds by submitting an application [applications] which specifies [specify] special services to be provided to students who are at high risk of dropping out. [Procedures and forms for applications shall be developed by the Department of Education.] Applications shall be approved by the Department of Education prior to the encumbrance or expenditure of these [such] funds for a dropout prevention program.~~

~~(d) A district [(e) All districts] receiving dropout prevention funds as provided for in this administrative regulation shall implement a comprehensive research-based model across all grade levels [demonstrate a reduction in the number of youths dropping out as compared to the previous year in order to be eligible for continuation funding. In the 1989-90 school year, the percentage reduction shall be ten (10) percent. Appropriate percentage reductions will be determined by the Department of Education for succeeding years].~~

~~(3) A school district [School districts] applying for [such] funds shall describe the special service(s) to be provided to eligible students, including [from] the services listed below:~~

~~(a) Alternative curriculum which shall provide [provides] academic alternatives for [rebellious or disruptive] students, who have negative feelings for school or staff. Alternative educational programs, classes or schools shall provide the students with a positive learning environment to [neutral territory in which they can] develop [a positive attitude] and build student academic-behavioral successes.~~

~~(b) Counseling, [and] advising and mentoring services shall provide techniques to fulfill individual needs for building [a positive] self-esteem and personal status through school activities [which promote the development of a healthy identity].~~

~~(c) Parent involvement services shall provide teachers and counselors with appropriate [needed] information to assess [make an accurate assessment of] student needs. This service [approach] may be implemented through [extensive] home visits, group and individual conferences, and opportunities for family and community involvement [or using parents as tutors].~~

~~(d) Student [Students]-centered services shall provide a focus on~~

the individual student. [All] Efforts shall be focused on individual needs and differences. These similarities and differences shall be respected. [and] Individualized goals and objectives shall be developed and valued for cognitive [ecognition] and effective growth and development [are determined and priorities].

(e) Tutorial services shall provide the additional time, [extra] attention, encouragement and support needed by students at risk [underachievers]. Tutoring may be provided by students (peer tutoring) or specialized staff[~~at a small cost,~~] to help students gain social maturity, academic and [skills,] social skills [and social maturity].

(f) Work-related services may provide opportunities for paid employment to students [who face family economic pressure]. Services [This approach] may utilize several components which include on-the-job experiences, [work-related] classes, career awareness and exploration activities or vocational courses which are [It is] designed to transition [help] students into [enter] the world of work.

[(g) Upon approval of the Department of Education, other services which the local district believes may have a significant impact on reducing the dropout rate.]

Section 2. A school district [All school districts] receiving dropout prevention funds shall submit an annual evaluation report. The annual evaluation report shall provide data for each student receiving dropout prevention services. [The following data shall be required as a minimum: number of courses passed, number of courses failed, grade point average, NGE score of the Kentucky Essential Skills Test in reading and math, suspension data, and whether or not the student receiving services remained in school.]

Section 3. [The State Board for Elementary and Secondary Education authorizes] The chief state school officer shall be authorized to enter into contractual agreements with the Department of Employment Services and other agencies and organizations for the purpose of securing Job Training Partnership Act funds and other special grant and contract funds to be utilized to supplement state appropriations, under the criteria and standards of this administrative regulation, in reducing the numbers of dropouts in the common schools of Kentucky.

WILMER S. CODY, Commissioner of Education
HELEN MOUNTJOY, Chairperson
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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(a) Necessity of proposed regulation, if in conflict:

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:460. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant [applicants] seeking certification as principal, and further requires that each applicant [all applicants] for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board; and KRS 161.030 rests certification with the Education Professional Standards Board. This administrative regulation specifies the prerequisite tests, minimum scores for successful completion, and establishes a reasonable fee for administration of the prerequisite tests for certification as principal required under KRS 161.027.

Section 1. (1) A new applicant for certification as a school principal, including vocational school principal, shall successfully complete prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal.

(2) In addition to the examination requirement specified in Section

2 of this administrative regulation, an applicant for certification shall successfully complete ~~both the prerequisite examinations specified in Section 2 of this administrative regulation and~~ a one (1) year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. ~~Until October 1, 1999 [in order to satisfy the prerequisite sites for principal certification],~~ each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

- (1) ~~[NTE Core Battery Tests:~~
 - (a) Communication skills - 646;
 - (b) General knowledge - 643;
- (2) NTE Specialty Test of Educational Administration and Supervision - 540; and
- (2) [:
- (3) ~~]~~ Kentucky Specialty Test of Instructional Responses and ~~[Correct]~~ Administrative Practices - eighty-five (85) percent correct responses.

Section 3. ~~Beginning on October 1, 1999, each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:~~

- (1) School Leaders Licensure Assessment established - 155;
- (2) Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses. ~~[An initial applicant for principal certification who has previously attained the minimum score required by this administrative regulation on the NTE Core Battery for communication skills or general knowledge may meet the requirement for the test by:~~
 - (1) Having the score previously recorded at the Kentucky Department of Education for other professional certifications; or
 - (2) Having the Educational Testing Service (ETS) furnish a score report to the Kentucky Department of Education. A request for the score report shall comply with all policies and procedures of the ETS.]

Section 4. ~~The requirement to successfully complete the School Leaders Licensure Assessment shall be waived for those applicants who meet the following qualifications:~~

- (1) Two (2) years of experience as a certified principal in another state; and
- (2) Previous successful completion of a nationally administered test in the area of educational leadership and administration.

Section 5. (1) An applicant for certification as principal may take the required School Leaders Licensure Assessment [NTE tests] on a date established by the ETS. An applicant shall authorize that test results be forwarded to the Kentucky Department of Education by the ETS.

(2) An applicant for certification as principal may take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Kentucky Department of Education. Scoring and reporting of scores shall be the responsibility of the Kentucky Department of Education or its designated agent.

(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Kentucky Department of Education.

(4) It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 6. [5:] (1) For the required School Leaders Licensure Assessment [NTE tests], the applicant shall pay all fees assessed by the ETS.

(2) An applicant shall be assessed a fee of thirty (30) dollars for taking the Kentucky Specialty Test of Instructional and Administrative Practices.

Section 7. [6:] An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-

scheduled test administration.

Section 8. [7:] A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 9. [8:] (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 10. [9:] (1) To provide for confidentiality of information, the Kentucky Department of Education shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.

(2) A score shall not be used by the Kentucky Department of Education in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 11. [10:] On an annual or biennial basis, the Kentucky Department of Education shall collect and analyze data provided by the Educational Testing Service through [NTE Core Battery and Praxis II] score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held November 23, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 1998, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All applicants for principal certification are affected.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on 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: State General Funds.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: The new test was chosen because the current required test is not aligned with the standards that principal applicants are supposed to meet in order to be awarded a certificate. It is outdated.
 - (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: None
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (10) Any additional information or comments: None
 - (11) TIERING: Is tiering applied? No. Certification requirements are the same for all principal applicants.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(Amendment)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications equipment (STE) to any deaf, hard of hearing, or speech-impaired persons qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the criteria for awarding (STE) and the application and certification procedures.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the KCDHH TDD Distribution Program application which is entitled "TDD Distribution Program Application and Certification".

(3) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the TDD Distribution staff [Program Coordinator].

(6) "Deaf and hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means a person who is licensed by the Kentucky Licensing Board for Specialists in Hearing

Instruments to engage in the practice of fitting hearing instruments.

(10) "KCDHH" is defined by KRS 163.506 and 163.510.

(11) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(12) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(13) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(14) "Residency" means a resident of Kentucky is an individual who has resided within the Commonwealth of Kentucky as their primary residence, for at least one (1) full calendar year prior to their date of application for a specialized telecommunications equipment.

(15) "Specialized telecommunications equipment (STE)" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile) and [-] TDDs with large visual display[-, artificial larynx and electronic speech aids].

(16) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(17) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(18) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A legal resident of the state of Kentucky as documented by:

1. Possession of a Kentucky driver's license; or
2. Registered to vote in Kentucky; or
3. Kentucky automobile registration; or
4. Filing of Kentucky income tax return for the calendar year preceding the date the application for the specialized telecommunications equipment is submitted; or

5. A member of the Armed Forces stationed in Kentucky on active military orders of not less than one (1) year which shall include spouse and dependents; or

6. Regarding the residency of students enrolled at institutions of higher learning located in the Commonwealth of Kentucky, refer to 13 KAR 2:045.

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, parents or guardians shall apply on behalf of applicants and assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment.

(2) Applications shall be:

(a) Made on original forms provided by the KCDHH;

(b) Signed and submitted in person or via mail;

(c) Accompanied by a copy of the telephone bill with the name and address of the person being billed and the telephone number, a copy of the driver's license or any other document showing proof of legal residence, and any other supporting documentation as may be required by the KCDHH.

(3) The KCDHH shall require that applicants provide professional verification of the extent and permanence of their disability. The certification shall be included as part of the application form.

(a) Verification shall be at the applicant's expense.

(b) Certification shall be done by:

1. A licensed physician;
2. A licensed audiologist;
3. A licensed speech-language pathologist;
4. A licensed hearing instrument specialist; or

5. Public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(4) Except for individuals who receive assistance from programs designed to provide telephone services to those who would not normally be able to afford it, applicants shall subscribe to or have currently applied for telephone service, which shall include:

(a) Installation of a telephone line in their home at their own expense; and

(b) Payment of monthly telephone bills.

(5) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the TDD Distribution staff [Program-coordinator].

(6) KCDHH shall distribute the STE through the Model Procurement Code (KRS Chapter 45A) as established in 735 KAR 1:020.

(7) One (1) specialized telecommunications equipment shall be distributed to a deaf, hard of hearing or speech-impaired individual for one (1) residential access line only and one (1) additional visual or tactile signaler shall be distributed to a deaf or hard-of-hearing individual only.

Section 3. Application and Certification Procedures. (1)(a) "TDD Distribution Program Application and Certification", (June 1996) is incorporated by reference.

(b) It may be inspected or obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday 8 a.m. to 4:30 p.m. The KCDHH telephone number is 1-800-372-2907 V/TDD or 502-573-2604 V/TDD; the KCDHH fax number is 502-573-3594.

(2) As KCDHH recognizes that the demand for the specialized telecommunications equipment may exceed available funds, so the following statement shall be included on all application forms, which the applicant shall be required to sign: "The TDD Distribution Program has a limited amount of funds ~~for the program~~. There is a possibility that applicants may be placed on a waiting list, due to a large number of applications and the exhaustion of these limited funds on an annual basis. The specialized telecommunications equipment shall be distributed on a nondiscriminatory, first-come, first-served basis. The TDD Distribution Program shall distribute one (1) STE per individual for each residential telephone line."

Section 4. Application Process. (1) The KCDHH staff may provide assistance in completing forms when requested by an applicant.

(2) The TDD Distribution Program staff [coordinator] shall review all applications in the order the KCDHH office receives them to determine:

- (a) All the necessary information is completed on the application;
- (b) All required documentation is included; and
- (c) All eligibility requirements are met.

(3) An application found to be approved shall be dated and signed by the TDD Distribution Program staff [coordinator]. The approved date shall determine the first-come, first-serve roster.

(4) Applicants shall be notified in writing whether their application, has been accepted or rejected within sixty (60) calendar days of the completion date, ~~unless a letter as described in subsection (5) of this section has been forwarded indicating otherwise.~~

~~(5) During the first two (2) years of program implementation when there is an expected flood of applications, applicants shall be advised within sixty (60) days in writing that their applications may take longer than sixty (60) days to process.~~

~~(6) At the end of the second year, the application process shall be reevaluated, and, if feasible, a sixty (60) day response time shall be instated.~~

~~(5) [(7)] If the KCDHH finds that an applicant is ineligible to participate in the program, the applicant shall be given written justification for the determination within sixty (60) days [unless a letter as specified in subsection (5) of this section is sent]. Any applicant who has been denied participation may reapply if, due to a change in conditions, he meets eligibility requirements as delineated in Section 2 of this administrative regulation.~~

~~(6) [(8)] Training to properly select and use the STE shall be provided to applicants upon request.~~

Section 5. Applications shall be denied when:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, 735 KAR 1:010 and 1:020;

(2) The applicant has received STE from the TDD Distribution Program within the preceding four (4) years;

(3) The applicant is an active client of the Department of Vocational Rehabilitation and receives a STE as part of an IWRP (individual written rehabilitation plan);

(4) The applicant has negligently or willfully damaged a STE previously

received from the KCDHH's TDD Distribution Program, or violated other provisions of the administrative regulations governing the TDD Distribution Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) The applicant is found negligent in a police report of a stolen device, such as doors to the house or car left unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacing the equipment after four (4) years have passed, and the original STE is found to be technologically up to date and functional by the KCDHH.

Section 6. Replacing the Specialized Telecommunications Equipment. (1) A recipient may apply to replace the original specialized telecommunications equipment if:

(a) The specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, floods or other acts of God;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the TDD Distribution Program and is deemed more appropriate to the recipient's disability than a device previously received through the TDD Distribution Program; or

(d) It has been four (4) years since the applicant last received specialized telecommunications equipment.

(2) Specialized telecommunications equipment to replace existing specialized telecommunications equipment shall be issued to applicants:

(a) Who can demonstrate eligibility; and

(b) Who comply with the provisions of the administrative regulations governing the TDD Distribution Program: 735 KAR 1:010 and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, or floods, then:

(a) The recipient shall first send the damaged equipment to the KCDHH.

(b) The recipient may apply for a loaner STE under the provisions of the loan agreement as established in 735 KAR 1:020, Section 5 [7].

(c) KCDHH shall send the damaged STE to the vendor for verification of unrepairable damage.

(d) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement shall be issued to the recipient, upon reapplication, subject to:

- 1. Equipment availability;
- 2. Compliance with eligibility criteria established in this administrative regulation; and
- 3. The first-come, first-served provision.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, or speech-language pathologist stating that the recipient would benefit from another device available through the KCDHH TDD Distribution Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant. As an alternative, public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police within thirty (30) days of the theft; and

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

(7) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall then determine whether or not the original

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in 735 KAR 1:010 and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for a replacement shall be denied and the original STE shall be returned to the recipient.

Section 7. Loan Equipment. (1) When recipients' STE is under repair or maintenance, the KCDHH TDD Distribution Program shall provide, at no cost, "loaner" STE upon receiving a completed Loan Agreement Form from the recipient.

(2)(a) "Loan Agreement Form" (July 1995) is herein incorporated by reference.

(b) It may be inspected or obtained from the KCDHH, 632 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. - 4:30 p.m. The KCDHH phone number is (502) 573-2604 V/TDD or 800-372-2907 V/TDD; the KCDHH fax number is 502-573-3594.

Section 8. Fraud. If a recipient obtained specialized telecommunications equipment under false premises or through misrepresentation of facts on the "TDD Distribution Program Application and Certification" (June 1996), the KCDHH may demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH TDD Distribution Program.

Section 9. Confidentiality. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law in KRS 61.878.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney-at-Law

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1998, at 10 a.m., at the Kentucky Commission on the Deaf and Hard of Hearing Conference Room, located at 632 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, (502) 573-2604 (V/TTY), (502) 573-3594 (fax).

REGULATORY IMPACT ANALYSIS

Contact person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: All applicants for specialized telecommunications equipment to be distributed under the Telecommunications Device for the Deaf Distribution Program will be affected by this program. It is not possible to state a specific number of applicants because such a program with a targeted audience of deaf, hard of hearing, and speech impaired Kentucky residents has never been implemented. Also, unquantifiable factors such as the outreach program, word-of-mouth advertising, and formal advertising will directly impact the number of applicants.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no cost affecting the cost of living and employment in the geographical area in which the administrative regulation is implemented except

that the deaf, hard of hearing, and speech impaired recipients' opportunities to access telecommunications will be enhanced in that this program will enable them to purchase specialized telecommunications equipment in order to access and use their residential phone lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no effect on the cost of doing business in the geographical area in which the administrative regulation is implemented.

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

1. First year following implementation: Compliance of applicants is monitored in that applications are not deemed complete until all criteria and requisite paperwork has been submitted to the TDD Distribution Program. Vendors with whom the KCDHH contracts will have to detail the recipient's purchase of specialized telecommunications equipment in order to be reimbursed by the KCDHH.

2. Second and subsequent years: No change from the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs to the KCDHH after implementation in July 1995 are minimal because all direct costs will be covered by the revenues generated by the telephone surcharge tax.

2. Continuing costs or savings: Continued indirect costs will be 5% of the executive director's time to supervise the administration of this program. Three additional full-time positions are necessary; however, these three positions will be funded by the telephone surcharge tax.

3. Additional factors increasing or decreasing costs: If the number of qualified applicants exceeds the number of specialized equipment available for distribution, the KCDHH will ask that the \$200,000 cap be raised via an increase in the surcharge tax on telephone access lines.

(b) Reporting and paperwork requirements: The promulgating administrative body will make an annual report to the General Assembly regarding the TDD Distribution Program. Additional paperwork will be required in terms of the application form, processing the applications, and processing of payment invoices supplied by the vendors. A system designed to track recipients and the distributed specialized telecommunications equipment will require additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: The Public Service Commission (PSC) has determined that the funding mechanism for the TDD Distribution Program will be a one cent surcharge tax on access lines of the local exchange carriers. For the administrative and distribution costs of the program, the PSC will direct the bank to deposit \$200,000 annually into the KCDHH's TDD Distribution Program account via the State General Depository Account.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue, which was determined by the Public Service Commission, is a one cent surcharge tax on all access lines of the local exchange carriers.

(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: There were no public comments received.

(b) Kentucky: There were no public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In the course of researching TDD Distribution Programs in other states, the KCDHH considered the following alternatives:

(a) Purchasing the specialized telecommunications equipment in bulk and distributing it from one central location; and

(b) Establishing allocation categories for (1) those with financial hardship and (2) children to prioritize the distribution of the specialized telecommunications equipment; and

(c) Having the KCDHH retain ownership of all of the distributed specialized telecommunications equipment.

All of these alternatives were rejected because they are not cost effective for the KCDHH as administering agency.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effect on the environmental welfare in Kentucky; public health of deaf, hard of hearing, and speech-impaired recipients will be enhanced because the barriers preventing them from using telecommunications will be removed.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environmental welfare; the public health of deaf, hard of hearing, and speech impaired individuals would remain in a state of semi-isolation.

(c) If detrimental effect would result, explain detrimental effect: There would be no additional detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which may be in conflict, overlapping or duplication with these proposed administrative regulations.

(10) Any additional information or comments: The promulgating agency has no additional information or comments

(11) TIERING: Is tiering applied? Tiering was applied in times of 'fiscal constraint' which is defined as when 75% of program funds have been disbursed or encumbered. In times of fiscal constraint, preference is given to those deaf, hard of hearing, and speech impaired individuals that have not previously received specialized telecommunications equipment.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(Amendment)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications equipment to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the processing system for vendors, security, and the maintenance and repair of the STE.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the KCDHH TDD Distribution Program application which is entitled "TDD Distribution Program Application and Certification".

(3) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the TDD Distribution Program staff [Coordinator].

(6) "Deaf and hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" means a person who is licensed by the Kentucky Licensing Board for Specialists in Hearing Instruments to engage in the practice of fitting hearing instruments.

(10) "KCDHH" is defined by KRS 163.506 and 163.510.

(11) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being

repaired.

(12) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(13) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(14) "Residency" means a resident of Kentucky is an individual who has resided within the Commonwealth of Kentucky as their primary residence, for at least one (1) full calendar year prior to their date of application for a specialized telecommunications equipment.

(15) "Specialized telecommunications equipment (STE)" means readily-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile) and [;] TDDs with large visual display, ~~artificial-larynx and electronic-speech-aids~~.

(16) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(17) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(18) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with the provisions of the Model Procurement Code (KRS Chapter 45A) and shall be applied uniformly to applicants and vendors.

(3) The KCDHH TDD Distribution Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Vendor and Recipient Participation (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code (KRS Chapter 45A), as established in the contract between the vendor and KCDHH, and shall send the:

(a) STE directly to the recipients' Kentucky residence; and

(b) KCDHH:

1. An itemized invoice with the recipient's name and STE model and serial number; and

2. A copy of the delivery receipt for the STE when sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall be belong to the recipient, as evidenced by the recipient's copy of the delivery receipt.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment. However, the recipient shall contact the KCDHH and comply with the repair and maintenance procedures established in Section 5 of this administrative regulation in order to have repairs made to the STE and to receive loaner STE.

(b) Recipients shall assume all responsibilities for:

1. Paying their monthly telephone bills;

2. Purchasing or leasing a telephone;

3. Purchasing batteries and paper for the TDD; and

4. Paying other general costs and supplies associated with the functions and use of the STE.

(c) Recipients shall be responsible for the loss of STE received or borrowed under the auspices of the KCDHH TDD Distribution Program.

Section 4. Security. (1) Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally authorized recipient.

(2) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged. If stolen, the recipient shall:

- (a) Notify local police within thirty (30) days of the theft;
- (b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and
- (c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Equipment Loan Program/Maintenance and Repair Procedures. (1) The KCDHH shall maintain a stock of at least twenty (20) "loaner" units to be used by recipients when their STE has been sent to the manufacturer for repair or maintenance.

(2) The loan program shall only be available to recipients of the TDD Distribution Program. The loan period shall extend until the recipient's STE is returned in working condition.

(3) To participate in the loan program, the recipient shall:

(a) Sign the "Loan Agreement Form," as incorporated in 735 KAR 1:010;

(b) Submit the Loan Agreement Form and the malfunctioning STE to the KCDHH TDD Distribution Program.

(4) The KCDHH shall issue a loaner STE to the recipient.

(5) The KCDHH shall assume responsibility for shipping the STE to the contracted repair agent.

(6) When the repaired STE is received by the KCDHH, the KCDHH shall:

(a) Notify the recipient that their STE is repaired; and

(b) Request the return of the loaner STE.

(7) The recipient shall return the loaner STE to the KCDHH, either by insured, certified mail (with return receipt requested) or in person. When the recipient has returned the STE in good working condition, then the KCDHH shall send the repaired STE to the recipient.

(8) If the recipient does not return the loaner equipment then the KCDHH shall retain the original, repaired STE in exchange.

(9) The KCDHH reserves the right to repossess the loan equipment at any time if:

(a) There is a change in the recipient's eligibility status;

(b) Repeated negligent or willful damage is done to the equipment; or

(c) There are other violations of the administrative regulations governing the TDD Distribution Program.

(10) Loaner equipment shall be marked with nonremovable identification by the company supplying the equipment.

(11) In the event equipment is lost or stolen, the recipient shall immediately notify the KCDHH, who shall notify manufacturers, distributors and repairmen of the serial numbers of the missing equipment so that it can be identified and returned to the KCDHH. Any person who attempts to sell or knowingly purchase stolen equipment shall be prosecuted to the full extent of the law.

(12) The recipient shall be responsible for the replacement or repair of the loaner STE should the STE be damaged, lost, or stolen while in their possession, in accordance with the provisions of 735 KAR 1:010, unless the police report or vendor certifies that the theft or damage was not due to negligence or willful damage done on the part of the recipient.

(13) If the recipient moves:

(a) To a different address within the Commonwealth of Kentucky, the KCDHH shall be notified immediately of the address change; or

(b) Out of state, the equipment shall be returned to KCDHH.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney-at-Law

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1998, at 10 a.m., at the Kentucky Commission on the Deaf and Hard of Hearing Conference Room, located at 632 Versailles Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written

comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, (502) 573-2604 (V/TTY), (502) 573-3594 (fax).

REGULATORY IMPACT ANALYSIS

Contact person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: All applicants for specialized telecommunications equipment to be distributed under the Telecommunications Device for the Deaf Distribution Program will be affected by this program. It is not possible to state a specific number of applicants because such a program with a targeted audience of deaf, hard of hearing, and speech impaired Kentucky residents has never been implemented. Also, unquantifiable factors such as the outreach program, word-of-mouth advertising, and formal advertising will directly impact the number of applicants.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no cost affecting the cost of living and employment in the geographical area in which the administrative regulation is implemented except that the deaf, hard of hearing, and speech impaired recipients' opportunities to access telecommunications will be enhanced in that this program will enable them to purchase specialized telecommunications equipment in order to access and use their residential phone lines.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no effect on the cost of doing business in the geographical area in which the administrative regulation is implemented.

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

1. First year following implementation: Compliance of applicants is monitored in that applications are not deemed complete until all criteria and requisite paperwork has been submitted to the TDD Distribution Program. Vendors with whom the KCDHH contracts will have to detail the recipient's purchase of specialized telecommunications equipment in order to be reimbursed by the KCDHH.

2. Second and subsequent years: No change from the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs to the KCDHH after implementation in July 1995 are minimal because all direct costs will be covered by the revenues generated by the telephone surcharge tax.

2. Continuing costs or savings: Continued indirect costs will be 5% of the Executive Director's time to supervise the administration of this program. Three additional full-time positions are necessary; however, these three positions will be funded by the telephone surcharge tax.

3. Additional factors increasing or decreasing costs: If the number of qualified applicants exceeds the number of specialized equipment available for distribution, the KCDHH will ask that the \$200,000 cap be raised via an increase in the surcharge tax on telephone access lines.

(b) Reporting and paperwork requirements: The promulgating administrative body will make an annual report to the General Assembly regarding the TDD Distribution Program. Additional paperwork will be required in terms of the application form, processing the applications, and processing of payment invoices supplied by the vendors. A system designed to track recipients and the distributed specialized telecommunications equipment will require additional paperwork.

(4) Assessment of anticipated effect on state and local revenues: The Public Service Commission (PSC) has determined that the funding mechanism for the TDD Distribution Program will be a one cent surcharge tax on access lines of the local exchange carriers. For the administrative and distribution costs of the program, the PSC will direct the bank to deposit \$200,000 annually into the

KCDHH's TDD Distribution Program account via the State General Depository Account.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue, which was determined by the Public Service Commission, is a one cent surcharge tax on all access lines of the local exchange carriers.

(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: There were no public comments received.

(b) Kentucky: There were no public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In the course of researching TDD Distribution Programs in other states, the KCDHH considered the following alternatives:

(a) Purchasing the specialized telecommunications equipment in bulk and distributing it from one central location; and

(b) Establishing allocation categories for (1) those with financial hardship and (2) children to prioritize the distribution of the specialized telecommunications equipment; and

(c) Having the KCDHH retain ownership of all of the distributed specialized telecommunications equipment. All of these alternatives were rejected because they are not cost effective for the KCDHH as administering agency.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effect on the environmental welfare in Kentucky; public health of deaf, hard of hearing, and speech-impaired recipients will be enhanced because the barriers preventing them from using telecommunications will be removed.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be no detrimental effect on the environmental welfare; the public health of deaf, hard of hearing, and speech impaired individuals would remain in a state of semi-isolation.

(c) If detrimental effect would result, explain detrimental effect: There would be no additional detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy which may be in conflict, overlapping or duplication with these proposed administrative regulations.

(10) Any additional information or comments: The promulgating agency has no additional information or comments

(11) TIERING: Is tiering applied? Tiering was applied in times of 'fiscal constraint' which is defined as when 75% of program funds have been disbursed or encumbered. In times of fiscal constraint, preference is given to those deaf, hard of hearing, and speech impaired individuals that have not previously received specialized telecommunications equipment.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health

Education and Training

(Amendment)

803 KAR 2:306. Occupational health and environmental control.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those

standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Occupational Noise Exposure. (1) The language relating to audiometric test requirements for occupational noise exposure in subsection (2) of this section shall apply in lieu of 29 CFR 1910.95(h)(1).

(2) 29 CFR 1910.95(h)(1) is amended to read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(3) The language relating to audiometric test requirements for occupational noise exposure in subsection (4) of this section shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) 29 CFR 1910.95(h)(4) is amended to read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(5) The language relating to audiometric test requirements for occupational noise exposure in subsection (6) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(6) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(7) The language relating to audiometric test requirements for occupational noise exposure in subsection (8) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(8) 29 CFR 1910.95(h)(5)(iii) is amended to read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(9) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1).

(10) 29 CFR 1910.95(l)(1) is amended to read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(11) The language relating to exemptions to the regulation for occupational noise exposure requirements in subsection (12) of this

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

section shall apply in lieu of 29 CFR 1910.95(o).

(12) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(13) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E.

(14) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound pressure output check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading".

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances. When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	7.0
2000	9.07	9.0
3000	10.0	80.0
4000	9.57	9.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in paragraphs 1 through 7 of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference:

1. 29 CFR 1910.94 through 1910.95(g)(10)(ii);
2. 29 CFR 1910.95(h)(2) through 29 CFR 1910.95(h)(3);
3. 29 CFR 1910.95(h)(5)(i) through 29 CFR 1910.95(h)(5)(ii);
4. 29 CFR 1910.95(i)(1) through 29 CFR 1910.95(k)(2)(iii);
5. 29 CFR 1910.95(l)(2) through 29 CFR 1910.95(n)(2);
6. 29 CFR 1910.95(q) through 29 CFR 1910.95 Appendix D;
7. 29 CFR 1910.95 Appendix F through 29 CFR 1910.100.

(b) The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 63, Number 5, January 8, 1998 [61, Number 46, March 7, 1996], are incorporated by reference.

(c) The revisions to 29 CFR 1910.95, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revision of 29 CFR 1910.96, "Ionizing Radiation", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(e) The revision to 29 CFR 1910.97, "Nonionizing Radiation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(f) The removal of 29 CFR 1910.99, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.100, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) The language relating to audiometric testing in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(1).

(3) The language relating to audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) The language relating to audiometric testing in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(5) The language relating to audiometric testing in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(iii);

(6) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1);

(7) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(8) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E;

(9) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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

VOLUME 25, NUMBER 5 - NOVEMBER 1, 1998

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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions, as published in the Federal Register, January 8, 1998, which revises the respiratory protection provisions of the standard dealing with ventilation, update the reference to the Code of Federal Regulations, and make changes in the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, and update the reference to the Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations, update the reference to the current Code of Federal Regulations, and make changes in the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with respiratory protection.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work with respiratory protection.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:307. Hazardous materials.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express-authority-to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601].

Section 2. Automotive Service Station (Service Station). (1) The language relating to automotive service stations (service stations) in subsection (2) of this section shall apply in lieu of 29 CFR 1910.106(a)(3).

(2) 29 CFR 1910.106(a)(3) is amended to read: The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference:

1. 29 CFR 1910.101 through 1910.106(a)(2);

2. 29 CFR 1910.106(a)(4) through 29 CFR 1910.120.

(b) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [1910.101, "Compressed Gases (General Requirements)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.102, "Acetylene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.103, "Hydrogen", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.104, "Oxygen", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revision to 29 CFR 1910.105, "Nitrous Oxide", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The revisions to 29 CFR 1910.106, "Flammable and Combustible Liquids", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.107, "Spray Finishing Using

Flammable and Combustible Liquids", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.108, "Dip Tanks Containing Flammable or Combustible Materials", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.109, "Explosives and Blasting Agents", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) The revisions to 29 CFR 1910.110, "Storage and Handling of Liquefied Petroleum Gases", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(m) The removal of 29 CFR 1910.114, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(n) The removal of 29 CFR 1910.115, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(o) The removal of 29 CFR 1910.116, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(p) The revision to 29 CFR 1910.119, "Process Management of Highly Hazardous Chemicals", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(q) The revisions to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(2) The language relating to automotive service stations (service stations) in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.106(a)(3).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Tim Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions, as published in the Federal

Register, January 8, 1998, update reference material, update the reference to the Code of Federal Regulations, and change the "Necessity, Function and Conformity" paragraph and a definition to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from these revisions.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, update the reference to the Code of Federal Regulations, and change the "Necessity, Function and Conformity" paragraph and a definition to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations, update the reference to the current Code of

Federal Regulations and change a definition to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work that use, handle, or store anhydrous ammonia.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who use, handle, or store anhydrous ammonia.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:308. Personal protective equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) the following material is incorporated by reference:

(a) 29 CFR Part 1910.132, 138, Subpart R, "Personal Protective Equipment", revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1910.134, "Respiratory Protection", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(c) The corrections to 29 CFR 1910.134, "Respiratory Protection", as published in the Federal Register, Volume 63, April 23, 1998, are incorporated by reference.

(d) The addition of 29 CFR 1910.139, "Respiratory Protection for M. Tuberculosis", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. (Respiratory Protection. (1) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in subsection (2) of this section shall apply in lieu of 29 CFR 1910.134(b)(10).

(2) 29 CFR 1910.134(b)(10) is amended to read: A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection-Respirator Use-Physical Qualifications for Personnel" on the frequency and content of the examination.

(3) The language relating to selection of respirators in subsection (4) of this section shall apply in lieu of 29 CFR 1910.134(c).

(4) 29 CFR 1910.134(c) is amended to read: Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2-1980.

(5) The language relating to specifications for breathing air in subsection (6) of this section shall apply in lieu of 29 CFR 1910.134(d)(1).

(6) 29 CFR 1910.134(d)(1) is amended to read: Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United States Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1-1973. Compressed oxygen shall not be used in supplied air respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(7) The language relating to identification of gas mask canisters in subsection (8) of this section shall apply in lieu of 29 CFR 1910.134(g).

(8) 29 CFR 1910.134(g) is amended to read: Identification of Air-purifying Respirator Canisters and Cartridges:

(a) The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

(b) All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

(c) On each air-purifying respirator canister and cartridge, the

following shall appear in bold letters:

1. CANISTER FOR (Name of atmospheric contaminant); or CARTRIDGE FOR (Name of atmospheric contaminant).

2. In addition, either or both of subparagraphs 1 and 2 of this paragraph, information in clauses a, b, and c of this subparagraph, shall appear beneath the appropriate phrase on the canister or cartridge label:

a. For respiratory protection in atmospheres containing not more than (Concentration) by volume of (Name of atmospheric contaminant).

b. For respiratory protection in atmospheres containing (Type of particulate contaminant).

c. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

(d) Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

TABLE I-1 Color Assigned to Canister or Cartridge			
Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid Yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep Yellow Brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong Purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid Orange

NOTES:

1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color.

4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 4 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.132 through 1910.134(b)(9);

2. 29 CFR 1910.134(b)(11);

3. 29 CFR 1910.134(d)(2) through 29 CFR 1910.134(f)(5)(iii);

4. 29 CFR 1910.135 through Appendix B to Subpart I.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(b) The revisions to 29 CFR 1910.133, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 86, May 2, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.135, "Head Protection", as published in the Federal Register, Volume 61, Number 86, May 2, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.136, "Foot Protection", as published in the Federal Register, Volume 61, Number 86, May 2, 1996, are incorporated by reference.

(2) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(b)(10).

(3) The language relating to selection of respirators audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(c).

(4) The language relating to specifications for breathing air in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(d)(1).

(5) The language relating to identification of gas mask canisters in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(g).

(6) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no anticipated effect on the cost of living and employment.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The amendments make changes in the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations, update the reference to the Code of Federal Regulations, and adopt revisions to 29 CFR 1910.134 as published in the Federal Register, Volume 63, Number 5, January 8, 1998. Nationwide, Federal OSHA estimates that the average costs of the revisions per covered employee will be twenty-two dollars per year.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional fac-

tors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations incorporate, by reference, federal regulations published in the Federal Register, and update the reference to the Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations, update the reference to the current Code of Federal Regulations, and amend the "Necessity, Function and Conformity" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to 29 CFR 1910.134 as published in the Federal Register, Volume 63, Number 5, January 8, 1998. The amendments also redesignate the existing federal respiratory protection standard as 29 CFR 1910.139 allowing it to remain in effect for respiratory protection against Mycobacterium Tuberculosis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with respiratory protection.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work with respiratory protection.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:311. Fire protection.

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof,

~~shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]~~

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.155-.165, Subpart L, "Fire Protection", published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference.

(b) The revisions to 29 CFR 1910.156, "Fire Brigades", as published in the Federal Register, Volume 63, Number 5, January 8, 1998 [61, Number 46, March 7, 1996], are incorporated by reference.

~~[(c) The revision to 29 CFR 1910.157, "Portable Fire Extinguishers", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]~~

~~(d) The revisions to 29 CFR 1910.158, "Standpipe and Hose Systems", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]~~

~~(e) The revision to Appendix D to 29 CFR Subpart L, "Availability of Publications Incorporated by Reference in Section 1910.156, Fire Brigades", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]~~

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional fac-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

tors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.156 "Fire Brigades", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that employ professional fire fighters.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work fight fires.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:316. Welding, cutting, and brazing. [Adoption of 29 CFR Part 1910.251-257.]

RELATES TO: KRS 338.051(3), 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof,

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky.]

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.251-.257, Subpart Q, "Welding, Cutting, and Brazing", revised as of July 1, 1997 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The revisions to 29 CFR 1910.252, "General Requirements", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [1910.251, "Definitions", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The revisions to 29 CFR 1910.252, "General Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.253, "Oxygen Fuel Gas Welding and Cutting", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.254, "Arc Welding and Cutting", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The removal of 29 CFR 1910.256, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.257, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

(b) Cost of doing business in the geographic area in which the

administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal man-

date. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.252, "General Requirements", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in welding operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in welding operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

803 KAR 2:317. Special industries.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as

and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the] Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910.261-.275, Subpart R, "Special Industries", revised as of July 1, 1997 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills", as published in the Federal Register, Volume 63, Number 5, January 8, 1998 [61, Number 46, March 7, 1996], are incorporated by reference.

(c) The revisions to 29 CFR 1910.262, "Textiles", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.263, "Bakery Equipment", as published in the Federal Register, Volume 61, Number 46, March 12, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.265, "Sawmills", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revisions to 29 CFR 1910.266, "Logging Operations", as published in the Federal Register, Volume 60, Number 174, September 8, 1995, are incorporated by reference.

(g) The revisions to 29 CFR 1910.266, "Logging Operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.268, "Telecommunications", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.272, "Grain Handling Facilities", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.272, "Grain Handling Facilities", as published in the Federal Register, Volume 61, Number 47, March 8, 1996, are incorporated by reference.

(k) The removal of 29 CFR 1910.274, "Sources of Standards Operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The removal of 29 CFR 1910.275, "Standards Organization", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facili-

ties of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "Necessity, Function and Conformity" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in manufacturing of pulp, paper, and paperboard.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in manufacturing of pulp, paper, and paperboard.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health

Education and Training

(Amendment)

803 KAR 2:320. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 1. Definitions. (1) Definitions applicable to this part:

- (a) "Act" means KRS Chapter 338.
 - (b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
 - (c) "Employee" means any person employed except those employees excluded in KRS 338.021.
 - (d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
 - (e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.
 - (f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
 - (g) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.
 - (h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.
- (2) Definitions for Section 2 of this administrative regulation.
- (a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) μ particles.
 - (b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.
 - (c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.
 - (d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.
 - (e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.
 - (f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health, Education and Welfare to act for the Director.
 - (g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.
 - (h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).
 - (i) "External environment" means any environment external to regulated and nonregulated areas.
 - (j) "Isolated system" means a fully enclosed structure other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.
 - (k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.
 - (l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.
 - (m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.
 - (n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

- (a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.
- (b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.
- (c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in Section 1(1)(m) of this administrative regulation are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level or protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit,

and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, non-regulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modifica-

tion of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be main-

tained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated and the address of each regulated area;

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(5) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

(b) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 3(2), (3), and (4) of this administrative regulation.

(c) Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, other than those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suite, or fully buttoned laboratory coat;

(b) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under Section 3(2), (3), and (4) of this administrative regulation.

(c) Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(10) There shall be no connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR

1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and

2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 149, August 4, 1997, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1001, "Asbestos", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(d) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(e) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(f) The revisions to 29 CFR 1910.1017, "Vinyl Chloride", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(g) The revisions to 29 CFR 1910.1018, "Inorganic Arsenic", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(h) The revisions to 29 CFR 1910.1025, "Lead", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(i) The revisions to 29 CFR 1910.1025, "Lead", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(j) The revisions to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(k) The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(l) The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(m) The revisions to 29 CFR 1910.1029, "Coke Oven Emissions", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(n) The revisions to 29 CFR 1910.1043, "Cotton Dust", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(o) The revisions to 29 CFR 1910.1044, "1,2-Dibromo-3-chloropropane", published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(p) The revisions to 29 CFR 1910.1045, "Acrylonitrile", as pub-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

lished in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(g) The revisions to 29 CFR 1910.1045, "Acrylonitrile", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(r) The revisions to 29 CFR 1910.1047, "Ethylene Oxide", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(s) The revisions to 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(t) The revisions to 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(u) The revisions to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(v) The revisions to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(w) The revisions to 29 CFR 1910.1051, "Butadiene", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(x) The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(y) The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these pro-

posed amendments, as these revisions, as published in the Federal Register, January 8, 1998 and April 23, 1998, delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative) in the standards regulating asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations as published in the Federal Register, January 8, 1998 and April 23, 1998, which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative) in the standards regulating asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments adopt federal regulations.
3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations on asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride, as published in the Federal Register, January 8, 1998 and April 23, 1998.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work with asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET

Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health
Education and Training
(Amendment)

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

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926.50-.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926.50-.66

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety

and Health Compliance in the area of construction.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

- (1) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;
- (2) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;
- (3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1926.50-.66, Subpart D, "Environmental Controls", revised as of July 1, 1997 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [1926.53, "Ionizing Radiation", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.]

(c) Revisions to 29 CFR 1926.60, "Methylenedianiline", as published in Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [1926.55, "Gases, Vapors, Fumes, Dusts, and Mists", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(d) Revisions to 29 CFR 1926.62, "Lead", as published in Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [29 CFR 1926.55, Appendix, is revised as follows:

1. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists Threshold Limit Values", as published in Federal Register, Volume 61, Number 214, November 4, 1996, are incorporated by reference.

2. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists Threshold Limit Values", as published in Federal Register, Volume 62, Number 7, January 10, 1997, are incorporated by reference.

(e) Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(g) 29 CFR 1926.60, "Methylenedianiline", is revised, as follows:

1. Revisions to Appendix A of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

2. Revisions to Appendix B of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

3. Revisions to Appendix C of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

4. Revisions to Appendix D of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

5. Revisions to Appendix E of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(h) Revisions to 29 CFR 1926.61, "Retention of DOT Markings; Placards and Labels", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.]

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the

Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change a definition, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material and delete requirements for fit-testing, respirator selection, and respirator use for methylenedianiline and lead (as they are duplicative).

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change a definition, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments meet change a definition, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926.57 "Ventilation", 29 CFR 1926.60, "Methylenedianiline", and 29 CFR 1926.62, "Lead", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in construction work using abrasive blasting or where respiratory protection is used to lower worker exposure to methylenedianiline or lead.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in construction work using abrasive blasting or where respiratory protection is used to lower worker exposure to methylenedianiline or lead.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

803 KAR 2:404. Personal protective and lifesaving equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to

the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(a) 29 CFR 1926.95-1926.107, Subpart E, "Personal Protective and Lifesaving Equipment", published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference.

(b) The revisions to 29 CFR 1926.103, "Respiratory Protection", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, is incorporated by reference. [Table E-4 Respirator Protection Factors. (1) The Table E-4 Respirator Protection factors found in Section 2 shall apply in lieu of Table E-4 found in 29 CFR 1926.103.

(2) Table E-4 Respiratory Protection Factors:

Type of Respirator	Respirator Protection Factors ^a			
	Permitted for Use in Oxygen-deficient Atmosphere	Permitted for Use in Immediately-dangerous-to-life-or-health Atmosphere ¹	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, quarter-mask or half-mask face-piece ^{b,c}	No	No	10	As measured on each person with maximum of 100.
Vapor- or gas-removing, quarter-mask or half-mask facepiece ^c	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100; or maximum use limit of cartridge or canister for vapor or gas, ^h whichever is less.
Combination particulate-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece ^{b,c}	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100; or maximum use limit of cartridge or canister for vapor or gas, ^h whichever is less.
Particulate-filter, full facepiece ^b	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000; or maximum use limit of cartridge or canister for vapor or gas, ^h whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece ^b	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particulate-filter, any respiratory-inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.	
Powered vapor- or gas-removing, any respiratory-inlet covering ^{c,d}	No	No (yes, if escape provisions are provided ^d)	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas, ^h whichever is less.	
Powered combination particulate-filter and vapor- or gas-removing, any respiratory-inlet covering ^{b,c,d}	No	No (yes, if escape provisions are provided ^d)	N/A	N/A

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, ^h , whichever is less.	
Airline, demand, quarter-mask or half-mask facepiece, with or without escape provisions ^{c,e}	Yes ^f	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values.
Airline, demand, full facepiece, with or without escape provisions ^c	Yes ^f	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values
Airline, continuous flow or pressure demand type, any facepiece, without escape provisions ^c	Yes ^f	No	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values.	
Airline, continuous flow or pressure demand type, any facepiece, with escape provisions ^{c,e}	Yes ^g	Yes	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus ^h .	
Airline, continuous flow, helmet, hood, suit without escape provisions	Yes ^f	No	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values.	
Airline, continuous flow, helmet, hood, or suit, with escape provisions ^c	Yes ^g	Yes	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus ^h .	
Hose mask, with or without blower, full facepiece	Yes ^f	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece ^c	Yes ^f	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full facepiece or mouth-piece/nose clamp ^c	Yes ^f (Yes, if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.
Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouth-piece/nose clamp ^c	Yes ^g	Yes	N/A	N/A
			No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.	
Combination respirators not listed.	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator-fitting test is not carried out.

^arespirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

^bWhen the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

^cIf the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

^dIf the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

^eThe escape provision shall be an auxiliary self-contained supply of respirable air.

^f"Oxygen deficiency -- not immediately dangerous to life or health" -- an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

^g"Oxygen deficiency -- immediately dangerous to life or health" -- an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

^hThe protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

ⁱThe service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

^jVapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory inlet covering are not given, since such respirators are approved only for escape purposes.

Section 2. Incorporation by Reference. (1) The material in paragraphs (a) and (b) of this subsection, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

(a) 29 CFR 1926.95 to 29 CFR 1926.103(b)(2), excluding Table E-4 -- Selection of Respirators.

(b) 29 CFR 1926.103(c) through 29 CFR 1926.107.

(2) "Table E-4 Respiratory Protection Factors", listing the types of respirators required for protection in dangerous atmospheres, found in Section 1(2) of this administrative regulation shall apply in lieu of "Table E-4 Selection of Respirators" found in 29 CFR 1926.103(b)(3).

(3) The removal of 29 CFR 1926.97, "Protective Clothing for Fire Brigades", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(4) The removal of 29 CFR 1926.98, "Respiratory Protection for

Fire Brigades", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(5) The revision to 29 CFR 1926.103, "Respiratory Protection", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) [(6)] This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601, during the hours of 8 a.m. - 4:30 p.m.(ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments as these revisions update the reference to the current Code of Federal Regulations, incorporate revisions, as published in the Federal Register, January 8, 1998, which refer the reader to 29 CFR 1910.134, and make changes in the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change a definition, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments update the reference to the current Code of Federal Regulations, incorporate revisions, as published in the Federal Register, January 8, 1998, which refer the reader to 29 CFR 1910.134, make changes in the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926.103 "Respiratory Protection", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in construction work that use respiratory protection.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees who use respiratory protection.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amend-

ments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

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

803 KAR 2:418. Underground construction, caissons, cofferdams, and compressed air. [Adoption of 29 CFR Part 1926.800-804.]

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926 [Chapter 338]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [and 338.061 authorize] the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules;] administrative regulations[; and standards]. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]

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

(a) 29 CFR 1926.800-804 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1926.800, "Underground Construction", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(2) [The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.800-804 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended January 15, 1990, with the following additions, exceptions, and deletions:

(1) Revision of 29 CFR 1926.800, as published in the Federal Register, Volume 54, Number 105, June 2, 1989, is incorporated by reference.

(2) Revision of 29 CFR 1926.800, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(3) Revision of 29 CFR 1926.803(j)(3), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c); This material may be inspected and copied at the offices of the Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

[(2)] Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments as these revisions make changes in the introductory paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations and incorporate revisions, as published in the Federal Register, January 8, 1998, which revise references in one paragraph of the standard.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the introductory paragraph to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public

health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments make changes in the introductory paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations and incorporate revisions, as published in the Federal Register, January 8, 1998, which revise references in one paragraph of the standard.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926.800, "Underground Construction", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in underground construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees who work in underground construction.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

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

803 KAR 2:425. Toxic and hazardous substances.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(a) 29 CFR 1926.1100-1148 revised as of July 1, 1997 [1996], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 63, Number 5, January 8, 1998 [61, Number 165, August 23, 1996], is incorporated by reference.

(c) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, is incorporated by reference.

(d) The amendment to 29 CFR 1926.1127, "Cadmium", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, is incorporated by reference. [addition of 29 CFR 1910.1152, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 2 p.m. (ET) at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone (502) 564-3070, Fax (502) 564-1682.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

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

which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions to the asbestos and cadmium standards, as published in the Federal Register, January 8, 1998 and April 23, 1998, which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative).

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative).

3. Minimum or uniform standards contained in the federal mandate.

The amendments adopt revisions to the previously adopted regulations, 29 CFR 1926.1101 "Asbestos", and 29 CFR 1926.1127, "Cadmium", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, and corrections to the January 8 revisions to the asbestos standard, published April 23, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in construction work where cadmium or asbestos is used.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in construction work where cadmium or asbestos is found.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:026. Group self-insurers.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, 342.340, 342.345, 342.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to establish the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR 25:025, which is repealed.

Section 1. Definitions. (1) "Administrator" means an individual or legal entity engaged by a group self-insurance fund board of trustees to carry out the policies established by the group self-insurance fund's board of trustees and provide day-to-day management of the self-

insurance fund.

(2) "Aggregate excess insurance" means an insurance policy written on a claims incurred basis which insures claims to a stated limit in excess of a specified percentage of the earned premium ~~(or in excess of the group retention amount)~~.

(3) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the state of Kentucky for at least two (2) years prior to its sponsorship of a group self-insurance fund.

(4) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(5) "Common interests" means that employers are engaged in similar activities, share common standard industrial classification codes and common risk factors.

(6) "Dividends" mean disbursements ~~[to group members]~~ from surplus funds to group members pursuant to a plan filed with the commissioner.

(7) "Earned premium" means the pro rated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.

(8) "Fiscal agent" means a person, or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest and disburse the self-insurance group's funds.

(9) "Group members" means employers who have joined a group self-insurance fund.

(10) "Group self-insurance fund" means the total contractual arrangement whereby eleven (11) or more employers or two (2) or more city, county, municipal or urban-county employers or their agencies associate to jointly self-insure their workers' compensation liability.

(11) "Insolvent" or "insolvency" means the inability of a group self-insurance fund to pay its outstanding lawful obligations as they mature in the regular course of business, or which holds insufficient assets to prospectively pay all incurred workers' compensation benefits when due.

(12) "Loss fund" means the total amount of the group self-insurance fund's retained liability for claims against the group members.

(13) "Premium" means the amount of money charged each member to fund the obligations and expenses of the group self-insurance fund.

(14) "Qualified actuary" means a member or fellow ~~[of the American Academy of Actuaries or a member]~~ of the Casualty Actuarial Society.

(15) "Service organization" means a person or entity which provides services which may include but is not limited to, claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports, and other required self-insurance reports, administration of the fund, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, and legal assistance.

(16) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

(17) "Surplus funds" means the excess of the group self-insurer's assets over its liabilities ~~[monies in the self-insurance fund in excess of all losses, reserves and other costs]~~.

(18) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association or association of governmental entities to oversee the administration of the group self-insurance fund.

Section 2. Certification. Except for activities arising in the creation of a group self-insurance fund, no person or entity shall issue binders or certificates of insurance for workers' compensation coverage unless the group self-insurance fund has been certified to do so by the commissioner. All certifications issued by the commissioner shall remain in effect until revoked or suspended by the commissioner pursuant to Section 11 [42] of this administrative regulation.

Section 3. Initial Application. (1) An application for certification as a workers' compensation group self-insurance fund may be filed on form SI-06 with the commissioner by a group of eleven (11) or more

employers having common interests or membership in a bona fide trade association. Any group members having more than fifty (50) percent common ownership shall constitute one (1) group member. Each initial application shall set forth or be accompanied by:

(a) The fund's name, location of principal office, date of organization, name and address of each member, and the dates of the fiscal year for accounting purposes;

(b) A description of the group members' common interest or a description of the bona fide trade association including date of organization, articles of incorporation, and a history of the association's activities;

(c) A copy of the articles of association, articles of incorporation, trust agreement or bylaws of the proposed group self-insured fund. The group self-insurance fund's enabling documents shall describe the time and methodology by which premiums shall be determined, assessed and collected during regular operations and in the event of insolvency of the group self-insurance fund;

(d) The managed care and utilization review plans, if any, for the group self-insurance fund;

(e) Copies of any instruments by which the applicant or its agents have made any commitments to pay for any past or purchase any future goods or services;

(f) An executed copy of the indemnity agreement by which group members jointly and severally bind themselves to pay their workers' compensation liability;

(g) Identification by name, address, and term of the initial board of trustees, administrator, and service organization together with a statement that there exists no real or potential pecuniary or other conflict between the official duties of such trustees, administrators and service organizations and the personal interests of the individual members or their families or heirs or assigns;

(h) The name of the custodian and the address where the group self-insurance fund's books and records will be kept;

(i) Specimen of the proposed policy and certificate of insurance for the specific and aggregate excess coverage;

(j) Copies of surety deposits and fidelity bonds as required by Section 11 of this administrative regulation;

(k) A proposed schedule of premium rates and any plan by which rates will be modified. If employment classifications are to vary from those utilized by the National Council on [of Workers'] Compensation Insurance [Insurers], a description of each classification shall be presented;

(l) A schedule of projected annual premiums and expenses; and

(m) Financial statements for initial group members prepared by a certified public accountant and signed by an owner or officer of each member demonstrating a combined net worth of no less than \$5,000,000 for the group and the financial stability of each member.

(2) The premium of one (1) group member shall not exceed forty (40) percent of the estimated total premium for the group self-insurance fund.

(3) The first year's premium for the initial membership of the group self-insurance fund shall be no less than \$750,000. Verification must be presented that twenty-five (25) percent of the initial estimated premium has been paid and deposited with the group's fiscal agent.

(4) The initial application shall [must] be filed no later than sixty (60) days prior to the proposed inception date of the group self-insurance fund.

(5) Certification as a group self-insurance fund shall be granted if the commissioner finds the following:

(a) ~~[that]~~ The applicant has complied with all requirements of this administrative regulation;

(b) ~~[that]~~ The persons responsible for the affairs of the group self-insurance fund are financially stable, competent and experienced in the administration of workers' compensation self-insurance; and

(c) ~~[that]~~ The proposed group self-insurance fund has demonstrated the ability to meet all of its obligations.

(6) Before granting certification, the commissioner shall consider the following:

(a) The adequacy of the funding mechanisms;

(b) The presence of excess insurance;

(c) The financial strength of the participating members; the stability of the membership; and

(d) The risks of the industry.

Section 4. Annual Filing. The following information and reports shall be filed by the group self-insurance fund with the commissioner on an annual basis:

(1) Within thirty (30) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file:

(a) Copies of all fidelity and surety bonds or surety deposits;

(b) A current listing of the group members of the fund;

(c) A schedule of proposed premiums by employment classifications; and

(d) Any material changes in administration or the service organization.

(e) A plan by which premium shall be determined, assessed, and collected in the event of insolvency or liquidation of the group self-insurance fund, unless such a plan has been previously submitted a statement relating to conflicts as described in Section 3(1)(g) of this administrative regulation.

(2) Within ten (10) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file proof of excess insurance coverage for the ensuing year.

(3) Within 120 days from the end of the group self-insurer's fiscal year, the statement of financial condition required by KRS 342.347(2) [Within 150 days after the close of a self-insurance year, the group self-insurance fund shall file:

(a) ~~The actuarial information required by Section 5 of this administrative regulation;~~

(b) ~~A certified audit report in conformity with generally accepted accounting principles;~~ and

(c) any other relevant financial information requested by the commissioner.

(4) In the event the statement of financial condition [certified audit report] reveals a fund deficit or inadequate reserves, the trustees shall prepare and file a plan of remedial action within thirty (30) days of the receipt of the statement of financial condition [certified audit report].

(5) Within 150 days after the end of each self-insurance year, ~~[the trustees shall furnish to the group members]~~ a statement setting forth all premiums, losses, expenses and distributions for the group self-insurance fund and the trustees shall furnish a copy of this statement to the group members.

Section 5. ~~[Actuarial Reports. (1) On an annual basis, the group self-insurance fund shall file with the commissioner an actuarial opinion by a qualified actuary addressing the adequacy of current premium levels and setting forth the actuarial assumptions on which the opinion is based. The opinion shall advise if the premium levels are adequate to provide financial resources to reasonably meet all of the fund's estimated liability for the payment of all workers' compensation benefits previously incurred and projected for the ensuing year, including a reasonable allowance for incurred but not reported claims plus all administrative, marketing and reinsurance costs of the program.~~

(2) ~~If in the opinion of the qualified actuary, the group self-insurance fund's current premium levels are not adequate to provide for the payment of all incurred and projected losses and related expenses, the fund's trustees shall adjust the rates and the plan by which premiums will be collected to the level estimated by the qualified actuary to be sufficient to cover all incurred and projected liabilities and other expenses.~~

Section 6. ~~[Withdrawals and Terminations. (1) A member may withdraw from a group self-insurance fund upon sixty (60) days notice to the commissioner and the trustees.~~

(2) If a group self-insurance fund determines to terminate its self-insurance program, the trustees:

(a) Shall give thirty (30) days advance written notice by certified mail to the commissioner and each group member; and

(b) Shall not pay ~~[ne]~~ dividends without the written approval of the commissioner for five (5) years following the close of the last year in which it operated; ~~[The trustees]~~ shall demonstrate to the commissioner that satisfactory arrangements have been made for the continued payment and servicing of all outstanding claims.

Section 6. ~~[7.] Trustees; Duties. (1) The Board of Trustees of the group self-insurance fund shall consist of no less than three (3) nor more than eleven (11) [seven (7)] persons, none of whom are to be owners, officers, employees or agents of a service organization or~~

have any direct or indirect pecuniary interest in a service organization.

(2) The trustees on behalf of the group members shall be responsible for the following:

- (a) Administration of the group self-insurance fund;
- (b) [for] The assessment and collection of premium;
- (c) [for] Disbursements from the group self-insurance fund; and
- (d) Investment of the fund's monies.

(3) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the group self-insurance fund.

(a) A service organization, its employees and agents shall [must] be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) Any contract with a service organization that includes the adjustment and settlement of claims shall include a requirement that the service organization will adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.

(c) A revolving fund of not more than twenty (20) percent of estimated premiums may be established for use by a servicing organization for the payment of claims.

Section 7. [8:] Excess Insurance. (1) With the exception of group self-insurance funds qualifying under subsection (2) of this section, the trustees shall purchase aggregate excess insurance. The retained liability and other fixed costs of the fund shall not exceed 100 percent of the annual assessment of the group members, unless the [such] amount over 100 percent is secured by unencumbered surplus funds. In the computation of the retained liabilities of the group self-insurance fund, reserves for claims or projected reserves for claims may be discounted for their present value, provided such discounting is based upon the computation of a qualified actuary. The limit of liability of the aggregate excess insurance coverage shall be no less than \$2,000,000 or fifty (50) percent of the earned premium, whichever is greater.

(2) A group self-insurance fund meeting all of the following conditions may annually seek a waiver from the commissioner of the requirement [is not required] to purchase aggregate excess insurance:

(a) The fund has been in continuous operation for at least five (5) years;

(b) The fund's annual premium has exceeded \$10,000,000 [\$5,000,000] in each of the three (3) preceding years; and

(c) Reserves and premium structure have been established so as to secure adequately all predictable losses.

(3) The trustees shall purchase specific excess insurance coverage with a limit of at least \$25,000,000 per occurrence.

(4) To be eligible to write excess liability coverage for group self-insurance funds, a casualty insurance company shall at all times maintain on file with the Kentucky Insurance Commissioner financial statements demonstrating assets, including surplus to policyholders, at least equal to the Insurance Department requirements of a carrier to do business in the state. The latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000 and the carrier shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over a long period of time.

Section 8. [9:] Fund Balances. (1) Prior to inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five (25) percent of the estimated premium for the ensuing year. The balance of the estimated premium shall be collected in either quarterly or monthly installments. Each group member's payroll shall be audited and an adjustment to premium shall be made accordingly.

(2) Disbursements from the fund shall be only for those purposes related to the group self-insurance fund. Dividends shall not be paid until at least twenty-four (24) months after the expiration of the self-insurance year and shall be paid only from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications as the directors may in their discretion from time to time establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications.

(3) The formula to be used for collection of assessments [premi-

ums] and for the distribution of dividends shall be determined by the trustees and approved by the commissioner. Any dividend plan shall specify whether past fund members are eligible for such dividend.

(4)(a) A trustee [No-trustees], fiscal agent or service organization shall not utilize any asset [assets] of the group self-insurance fund for any purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.

(b) The trustees may[, at their discretion,] invest any surplus funds not needed for current obligations in: [;but such investments shall be limited to]

1. U.S. government bonds, U.S. Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government and its agencies, tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor, or obligations issued by a county, district, municipality or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit if issued by a duly chartered commercial bank. Such deposits in savings and loan associations and commercial banks shall be limited to institutions in the state of Kentucky and the safety of any investments which exceed the federally insured amounts shall be the responsibility of the trustees.

2. Individual equity securities actively traded on the New York or NASDAQ Stock Exchanges with no individual equity holding comprising greater than ten (10) percent of the equity portion of the portfolio at the time of purchase. An investment in any individual equity holding shall not represent at the time of purchase more than five (5) percent of the total market value of the security. Investments in equity securities shall not exceed twenty (20) percent of the total market value of the investment portfolio of the self-insurance group at the time of purchase;

3. Corporate bonds issued, assumed, or guaranteed by any solvent institution created or existing under the laws of the United States, or any state, province, district, or territory. However, corporate bond investments shall not exceed fifteen (15) percent of the total market value of the investment portfolio at the time of purchase. The minimum standard for quality of these securities is an "A" rating by Standard & Poor;

4. Mutual funds that are registered investment advisors licensed by the Security and Exchange Commission and Commonwealth of Kentucky to perform such investment services. Investments in mutual funds shall not exceed twenty (20) percent of the total market value of the investment portfolio at the time of purchase;

(c) Of the aggregate investments made by the self-insurance group under 803 KAR 25:026, Section (9) paragraph (4)(a) and (b):

1. Not less than seventy-five (75) percent of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities described in paragraph (b)1 of this subsection;

2. A minimum of fifteen (15) percent of the total investment portfolio value shall be maintained in cash or cash equivalent accounts and/or U.S. Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.

(d) Each trustee shall personally be jointly and severally liable for the safety of any investment exceeding the limitations set forth in paragraph (b)2, 3, 4 and 4(c) of this subsection.

(5) Group self-insurance funds shall have six (6) months from the effective date of this administrative regulation to restructure investments to conform to the mandates set forth herein. Variation from the requirements of this section for good cause shown may be sought by application to the commissioner.

Section 9. [10:] Group Members. (1) The trustees shall not accept as a member of the group, any employer that does not have a net worth of at least two (2) times its estimated annual premium, unless the [such] employer pays its full estimated annual premium in advance. The trustees shall not accept as a member of the group any employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(2) At the discretion of the trustees, the group self-insurance fund

may include the Kentucky employees of foreign (out-of-state) employers.

(3) The trustees may suspend or expel any member from the group due to adverse claims experience or lack of cooperation with safety and loss prevention policies by giving the member and the commissioner thirty (30) days advance written notice.

(4) The trustees shall report to the commissioner any attempt by any person as defined in KRS 342.0011 who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentation of hazards, classifications, payrolls, or other facts of an employer or its agent that are designed to cause a reduction in the employer's premium. The trustees shall secure from each member an agreement to report payroll in accordance with the rules and rating plan of the fund. Willful failure to properly report in accordance with the rules and rating plan is ground for expulsion pursuant to subsection 3 of this section.

(5) At least thirty (30) days prior to due date, the trustees shall notify each group member of all premium due, including adjustments. Failure by any member to pay the premium due prior to the due date may result in immediate suspension or expulsion from the group by the trustees. Ten (10) days advance written notice shall be given to the member and the commissioner.

(6) The group self-insurance fund shall be considered as an individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the group self-insurance fund.

Section 10. [44:] Bonds. (1) The trustees and fund administrators shall provide a fidelity bond to the commissioner in the amount of not less than \$300,000, which may be subject to a deductible not exceeding \$10,000 for each trustee, each fund administrator and the administrator's employees.

(2) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty (50) percent or \$1,000,000, whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(3) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(4) In lieu of the bonds required under subsections (1), (2) and (3) of this section, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of the self-insurance fund or \$2,000,000, whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization and the fiscal agent, unless the fiscal agent is a national bank.

(5) The fund shall provide surety to the commissioner on form SI-03 in an amount no less than \$250,000, [or] ten (10) percent of the annual premium or ten (10) percent of the reserve requirement as established in the most recent certified statement of financial condition [audit] on file with the commissioner, whichever is greater.

(6) Any corporate surety, to be eligible for writing group self-insurance fund bonds in the state of Kentucky, shall be authorized by the Kentucky Insurance Commissioner to transact [such] business in the state, and its latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. On its latest financial statement, the corporate surety shall reflect a minimum policyholder surplus of not less than \$25,000,000. The corporate surety shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over a long period of time. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(7) The trustees may file a cash or cash equivalent security deposit on form SI-05 or bank letter of credit on form SI-04 in satisfaction of the surety requirement.

Section 11. [42-Suspension:] Revocation or Modification of Certification. (1) The commissioner may [suspend:] revoke or direct remedial actions regarding any group's certification as a group self-insurance fund if he finds any of the following conditions exist:

(a) The group self-insurance fund is operating significantly in con-

travention of the basic organizing documents of the group self-insurance fund or is in material violation of this administrative regulation or KRS Chapter 342;

(b) The group self-insurance fund is no longer financially responsible and may reasonably be expected to be unable to meet its current obligation to participants or employees of participants for the payment of workers' compensation medical and indemnity benefits; or

(c) There has been a significant and adverse change in the administration of the group self-insurance fund.

(2) In the event the commissioner [~~suspends or~~] revokes any group self-insurance fund's certification, the commissioner shall immediately notify the Kentucky group self-insurer's guaranty fund, [may appoint one (1) or more individuals or professional corporations as a receiver to conduct the ongoing workers' compensation affairs of the group self-insurance fund. In the event the commissioner appoints a receiver to assume certain administrative responsibilities over the activities of the group self-insurance fund, the trustees, service organization and administrator shall cooperate with the commissioner or receiver and are required to reply promptly in writing to any inquiry from the commissioner or his representative, to make available and to deliver to the commissioner or his representative any books, accounts, documents, or other records or information in their custody and control. The receiver may take any action necessary and reasonable to preserve all of the group self-insurance fund's assets and to insure timely payment of all workers' compensation benefits. The receiver may consult with and obtain advice or professional services from appropriate experts or other third-party professionals.]

(3) A group self-insurance fund's certification may be [suspended or] revoked or made subject to remedial action after compliance with the following procedures:

(a) The commissioner shall conduct a hearing upon a written application by any person or group aggrieved by an order of the commissioner or on his own violation. Written request for a hearing shall be filed within thirty (30) days after an order by the commissioner. The application for hearing shall briefly state the grounds on which the aggrieved party is relying and a basis for the relief sought. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, stating the date, time and place for the hearing, and specify the matters to be considered.

(b) The commissioner, during the pendency of any appeal or request for hearing, may utilize the surety deposit provided by the group self-insurance fund to make any payment of workers' compensation benefits which is currently due.

(c) Any party to the hearing shall have the right to appear in person or by counsel and to be present during the giving of all evidence and to have a reasonable opportunity to inspect all documentary and other evidence, and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may be taken orally or by deposition, and the parties shall have the [such] right of introducing evidence by interrogatories or by deposition as may be obtained in circuit court. Formal rules of pleadings or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) Within thirty (30) days after the conclusion of the hearing, the commissioner shall make his order covering all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain concise findings of fact and conclusions of law. The final order may [~~suspend;~~] revoke or modify a group self-insurance fund's certification.

(4) The group self-insurer may appeal the ruling of the commissioner to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) 51-03 (March 15, 1995 edition);

(b) 51-04 (March 15, 1995 edition);

(c) 51-05 (March 15, 1995 edition); and

(d) 51-06 (March 15, 1995 edition);

(2) This material may be inspected, copied, or obtained at the

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

[Section 13. Forms. (1) Forms SI-03, SI-04, SI-05 and SI-06, (all revised 3/15/95), are hereby adopted and incorporated by reference.

(2) Obtaining forms:

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims:

1. Frankfort – Perimeter Park West – Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville – 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah – 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville – 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., local time, Monday through Friday, inclusive, for this purpose.]

WALTER W. TURNER, Commissioner

STEPHEN B COX, General Counsel

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on November 23, 1998, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 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 a.m. (ET), on November 23, 1998, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 10 group self-insurers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

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

1. First year following implementation: There will be additional financial documents filed annually with the department. Self-insurers have six months to comply with the investment guidelines. There is a conflict of interest statement.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect in costs or savings on agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional pa-

perwork requirements. The department will be receiving additional financial documents.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for Department of Workers' Claims will continue to be used to 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 public comments were received.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments are necessary to continue to bring the self-insurance carrier into the same financial requirements as an insurance company. These requirements are necessary to fulfill both the statutory duties of Department of Workers' Claims and the protection of policyholders.

(8) Assessment of expected benefits: Policyholders will benefit from the assurances of financial stability and self-insured groups will be able to fully demonstrate financial strengths and improve weak areas.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: No conflict.

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because all group self-insurers will be subject to this regulation.

LABOR CABINET Department of Workers' Claims (Amendment)

803 KAR 25:170. Filing of claims information with the Department of Workers' Claims.

RELATES TO: KRS [Chapter] 342.038, 342.039

STATUTORY AUTHORITY: KRS [Chapter 19A:] 342.039

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.039 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

Section 1. Definitions. (1) "Carrier" is defined in KRS 342.0011(6).

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.

(3) [(2)] "Data collection agent" means a business or entity that keys information in an electronic format and transmits the resulting data to a value added network used by the Department of Workers' Claims.

[(3)] "Insurance company" means an insurer or where applicable, the Kentucky Insurance Guaranty Association.]

(4) "Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressees.

Section 2. Reporting Requirements. (1) Beginning with work-

related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier [insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator)] shall file the information required on the Form IA-1 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format, as soon as practicable and not later than one (1) week [three (3) weeks] from the date on which an employee has reported a work-related injury or occupational disease to the employer.

(2) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier [insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator)] shall file the information required on the Form IA-2 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date [every sixty (60) days for as long as the disability of an employee continues and whenever] payments to an employee are commenced, terminated, changed, or resumed; and

(b) Every sixty (60) days during temporary total disability.

(3)(a) Beginning July 1, 1999 [April 22, 1996], for medical bills paid [or denied] on or after that date [January 1, 1996], each carrier [insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator)] shall file a medical report containing the information extracted from the standardized uniform health claim forms [prescribed by the Health Policy Board of the Commonwealth of Kentucky pursuant to KRS Chapter 216 and the administrative regulations promulgated pursuant thereto].

(b) This information shall be filed with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format, as soon as practicable and after April 22, 1995; not later than three (3) weeks following [the] payment [or denial] of the [a] bill [submitted on a uniform health claim form in a workers' compensation case].

Section 3. Data Collection Agents. (1) If a carrier [an insurance company, group self-insurer (or its third-party administrator) or an individual self-insurer (or its third-party administrator)] is unable to transmit the information required under this administrative regulation to a value added network utilized by the Department of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value added network utilized by the Department of Workers' Claims.

(2) The Department of Workers' Claims shall maintain a directory of authorized data collection agents [businesses capable of providing this service that have asked to be listed as potential data collection agents].

Section 4. Acknowledgements. Acknowledgements of accepted filings made pursuant to this administrative regulation, and requests by the Department of Workers' Claims for resubmission of reports due to incomplete or incorrect information, shall be made in electronic format through the same data collection agent or value added network used for the filings.

Section 5. Forms. (1) The following forms are incorporated by reference:

(a) Form IA-1;

(b) Form IA-2. [Forms IA-1 and IA-2 are filed herewith and incorporated by reference.]

(2) This material may be inspected, copied, or obtained at [Obtaining forms:

(a) Forms are available to the public at main and branch office of the Department of Workers' Claims, Monday through Friday, 9 a.m. to 4 p.m. at [:

1. Frankfort—] Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville—410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah—220 B. North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville—412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday inclusive, for this purpose].

WALTER W. TURNER, Commissioner

STEPHEN B COX, General Counsel

APPROVED BY AGENCY: October 15, 1998

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CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 550 carriers as defined in KRS 342.0011(6).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. No effect is expected.

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

1. First year following implementation: KRS 342.038 requires that the first report of injury be filed within one week after the occurrence and knowledge. The regulation is in conflict with this time period. The carriers should have already been complying with the statute. The other amendments are technical and clarifications.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There should be no effect on costs or savings for Department of Workers' Claims.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Workers' Claims will be used to 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 public comments were received. The department does not anticipate an effect on economic activities.

(b) Kentucky: No public comments were received. The department does not anticipate an effect on economic activities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The regulation time period for first report of injury is in conflict with KRS 342.038. Therefore, there is no alternative but to bring the regulation into conformity with the statute.

(8) Assessment of expected benefits: The regulation will be consistent with the statute. Other amendments help clarify the language of the regulation.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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: The amendment will bring the regulation into conformity with KRS 342.038. No other conflicts.

(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 because this regulation applies equally to all carriers defined in KRS 342.0011(6).

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(Amendment)

808 KAR 1:060. Automated teller machines. [Remote service units.]

RELATES TO: KRS 287.180, 289.061, 290.055

STATUTORY AUTHORITY: KRS [Chapter 13A, 287.011,] 287.020, [287.900,] 289.702, 290.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides for the use of an automated teller machine by a financial institution and specifies that an automated teller machine is not a branch of the financial institution. [To clarify the definition of the term "branch," "branch office," and "service facility," as used in KRS 287.180, 289.061, and 290.055, respectively, and to provide a procedure and set of criteria for the establishment of remote service units so as to ensure the maintenance of competitive equality between state and federally chartered financial institutions.]

Section 1. Definitions. (1) "Financial institution" means a state-chartered bank, savings and loan association, or credit union. [Unless otherwise provided, whenever the term "financial institution" is used in this administrative regulation, it shall be deemed to refer to a state-chartered bank, savings and loan association or credit union.]

Section 2. [Except as provided in Section 11 of this administrative regulation,] A financial institution may receive and act upon a communication from a customer [communications from its customers] transmitted through an automated teller machine. The communication may:

(1) Request [electronic or mechanical devices (hereinafter referred to as "remote service units") requesting] the withdrawal of funds either from the customer's deposit account or from a previously authorized line of credit; [or]

(2) Instruct [instructing] the institution to receive funds or to transfer funds for the customer's benefit;

(3) Make a balance inquiry;

(4) Instruct the financial institution to receive cash or a check; or

(5) Request the financial institution to dispense cash to the customer at the location of the automated teller machine. [In accordance with a customer's request or instruction, and subject to verification by the institution, and the restrictions of Section 11 of this administrative regulation, cash or checks may be received, and cash may be dispensed at the location of the device.]

Section 3. A [Any] transaction initiated by an automated teller machine [a remote service unit] shall be subject to verification by the financial institution[, either by direct wire transmission or otherwise].

Section 4. [Although the approval of the commissioner shall not be required to operate the devices described in this administrative regulation, if a financial institution wishes to establish, use or share a device which allows customers to leave cash or checks for deposit or receive cash in connection with a debit to any of his accounts, then such financial institution shall furnish to the Department of Financial Institutions at least thirty (30) days prior to its actual use of such device the following information:

(1) The location;

(2) A general description of the area where located and the manner of installation at that location;

(3) The manner of operation, including whether the device is on-line, and a step-by-step analysis of how a customer is to use the device. A description of how the transactions are recorded and verified should also be included;

(4) The types of transactions that will be performed;

(5) Whether the device will be manned, and if so, by whose employee;

(6) Whether the device will be shared, and if so, the names and locations of the other institutions participating, and the costs and terms of the sharing agreement;

(7) The manufacturer and, if owned, the purchase price, or, if leased, the lease payments and the name of the lessor;

(8) If a card or other device is used to activate the remote service unit, how such card or device is to be used;

(9) Consumer protection procedures, including the disclosure of rights and liabilities of consumers and protection against wrongful or accidental disclosure of confidential information;

(10) The distance from the nearest office of the reporting institution, and the distance from the nearest remote service unit of the reporting institution;

(11) The distance from the nearest office of another institution that will not share the facility, and the name of such other institution and the distance from the nearest remote service unit that is not shared by the reporting institution and the names of the financial institutions that use such unit;

(12) Insurance and the security provisions protecting the installation and its users.

Section 5. The commissioner may, if he deems it appropriate, allow an institution to establish, use or share a remote service unit less than thirty (30) days after furnishing the information required by Section 4 of this administrative regulation.

Section 6. Written notice must be given to the Department of Financial Institutions at least ten (10) days prior to changing any of the operations described in a notice previously given pursuant to Section 4 of this administrative regulation; provided that the commissioner may, if he deems it appropriate, allow a change upon shorter notice.

Section 7. Any financial institution which desires to operate or to enable its customers to utilize a remote service unit may make such device available for use by customers of any other bank, savings and loan association or credit union which has its principal office in the same county, whether it be state or federally chartered, upon the request of such institution to share in the use of the device and to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation.

Section 8. One (1) or more financial institutions sharing one (1) or more remote service units may give a single notice to the Department of Financial Institutions, provided that such notice include the information listed in Section 4 of this administrative regulation for each shared

device:

Section 9:] The commissioner may [of the Department of Financial Institutions reserves the right to] require [new or additional] information from a [any] financial institution concerning [desiring to participate in] the operation of an automated teller machine or other information that the commissioner believes to be in the public interest. [one or more remote service units:

Section 10. No notice is required for any device which:

- (1) ~~is used only to transfer funds for goods or services received, and through which neither cash is dispensed nor cash or checks left for subsequent deposit;~~
- (2) ~~is used solely to verify a customer's credit for purposes of cashing a check or completing a credit card transaction;~~

Section 11. No bank or savings and loan association shall establish, share, or in any way participate in the operation or use of a remote service unit unless such unit is located within the county in which its principal office is located; provided that a bank or savings and loan association may share in the use of a remote service unit that is located outside of the county in which its principal office is located if such remote service unit is so programmed that the only type of transaction available to an out-of-county user is the dispensing of funds. For purposes of this administrative regulation, the term "out-of-county user," as it relates to a particular remote service unit, shall be deemed to refer to an individual who has his principal banking relationship with a state or federally chartered bank or savings and loan association whose principal office is located in a county other than that in which the remote service unit is located.

Section 12. A remote service unit may not be staffed by an institution employee; except that the institution may, for a reasonable period of time, provide an employee to instruct and assist customers in the operation of the device. The use of employees other than those of an institution to operate or assist in the operation of remote service units shall not be deemed to constitute the conducting of the business of banking by them or their employees, and such employees may be trained in the use of the devices by an institution's employees.]

Section 5. A [13. Any] financial transaction effected by use of an automated teller machine [a remote service unit] shall be deemed to be transacted at the institution and not at the automated teller machine. The automated teller machine [remote service unit, and such remote service unit] shall not be considered to be a branch or branch office.

[Section 14. If, as a result of this administrative regulation, any action by one or more institutions would be in violation of what is commonly referred to as the antitrust law, then this administrative regulation shall be construed so as to permit or require only such action as shall not be in violation of such law.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for November 30, 1998, at 10 a.m., EST, at the Department of Financial Institutions. Individuals who wish to be heard at this hearing must notify the contact person noted below in writing by November 19, 1998, of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed regulation. The department will not make a transcript of the hearing unless a person makes a request for a transcript prior to November 19, 1998. If a person does not wish to be heard at the hearing, the person may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: State chartered banks, savings and loan associations, and credit unions who operate automated teller machines. The number is indeterminable.

(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: Indeterminable, 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: Indeterminable, 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: None

2. Continuing costs or savings: 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: Revenue neutral.

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

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation, if in conflict:

(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 regulated entities only have one class each.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 3:050. Conduct.

RELATES TO: KRS [290.070:] 290.100, 290.225, 290.585, 290.715

STATUTORY AUTHORITY: KRS 290.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 290.070 requires the Department of Financial Institutions to prescribe rules and regulations for the proper conduct and regulation of credit unions. This administrative regulation is to assure the proper conduct of credit unions.

Section 1. Definition. A corporate credit unit means as a credit union that:

(1) is operated primarily for the purpose of serving other credit unions;

(2) is designated by the National Credit Union Administration as a corporate credit union; and

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(3) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Section 2. Refund of Interest. When an interest refund is authorized by the board of directors under KRS 290.225 [pursuant to the Act], it shall be recorded in the books of the credit union as a reduction of interest income from loans for that year or period.

Section 3. [2:] Advertising. No credit union shall represent by any means nor permit any representation by any means (including any means of advertisement) that it is under the supervision or regulation of the Department of Financial Institutions.

Section 4. [3:] Fee for Examination. (1) Each credit union shall pay the department a fee for each examination in accordance with the schedule of fees fixed by this section.

(2) In establishing such fees, the commissioner shall consider the anticipated aggregate cost of the examination program of the department including supervision, salaries, travel, and all other items which affect the cost of the examination program along with the ability of credit unions to pay such fees.

(3) The schedule of examination fees shall be as follows:

(a) Newly organized credit union [unions]. No fee will be charged a newly organized credit union for the first examination made within a year of the date of its organization being approved.

(b) Credit union [unions] with assets of less than \$25,000; a fee of \$50.

(c) Credit union [unions] with assets of \$25,000 to \$50,000; a fee of \$50 plus \$2 per \$1,000 of assets over \$25,000.

(d) Credit union [unions] with assets of \$50,000 to \$100,000; a fee of \$100 plus \$1.90 per \$1,000 of assets over \$50,000.

(e) Credit union [unions] with assets of \$100,000 to \$250,000; a fee of \$195 plus \$1.75 per \$1,000 of assets over \$100,000.

(f) Credit union [unions] with assets of \$250,000 to \$500,000; a fee of \$457.50 plus \$1.20 per \$1,000 of assets over \$250,000.

(g) Credit union [unions] with assets of \$500,000 to \$1,000,000; a fee of \$757.50 plus \$.55 per \$1,000 of assets over \$500,000.

(h) Credit union [unions] with assets of \$1,000,000 to \$2,000,000; a fee of \$1,032.50 plus \$.45 per \$1,000 of assets over \$1,000,000.

(i) Credit union [unions] with assets of \$2,000,000 to \$5,000,000; a fee of \$1,482.50 plus \$.30 per \$1,000 of assets over \$2,000,000.

(j) Credit union [unions] with assets of \$5,000,000 to \$20,000,000; a fee of \$2,382.50 plus \$.15 per \$1,000 of assets over \$5,000,000.

(k) Credit union [unions] with assets of \$20,000,000 to \$50,000,000; a fee of \$4,632.50 plus \$.13 per \$1,000 of assets over \$20,000,000.

(l) Credit union [unions] with assets of \$50,000,000 to \$100,000,000; a fee of \$8,532.50 plus \$.10 per \$1,000 of assets over \$50,000,000.

(m) Credit union [unions] with assets over \$100,000,000; a fee of \$11,532.50 plus \$.05 per \$1,000 of assets over \$100,000,000.

Section 5. [4:] Fidelity Bond. (1) [Every credit union shall, by July 1, 1985, purchase a blanket fidelity bond to protect the credit union against losses caused by the occurrences covered therein:] The minimum amount of the blanket fidelity [such] bond required by KRS 290.225(2) shall be the amount set forth in the following chart based on the assets of the credit union; [out in 12 CFR 701.20, effective September 7, 1984. Copies of 12 CFR 701.20 may be obtained from the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.]

Assets	Minimum Bond
\$0 to \$10,000	Amount equal to the credit union's assets
\$10,001 to \$1,000,000	\$10,000 for each \$100,000 or fraction thereof
\$1,000,001 to \$50,000,000	\$100,000 plus \$50,000 for each million or fraction thereof over \$1,000,000
\$50,000,001 to \$295,000,000	\$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000
Over \$295,000,000	\$5,000,000

(2) The board of directors of every credit union shall review their blanket fidelity bond coverage at least once each year in order to as-

certain its adequacy in relation to risk exposure.

Section 6. [5:] Stocks and Bonds. A credit union [Credit unions] may invest [up to] a maximum of five (5) percent of members shares in:

(1) Stock [Stocks] of a corporation [corporations] rated A+ in the current issue of Standard and Poore's Corporation Security Owners Stock Guide at the date of acquisition of the stock; and

(2) A corporate bond [Corporate bonds] rated AAA or higher in the current issue of Standard and Poore's Corporation Bond Guide, or rated AAA in the current issue of Moody's Bond Record at the date of acquisition of the bond. [Copies may be obtained from the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.]

Section 7. [6:] Risk Asset. For the purpose of establishing the regular reserve, an asset is a risk asset except for the following:

(1) Cash on hand;

(2) A deposit or share in a federally or state-insured bank, savings and loan association, or credit union that has a remaining maturity of five (5) years or less;

(3) An asset, including a collateralized mortgage obligation that is comprised of government guaranteed mortgage loans, that has a remaining maturity of five (5) years or less and is insured by, is fully guaranteed as to principal and interest by, or is due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association;

(4) A loan to another credit union that has a remaining maturity of five (5) years or less;

(5) A student loan that has a remaining maturity of five (5) years or less and that is insured under the provisions of Title IV, Part B of the Higher Education Act of 1965 (20 USC 1071, et seq.) or similar state insurance programs;

(6) A loan that has a remaining maturity of five (5) years or less and that is fully insured or guaranteed by the federal or a state government or any agency of either;

(7) A share or deposit in a corporate credit union that has a remaining maturity of five (5) years or less, other than a Membership Capital Share Deposit account as defined in 12 USC 704.

(8) A common trust investment, including a mutual fund, which deals exclusively in investments authorized by the Federal Credit Union Act that are either carried at the lower cost or market, or are marked to market value monthly;

(9) A prepaid expense;

(10) Accrued interest on a nonrisk investment;

(11) A loan fully secured by a pledge of shares in the lending credit union, equal to and maintained to at least the amount of the loan outstanding;

(12) A loan which is purchased from a liquidating credit union and guaranteed by the National Credit Union Administration;

(13) A National Credit Union Share Insurance Fund Guaranty Account established with the authorization of the National Credit Union Administration under the authority of section 208(a)(1) of the Federal Credit Union Act;

(14) An investment in shares of the National Credit Union Administration Central Liquidity Facility;

(15) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section with a maturity greater than five (5) years is not a risk asset if the asset is being carried on the credit union's records at the lower of cost or market, or is being marked to market value monthly;

(16) An asset included in subsections (2), (3), (4), (5), (6), and (7) of this section, with a remaining maturity of greater than five (5) years is not a risk asset, whether or not the asset is being carried on the credit union's records at the lower of cost or market or is being marked to market value monthly, provided the asset meets the following criteria:

(a) The interest rate is reset at least annually;

(b) The interest rate of the instrument is less than the maximum allowable interest rate for the instrument on the date of the required reserve transfer; and

(c) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a

multiple of the change in the related index;

(17) A fixed asset which includes an office, branch office, suboffice, service center, parking lot, or real estate where the credit union transacts or will transact business; office furnishing, office machine, computer hardware and software, automated terminal, and heating and cooling equipment; and

(18) A deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one (1) percent of insured shares. [Assets. Risk assets, for the purpose of establishing the regular reserve, shall be defined as set out in 12 CFR 700, effective July 14, 1980. Copies of 12 CFR 700 may be obtained from the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.]

Section 8. [7.] Charitable Contribution. [Contributions:] The board of directors may authorize a contribution to a [contributions to] civic, charitable or service organization [organizations, each contribution not to exceed \$100].

Section 9. Conversion. [8. Conversions.] A state-chartered credit union may convert to another charter by complying with the following procedures:

(1) The board of directors shall first put the question of conversion to a vote of the members. Written notice of the proposed conversion shall be given to all members, including the reasons for the proposed conversion. The notice may be mailed or hand delivered to the members. The notice shall set forth the date and place for this meeting called to vote on the proposed conversion, which shall be at least fifteen (15) days after the date of the notice.

(2) Approval of the proposed conversion shall be by a vote of the majority of the members who vote on the proposed conversion, in person or by absentee ballot if the bylaws of the credit union allow absentee ballots.

(3) A statement of the results of the vote, verified by the president and secretary, shall be filed with the commissioner.

(4) The commissioner shall issue an order that, on the effective date of the conversion, the credit union is no longer incorporated under the laws of Kentucky. A copy of the order shall be forwarded to the Secretary of State.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for November 30, 1998, at 10 a.m., EST, at the Department of Financial Institutions. Individuals who wish to be heard at this hearing must notify the contact person noted below in writing by November 19, 1998, of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed regulation. The department will not make a transcript of the hearing unless a person makes a request for a transcript prior to November 19, 1998. If a person does not wish to be heard at the hearing, the person may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: State-chartered credit unions. The number is indeterminable.

(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: Indeterminable, 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: Indeterminable, 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: None

2. Continuing costs or savings: 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: Revenue neutral.

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

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation, if in conflict:

(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 regulated entities only have one class each.

PUBLIC PROTECTION AND REGULATION CABINET Department of Financial Institutions (Amendment)

808 KAR 12:020. Claims of exemption.

RELATES TO: KRS 294.020

STATUTORY AUTHORITY: KRS 294.140(1)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedure for filing a claim of exemption pursuant to KRS 294.020(3). [To establish procedures for filing a claim of exemption:]

Section 1. A person filing a claim of exemption under KRS 294.020(3) shall: [Pursuant to KRS 294.020(2), any person relying on an exemption under KRS 294.020(1) shall file with the commissioner a claim of exemption. In submitting the application to the commissioner, the applicant shall:]

(1) Submit an [the] application on the form prescribed by the commissioner;

(2) Enclose with the application [any] documentation that supports [which the commissioner may require to support] the applicant's claim of exemption; and

(3) Enclose a [the] fee in the amount of \$150 [or the application in the amount of fifty (50) dollars].

Section 2. Within ten (10) days of the change, a person who submits an application under Section 1 of this administrative regulation shall notify the commissioner:

(1) Of a change of address of the applicant; or

(2) That the applicant has ceased to do business in Kentucky. [Information contained in applications for exemption which are approved shall be updated on a yearly basis on July 1. The yearly update shall be:]

(1) Submitted on the form prescribed by the commissioner;

(2) Accompanied by a fee of twenty-five (25) dollars.]

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for November 30, 1998, at 10 a.m., EST, at the Department of Financial Institutions. Individuals who wish to be heard at this hearing must notify the contact person noted below in writing by November 19, 1998, of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed regulation. The department will not make a transcript of the hearing unless a person makes a request for a transcript prior to November 19, 1998. If a person does not wish to be heard at the hearing, the person may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: A person filing a claim of exemption under KRS 294.020(3). The number is indeterminable.

(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: Indeterminable, 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: Indeterminable, 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: None

2. Continuing costs or savings: 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: Revenue neutral.

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

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation, if in conflict:

(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 regulated entities only have one class each.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Division of Building Codes Enforcement
(Amendment)

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

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the board to adopt a mandatory uniform state building code to establish standards for the construction of all buildings in the state. This administrative regulation incorporates by reference the Kentucky Building Code, Seventh Edition 1997.

Section 1. Incorporation by Reference. (1) "The Kentucky Building Code", (Seventh Edition - 1997), as amended July 6, 1998 [January 6, 1998 and April 16, 1998], by the Kentucky Board of Housing, Buildings and Construction, is incorporated by reference.

(2) This material [H] may be inspected, copied, or obtained at the Kentucky Department of Housing, Buildings, and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No costs or savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated above.

(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 to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the

sale of the Code books.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Plan review fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced statewide.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within defined limits.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

(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: Without a building code, construction would not conform to the latest safety standards listed and confusion over some provisions would make design more difficult.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict of statute or policy.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.

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: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:120. Water supply and distribution.

RELATES TO: KRS 318.010, 318.130, 318.150, 318.165, 318.200

STATUTORY AUTHORITY: KRS 198B.040(10), 318.130

NECESSITY, FUNCTION, AND CONFORMITY: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation establishes the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control the water supply system and requires the manufacturer's specification number of the material accepted in those installations to be identified and published.

Section 1. Definition of Terms. (1) "ASSE" means American Society of Sanitary Engineers and copies of specifications identified in this administrative regulation may be obtained by writing the American Society of Sanitary Engineers, P.O. Box 40362, Bay Village, Ohio 44140.

(2) "ASTM" means American Society for Testing Materials and copies of specifications identified in this administrative regulation may be obtained by writing the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "Critical level (CL)" means the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(4) "DWV" means drain, waste and vent piping.

(5) "SDR" means standard dimensional ratio.

Section 2. Quality. (1) The bacteriological and chemical quality of the water supply shall comply with the administrative regulations of the department and other governing authorities. Toxic materials shall be kept out of the potable water system.

(a) The pipe conveying and the surfaces in contact with potable water shall be constructed of nontoxic materials.

(b) Chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a potable water system shall not be introduced into, or used in, the systems.

(c) The interior surface of a potable water tank shall not be lined, painted, or repaired with a material which will affect either the taste, odor, color, or potability of the water supply if the tank is placed in, or returned to, service. All interior tank coatings shall be from the list approved by the authority having jurisdiction.

(2) Potable water shall be accessible to plumbing fixtures that supply water for drinking, bathing, culinary use or the processing of medicinal, pharmaceutical or food products.

(3) The potable water supply system shall be designed, installed, and maintained to prevent contamination from nonpotable liquids, solids, or gases being introduced into the potable water supply through cross connections or other piping connections to the system.

(4) Cross connections shall be prohibited except as approved by the authority having jurisdiction, and suitable protective devices shall be installed.

(5) Cross connections between a private water supply and a public water supply shall not be made.

(6) If cross connection control devices are properly installed, they shall create a closed water system. A properly sized thermal expansion tank shall be installed in the cold water supply located near the water heater.

(7) Backflow and back siphonage protection. Means of protection against backflow shall be as required in paragraphs (a) through (l) of this subsection in order of degree of protection provided. Backflow shall include both back pressure and back siphonage.

(a) An air gap shall provide the best level of protection in all backflow situations. The minimum required air gap shall be determined as follows:

1. How measured. The minimum required air gap shall be measured vertically from the lowest end of a potable water outlet to the

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

flood rim or line of the fixture or receptacle into which it discharges.

2. Size. The minimum required air gap shall be twice the effective opening of a potable water outlet, unless the outlet is a distance less than three (3) times the effective opening away from a wall or similar vertical surface, in which case the minimum required air gap shall be three (3) times the effective opening of the outlet. The minimum required air gap shall not be less than shown in the following table - Minimum Air Gaps for Plumbing Fixtures.

MINIMUM AIR GAPS FOR PLUMBING FIXTURES		
Fixture	Minimum Air Gap	
	When not affected by near wall (inches)	When affected by near wall (inches)
Lavatories and other fixtures with effective opening not greater than 1/2 inch diameter	1	1 1/2
Sink, laundry trays, gooseneck bath faucets and other fixtures with effective openings not greater than 3/4 inch diameter	1 1/2	2 1/4
Over rim bath fillers and other fixtures with effective openings not greater than 1 inch diameter	2	3
Drinking water fountains - single orifice not greater than 7/16 (0.437) inch diameter or multiple orifices having total area of 0.150 square inches (area of circle 7/16 inch diameter)	1	1 1/2
Effective openings greater than 1 inch	2 x diameter of effective opening	3 x diameter of effective opening

NOTE 1. Side walls, ribs, or similar obstructions do not affect air gaps if spaced from inside edge of spout opening a distance greater than three (3) times the diameter of the effective opening for a single wall, or a distance greater than four (4) times the diameter of the effective opening for two (2) intersecting walls.

NOTE 2. Vertical walls, ribs, or similar obstructions extending from the water surface to or above the horizontal plane of the spout opening require a greater air gap if spaced closer to the nearest inside edge of spout opening than specified in NOTE 1 above. The effect of three (3) or more vertical walls or ribs has not been determined. In this case, the air gap shall be measured from the top of the wall.

(b) Reduced pressure principle back pressure backflow preventer. Reduced pressure principle back pressure backflow preventers shall provide the best mechanical protection against backflow available, and may be considered equivalent to an air gap.

(c) Double check valve assembly: applicable to low level of hazard back pressure backflow conditions. These devices shall be manufactured assemblies consisting of two (2) independently acting check valves and including shutoff valves at each end, and petcocks and test gauges for testing the watertightness of each check valve.

(d) Pressure type vacuum breaker: applicable to back siphonage conditions.

(e) Atmospheric type vacuum breaker: applicable to back siphonage conditions. If applicable, all atmospheric type vacuum breakers shall be installed after the last cutoff valve on the water line. These devices may operate under normal atmospheric pressure if the critical level (CL) is installed at the required height in accordance with the following table:

CRITICAL LEVEL (CL) SETTINGS FOR ATMOSPHERIC TYPE VACUUM BREAKERS	
Fixture or Equipment	Method of Installation
Aspirators, ejectors, and showers	CL at least 6 in. above flood level of receptacle

Bidets	CL at least 6 in. above flood level of receptacle
Cup beverage vending machines	CL at least 12 in. above flood level of machine
On models without built-in vacuum breakers:	
Dental units	CL at least 6 in. above flood level rim of bowl.
Dishwashing machines	CL at least 6 in. above flood level of machine
Flushometers (closet & urinal)	CL at least 6 in. above top of fixture supplied
Garbage can cleaning machines	CL at least 6 in. above flood level of machine
Hose bibs (sinks or receptacles)	CL at least 6 in. above flood level of receptacle served
Hose outlets	CL at least 6 in. above highest point on hose line
Laundry machines	CL at least 6 in. above flood level of machine
Lawn sprinklers	CL at least 12 in. above highest sprinkler or discharge outlet
Steam tables	CL at least 12 in. above flood level
Tanks & vats	CL at least 6 in. above flood level rim or line

NOTE 1. Critical level (CL) is defined as the level to which the vacuum breaker may be submerged before backflow will occur. If the CL marking is not shown on the vacuum breaker, the bottom of the device shall be taken as the CL.

(f) Barometric loop: applicable to back siphonage conditions. The use of a barometric loop shall not be acceptable as the primary back siphonage preventer.

(g) Location of backflow and back siphonage preventers. Backflow and back siphonage preventers shall be in an accessible location, preferable in the same room as the fixture or connection they protect. Devices may be installed in utility or service spaces. Devices and air gaps shall not be subject to flooding or freezing.

(h) Inspection of devices. Periodic inspections shall be made of all backflow and back siphonage preventers to determine if they are in proper working condition. Reduced pressure principle back pressure backflow preventers shall be tested on at least an annual basis. Records shall be kept on all inspections.

(i) Approval of devices. Before any device for the prevention of backflow or back siphonage is installed, it shall have first been certified by a recognized testing laboratory acceptable to the plumbing official. Devices installed in a building potable water supply distribution system for protection against backflow shall be maintained in good working condition by the person or persons responsible for the maintenance of the system.

(j) Protection of potable water system. Potable water openings, outlets, and connections, except those serving residential units, shall be protected against backflow in accordance with paragraphs, (a) through (l) of this subsection.

(k) Degree of hazard. The protection required at any given outlet or connection shall be determined based on the degree of hazard posed by that outlet or connection as follows:

1. Severe hazard. Potential for contamination by toxic substances or disease-causing organisms.

2. Moderate hazard. Potential for contamination by nontoxic but objectionable substances.

3. Minor hazard. Potential for contamination by generally nontoxic, nonobjectionable substances, but which may cause the consumer to question the quality of water.

(l) Minimum acceptable protection. An opening or outlet shall be protected by an air gap between the opening and flood level rim if possible. The acceptable protection for various types of outlets or connections shall be as shown in the following table:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

APPLICATION CHART					
TYPE AND PRESSURE	DESCRIPTION	INSTALLED AT	EXAMPLES OF INSTALLATIONS	APPLICABLE SPECIFICATIONS	
Reduced Pressure Principle Backflow Preventer For high hazard cross connections.	Two independent check valves with intermediate relief valve. Supplied with shut-off valves and ball-type test cocks.	All cross connections subject to backpressure or back siphonage where there is a high potential health hazard from contamination. Continuous pressure.	Main Supply Lines Commercial Boilers Cooling Towers Hospital Equipment Processing Tanks Laboratory Equipment Waste Digesters Car Wash Sewage Treatment Lawn Sprinklers	ASSE No. 1013 AWWA C506 FCCCHR of USC CSA B.64.4 Sizes 3/4 " - 10"	
(A) Double Check Valve Assembly For low hazard cross connections.	Two independent check valves. Supplied with shutoff valves and ball type test cocks.	All cross connections subject to back pressure where there is a low potential health hazard or nuisance. Continuous pressure.	Main Supply Lines Food Cookers Tanks and Vats Commercial Pools	N O N T O	ASSE No. 1015 AWWA C506 FCCCHR of USC CSA B.64.5 Sizes 3/4" - 10"
(B) Dual Check Valve Backflow Preventer For low hazard applications.	Two independent check valves. Checks are removable for testing	Cross connections where there is a low potential health hazard and moderate flow requirements.	Post ground hydrants.	X I C	ASSE No. 1024 Sizes 3/4" & 1"
(A) Backflow Preventer with Intermediate Atmospheric Vent For moderate hazard cross connections in small pipe sizes.	Two independent check valves with intermediate vacuum breaker and relief valve.	Cross connections subject to back pressure or back siphonage where there is a moderate health hazard. Continuous pressure.	Boilers (Small) Cooling Towers (Small) Dairy Equipment Residential	ASSE No. 1012 CSA B.64.3 Sizes 1/2" & 3/4"	
		Pump outlet to prevent backflow to carbon dioxide gas and carbonated water into the water supply system to beverage machines.	Postmix Carbonated Beverage Machine	Special Approvals	
(B) Laboratory Faucet and Double Check Valve with Intermediate Vacuum Breaker in small pipe sizes for moderate to low hazard.	Two independent check valves with intermediate vacuum breaker and relief vent.	Cross connection subject to back pressure or back siphonage where there is a moderate to low health hazard.	Laboratory Faucets and Pipe Lines Barber Shop and Beauty Parlor Sinks	ASSE No. 1035 (N-LF9)	
(A) Atmospheric Vacuum Breakers For moderate to high hazard cross connections.	Single float and disc with large atmospheric port.	Cross connections not subject to backpressure or continuous pressure. Install at least 6" above fixture rim. Protection against back siphonage only.	Process Tanks Dishwashers Soap Dispensers Washing Machines	ASSE No. 1001 ANSI.A112.1.1 CSA B.64.1.1 FCCCHR of USC Sizes 1/4" - 3"	
(B) Antisiphon Pressure Breakers For moderate to high hazard cross connections.	Spring loaded single float and disc with independent 1st check. Supplied with shutoff valves and ball type test cocks.	This valve is designed for installation in a continuous pressure potable water supply system 12" above the overflow level of the system being supplied. Protection against back siphonage only.	Laboratory Equipment Cooling Towers Comm. Laundry Machines, Swimming Pools Commercial Plating Tanks Lg. Total & Urinal Facilities Degreasers, Photo Tanks Livestock Water Systems Lawn Sprinklers	ASSE No. 1020 CSA B.64.1.2 FCCCHR of USC Sizes 1/2" - 2"	
(C) Hose Connection Vacuum Breakers For residential and industrial hose supply outlets.	Single check with atmospheric vacuum breaker vent.	Install directly on hose bibs, service sinks and wall hydrants. Not for continuous pressure.	Hose Bibs Service Sinks Hydrants	ASSE No. 1011 CSA B.64.2 Size 3/4" Hose	

CROSS CONNECTIONS, DEGREE OF HAZARD AND ACCEPTABLE PROTECTION FOR VARIOUS PLUMBING OUTLETS AND CONNECTIONS								
Type of Connection	Degree of Hazard				Acceptable Protection			
	Severe	Moderate	Minor	Air Gap	Reduced Pressure Device	Backflow		Atmospheric Type Vacuum Breaker
						Double Check Valve Assembly	Pressure Type Vacuum Breaker	
I. Connections subject to back pressure from:								
A. Pumps, tanks, and lines handling :								
1. Toxic substance	X			X	X			

2. Nontoxic substance		X		X	X	X		
B. Boilers								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		
C. Gravity due to obvious site conditions subject to:								
1. Contamination by toxic substances	X			X	X			
2. Contamination by nontoxic substances		X		X	X	X		
II. Water outlets and connections not subject to back pressure:								
A. Connection to sewer or sewage pump	X			X				
B. Outlet to receptacles containing toxic substances	X			X	X		X	X
C. Outlet to receptacles containing nontoxic substances		X		X	X	X	X	X
D. Outlet into domestic water tanks			X					
E. Flush valve toilets	X			X	X		X	X
F. Flush valve urinals		X		X	X		X	X
G. Outlets with hose attachments subject to contamination from:								
1. Toxic substance	X			X	X		X	X
2. Nontoxic substance		X		X	X	X	X	
H. Outlets to recirculating cooling tower								
1. With chemical additives	X			X	X			
2. Without chemical additives		X		X	X	X		

Section 3. Water Required. (1) A building equipped with plumbing fixtures and used for habitation or occupancy shall be equipped with a supply of potable water.

(2) In buildings used as residences or buildings in which people assemble or are employed, both hot and cold water shall be supplied.

Section 4. Water Service. (1) The water service piping to A building shall not be less than three-fourths (3/4) inch nominal pipe size but shall be of sufficient size to permit a continuous and ample flow of water to all fixtures in the building.

(2) The underground water service pipe from the main or water supply system to the water distribution system shall not be less than five (5) feet apart horizontally from the house sewer and shall be separated by undisturbed or compacted earth except they may be placed in the same trench if:

(a) The bottom of the water service pipe at all points shall be at least eighteen (18) inches above the top of the sewer at its highest point.

(b) The water service pipe shall be placed on a solid shelf excavated at one (1) side of the common trench.

(c) The number of joints in the water service pipe shall be kept to a minimum.

Section 5. Distribution. (1) The water supply shall be distributed through a piping system entirely independent of any other piping system.

(2) Piping which has been used for purposes other than conveying potable water shall not be used for conveying potable water.

(3) Nonpotable water may be used for flushing water closets and urinals, if the water is piped in an independent system. If a dual water distribution system is used, the nonpotable water supply shall be durably and adequately identified by color markings and metal tags, or other appropriate method as may be approved by the governing authority. An outlet on the nonpotable water distribution system used for drinking or domestic purposes shall be permanently posted: DANGER - UNSAFE WATER. The branches, fittings or valves shall be identified by the word - "NONPOTABLE WATER" either by signs or brass tags that shall be permanently affixed to the pipe, fittings, or valves. These identification markings shall not be concealed. Their maintenance shall be the responsibility of the owner.

(4) Any backflow device or cross-connection control device shall be approved by the department.

(5) Combination stop and waste valves, cocks, or hydrants shall not be installed in the underground water distribution system without

the installation of an approved backflow preventer.

(6) A private water supply shall not be interconnected with any public water supply.

(7) Water used for cooling of equipment or in other processes shall not be returned to the potable water system. The water shall be discharged into a drainage system through an air gap, or may be used for nonpotable purposes on written approval of the plumbing official.

Section 6. Water Supply to Fixtures. Plumbing fixtures shall be provided with a sufficient supply of water for flushing to keep them in a sanitary condition. A water closet or pedestal urinal shall be flushed by means of an approved tank or flush valve. The tank or valves shall furnish at least a sufficient amount of water to thoroughly cleanse the surface area of water closets, urinals or similar fixtures. If a water closet, urinal, or similar fixture is supplied directly from the water supply system through a flushometer or other valve, the valves shall be set above the fixture to prevent the possibility of polluting the potable water supply by back siphonage. These fixtures shall have a vacuum breaker. Plumbing fixtures, devices or appurtenances shall be installed in a manner that shall prevent any possibility of a cross connection between the potable water supply system, drainage system or other water system.

Section 7. Connections to Boilers. Potable water connections to boiler feed water systems in which boiler conditioning chemicals are introduced shall be made through an air gap, or provided with a reduced pressure principle backflow preventer located in the potable water line before the point where chemicals are introduced. Boilers shall be equipped with a check valve in the cold water supply to the boiler.

Section 8. Water Supply to Drinking Fountains. The orifice of a drinking fountain shall be provided with a protective cowl to prevent contamination of the potable water supply system.

Section 9. Sizing of Water Supply Piping. (1) The minimum size water service from the property line to the water heater shall be three-fourths (3/4) inch. The hot and cold water piping shall extend three-fourths (3/4) inch in size to the first fixture branch. More than three and one-half (3 1/2) inch fixture branches shall not be supplied from any one-half (1/2) inch pipe.

(2) The following schedule shall be used for sizing the water supply piping to fixtures. The branch pipe to a fixture shall terminate not more than thirty (30) inches from the point of connection to the fixture

and shall be brought to the floor or wall adjacent to the fixture. A concealed water branch pipe shall not be less than one-half (1/2) inch nominal pipe size.

Fixture Branches	Nominal Pipe Size (Inches)
Bath tubs	1/2
Combination sink and tray	1/2
Cuspidor	1/2
Drinking fountain	1/2
Dishwasher (domestic)	1/2
Kitchen sink (res.)	1/2
Kitchen sink (com.)	1/2 or 3/4 as required
Lavatory	1/2
Laundry tray	1/2
Sinks (service, slop)	1/2
Sinks flushing rim	3/4
Urinal (flush tank)	1/2
Urinal (direct flush type)	1/2 or 3/4 as required
Water closet (tank type)	1/2
Water closet (flush valve type)	1
Hot water boilers	3/4
Hose bibs	1/2
Wall hydrant	1/2
Domestic clothes washer	1/2
Shower (single head)	3/4

(3) Water hammer. In building supply systems in which devices or appurtenances are installed utilizing quick acting valves that cause noises due to water hammer, protective devices, including air chambers or approved mechanical shock absorbers, shall be installed as close as possible to the quick acting valve causing the water hammer.

(a) If mechanical shock absorbers are installed, they shall be in an accessible place.

(b) If mechanical devices are used, the manufacturer's specifications shall be followed as to location and method of installation.

Section 10. Water Supply Pipes and Fittings, Materials. (1) Water supply piping for a potable water system shall be of galvanized wrought iron, galvanized steel, brass, Types K, L, and M copper, cast iron, Types R-K, R-L, and R-M brass tubing, standard high frequency welded tubing produced and labeled as ASTM B-586-73, fusion welded copper tubing produced and labeled as ASTM B-447-72 and ASTM B-251, DWV welded brass tubing produced and labeled as ASTM B-587-73, seamless stainless steel tubing, Grade H produced and labeled as ASTM A-268-68, filament-wound reinforced thermo-setting resin pipe produced and labeled as ASTM D-2996 (red thread for cold water use and silver and green thread for hot and cold), polyethylene (PE) plastic pipe produced and labeled as ASTM D-2239-69 or ASTM F-714, cross-linked polyethylene (PEX), produced and labeled as ASTM F-876 for cold water and ASTM F-877 for hot or cold water applications, cross-linked Polyethylene /Aluminum/Cross-linked Polyethylene (Pex-Al-Pex) produced and labeled as ASTM F-1281, Polyethyl-ene/Aluminum/Polyethylene (Pe-Al-Pe) produced and labeled as ASTM F-1282, copper tubing size PE produced and labeled as ASTM D-2737 for water service if installed with compression couplings, Poly(vinyl chloride) (PVC) plastic pipe produced and labeled as ASTM D-1785-69, Chlorinated Poly(vinyl chloride) (CPVC) plastic pipe produced and labeled as ASTM D-2846-70, Poly(vinyl chloride) (PVC) standard dimensional ratio (SDR) -21 and (SDR) 26 produced and labeled as ASTM D-2241-84, polybutylene (PB) plastic pipe produced and labeled as ASTM-D-3309-85b with brass or copper fittings.

(2) Plastic pipe and fittings shall bear the NSF seal of approval.

(3) Polybutylene pipe utilizing insert fittings of brass or copper shall use copper clamping rings.

(4) Polybutylene hot and cold water connectors to lavatories, sinks and water closets shall be produced and labeled as ASTM-D-3309-85b, and polybutylene plastic pipe produced and labeled as ASTM 2662 for cold water applications.

(5) Fittings shall be brass, copper or approved plastic or galvanized cast iron or galvanized malleable iron. Piping or fittings that have been used for other purposes shall not be used for the water distribution system.

(6) All joints in the water supply system shall be made of screw, solder, or plastic joints. Cast iron water pipe joints may be caulked, screwed, or machine drawn.

(7) If Type M copper pipe, Type R-M brass tubing, standard high frequency welded tubing or stainless steel tubing is placed within a concrete floor or passes through a concrete floor, it shall be wrapped with an approved material to permit expansion or contraction.

(8) Polyethylene or PVC shall not be used below ground under a house or building. If Chlorinated Poly(vinyl chloride) (CPVC) joints or connections are installed below ground under a house or building, the water distribution system shall be tested to at least 100 psi before backfilling. (Refer also to 815 KAR 20:060 and 815 KAR 20:073).

(9) Joints between copper tubing and galvanized steel pipe. Joints between ferrous piping and copper or copper-alloy piping shall be made with a dielectric fitting or other insulating fitting to prevent electrolysis.

Section 11. Temperature and Pressure Control Devices for Shower Installations. Temperature or pressure balance devices to prevent sudden unanticipated changes in water temperature shall be installed to serve all shower compartments and shower-bath combinations.

Section 12. Water Supply Control. (1) A main shutoff valve shall be provided near the curb, in or near the meter box or property line on the water service pipe. In addition, a main supply control valve shall be placed inside a foundation wall. The main supply control valve shall be accessible and provided with a drip or drain valve. A pit or similar type installation shall not be used for a potable water supply shutoff valve.

(2) Pressure on gravity tanks shall have their supply lines valved at or near their source.

(3) A family unit in a two (2) family or multifamily dwelling shall have the unit controlled by an arrangement of shutoff valves which will permit the unit to be shutoff without interfering with the cold water supply to other family units or portions of the building.

(4) In buildings other than dwellings, shutoff valves shall be installed to permit the water supply to the equipment to be isolated without interference with the supply to other equipment.

(5) A fixture or group of bath fixtures shall be valved and lawn sprinkler openings shall be valved. In residential construction all fixtures except bathtub and showers shall be valved individually or as a group of fixtures.

(6) A group of fixtures or a fixture group shall mean two (2) or more fixtures adjacent to or near each other in the same room or back-to-back on a common wall.

(7) The cold water branch to a hot water storage tank or water heater shall be provided with a shutoff valve located near the equipment and serving this equipment.

Section 13. Water Supply Protection. All concealed water pipes, storage tanks, cisterns, and all exposed pipes or tanks subject to freezing temperatures shall be protected against freezing. Water services shall be installed at least thirty (30) inches in depth.

Section 14. Temperature and Pressure Relief Devices for Water Heaters. Temperature and pressure relief devices shall be installed on all water heaters on the hot water side not more than three (3) inches from the top of the heater. Temperature and pressure relief devices shall be of a type approved by the department. If a water heater is installed in a location that has a floor drain, the discharge from the relief device shall be piped to within two (2) inches of the floor; if a water heater is installed in a location that does not have a floor drain, the discharge from the relief device shall be piped to the outside of the building with an ell turned down and piped to within four (4) inches of the surface of the ground. The relief device may also discharge through an air gap to a sump basin, service sink, open receptacle or other point of discharge in which equivalent safety shall be provided as approved by the Division of Plumbing. Relief devices shall be installed on a pneumatic water system.

Section 15. Protection of a Private Water Supply or Source. Private water supplies or sources shall be protected from pollution in a manner approved by the department. The approval shall be obtained prior to.

Section 16. Domestic Solar Water Heaters. Domestic solar water heaters may have a "single wall heat exchanger" if the following con-

ditions are met:

- (1) The solar panel and the water heater exchanger use a non-toxic liquid such as propylene glycol or an equivalent; and
- (2) The heat exchanger is pretested by the manufacturer to 450 PSI; and
- (3) The water heater has a warning label advising that a nontoxic heat exchanger fluid shall be used at all times; and
- (4) A pressure relief valve is installed at the highest point in the solar panel.

Section 17. Domestic Water Heater Preheating Device. A domestic water heater preheating device may be used and connected with the high pressure line from the compressor of a domestic home air conditioner or heat pump water heater. Double wall heat-exchangers with two (2) separate thicknesses separating the heat exchange fluid (other than potable water) from the potable water supply shall be provided. The water inlet to the heat exchange vessel shall be provided with a check valve, and adjacent to, and at the outlet side of the check valve, an approved pressure relief valve set to relieve at five (5) PSI above the maximum water pressure at the point of installation shall be provided if the heat exchange units contain more than twenty (20) pounds of refrigerants. This device shall be equipped with a temperature limit control that would actuate a pump that would circulate hot water from the water heater through the preheater device. Condensate drain water shall be piped in accordance to the plumbing code and it shall not be permitted to drain into crawl space, or into a sewer or vent stack, or be installed in areas subject to freezing. If a drain is not available or if a drain is located above the vent, a condensate pump shall be utilized.

Section 18. Tanks and Vats, below Rim Supply. Tanks and vats with potable water supply below the rim shall be subject to the following requirements:

- (1) If a potable water outlet terminates below the rim of a tank or vat and the tank or vat has an overflow of diameter not less than given in the following table, sizes of overflow pipes for water supply tanks, the overflow pipe shall be provided with an air gap as close to the tank as possible.

SIZES FOR OVERFLOW PIPES FOR WATER SUPPLY TANKS			
Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)	Maximum capacity of water supply line to tank	Diameter of overflow pipe (inches ID)
0- 50 gpm	2	400- 700 gpm	5
50-150 gpm	2 1/2	700-1000 gpm	6
150-200 gpm	3	Over 1000 gpm	8

- (2) The potable water outlet to the tank or vat shall terminate a distance not less than one and one-half (1 1/2) times the height to which water can rise in the tank above the top of the overflow. This level shall be established at the maximum flow rate of the supply to the tank or vat, and with all outlets, except the air gap overflow outlet closed.

- (3) The distance from the outlet to the high water level shall be measured from the critical point of the potable water supply outlet.

Section 19. Water Distribution for Fan Coil Units. If a domestic water heater is used for heating purposes through a fan coil medium, its temperature shall not exceed 140 degrees Fahrenheit. It shall utilize not less than three-fourths (3/4) inch piping and its run shall not exceed 140 feet between the water heater and the heating unit (relates to 815 KAR 20:070).

Section 20. Fire Protection Systems. Fire protection systems using water from the potable water distribution system shall be equipped with two (2) check valves, one (1) of which may be an alarm check valve.

Section 21. Water Distribution and Connections to Mobile Homes. (1) An adequate and safe water supply shall be provided to each mobile home conforming to the administrative regulations of the department.

- (2) All materials, including pipes and fittings used for connections, shall conform with the State Plumbing Code.

- (3) An individual water connection shall be provided at an appropriate location for each mobile home space. The connection shall consist of a riser terminating at least four (4) inches above the ground with two and three-fourths (2 3/4) inch valve outlets with screw connection, one (1) for the mobile home water system and the other for lawn watering and fire control. The ground surface around the riser pipe shall be graded to divert surface drainage. The riser pipe shall be encased in an eight (8) inch vitrified clay pipe or an equivalent with the intervening space filled with an insulating material to protect it from freezing. An insulated cover shall be provided which shall encase both valve outlets but not prevent connection to the mobile home during freezing weather. A shutoff valve may be placed below the frost depth on the water service line, but this valve shall not be a stop-and-waste cock.

Section 22. Conservation of water shall comply with the standards established in 815 KAR 20:070.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

- (1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

- (2) Direct and indirect costs or savings on the,

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Some cost savings on installations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

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

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

- (3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of

this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and the Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect except to make more quality materials available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Different types of pipes are approved for different uses.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of State Fire Marshal
(Amendment)

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS 227.450, 227.489, 227.490, 227.4901

STATUTORY AUTHORITY: KRS 227.489, 227.490(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the Commissioner of the Department of Housing, Buildings and Construction to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation establishes the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means a person who has:

(a) Met the requirements established in this administrative regulation; and

(b) Received a certificate of compliance.

(4) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" is defined by KRS 227.450(5).

(7) "Electrical" is defined by KRS 227.450(3).

(8) "Electrical industry" means the industry engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means a person who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the

department under the provisions of Section 4 of this administrative regulation which is valid for a limited period of time.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant for certification as an electrical inspector.

Section 3. Categories of Certified Electrical Inspectors. A certified electrical inspector shall be classified as an electrical inspector one (1) and two (2) family or an electrical inspector general.

(1) An electrical inspector one (1) and two (2) family shall:

(a) Be a person who:

1. Has passed the applicable NCPCCI examination; or

2. Was classified as a residential inspector; and

(b) Be qualified to perform an electrical inspection and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or

2. Mobile home.

(2) An electrical inspector general shall:

(a) Be a person who:

1. Has passed the applicable NCPCCI examination; or

2. Was classified as a commercial inspector; and

(b) Be qualified to inspect and approve all types of residential, commercial, industrial, or other property which requires electrical inspection.

Section 4. Applications Requirements for Temporary Certification.

(1) Before an applicant may sit for the examination for temporary certification as an electrical inspector, the applicant shall:

(a)1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:

a. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or

b. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general; or

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspector, which shall be:

1. Notarized; and

2. Received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A written statement of need for certification from the local official responsible for the electrical or building inspection program; and

2. A fee of twenty-five (25) dollars in the form of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) An applicant shall receive credit earned for an electrical course satisfactorily completed from an accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review an applicant for temporary certification to determine his eligibility to sit for the exami-

nation.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) An examination shall be:

(a) Administered within thirty (30) days after acceptance by the Electrical Advisory Committee at the department's office in Frankfort, Kentucky, unless another location is specifically designated; and

(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code.

(3) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(4) An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:

(a)1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code;

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspector, which shall be:

1. Notarized; and

2. Received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A fee of twenty-five (25) dollars in the form of a check or money order payable to the State Treasurer, Commonwealth of Kentucky; and

2. Proof of successful completion of the NCPCCI examination for:

a. Electrical inspector general; or

b. Electrical inspector one (1) and two (2) family.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(3) Following the review and approval of an applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 of this administrative regulation.

(4) A certificate issued pursuant to this section shall be valid from July 1 to June 30.

(5) A fully-certified inspector shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.

(6) Each certified electrical inspector holding a valid certification under a previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:

(a) Be issued to an individual; and

(b) Not issued to a corporation, partnership, company, or other entity.

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A.

(3) Each electrical inspector certification, except a temporary certificate, shall expire on June 30 every year. The department shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the provisions of this administrative regulation.

(4) A renewal fee of twenty-five (25) dollars shall be paid by each certified electrical inspector before June 30 in each succeeding year to maintain certification.

(5) Delinquent renewal fee. A certified electrical inspector who fails to submit the application for renewal on or before July 1 of each year shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed by January 1 of the following year, the certification shall be canceled and shall not be renewed.

(6) Reinstatement. A certificate that has been revoked or canceled may be reinstated upon petition to the commissioner for good reason.

(7) An applicant for reinstatement shall pay a reinstatement fee of \$100; and shall:

(a)1. Pay the delinquent renewal fees; and

2. Submit proof of continuing education for each year the certificate was revoked or cancelled; or

(b) Pass the NCPCCI examination within the current year.

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. The program shall be approved by the electrical advisory committee.

(2) Each electrical inspection shall be made in compliance with the edition of the National Electrical Code, which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code.

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area in which he performs an inspection to determine the occupancy load of a facility.

(4) Temporary service approval shall require a red sticker.

(5) The electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(b) A "service only" approval may be issued by the inspector to provide temporary power for heating and lighting and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow.

(c) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment:

a. With his signature and certification number, name of the project and location; and

b. Stating that the system has been inspected for compliance with the National Electrical Code; and

2. Provide the owner or the owner's agent with a certificate of compliance.

(6) A red, yellow or green sticker or a certificate of compliance to be used by the electrical inspector shall be issued or approved by the department.

(7) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection and make them available to the department upon request. The record shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of a required permit and the agency granting the permit;

- (e) The size and complexity of the structure;
 - (f) Deficiencies in meeting code requirements and the action required to comply; and
 - (g) Other pertinent information considered necessary to allow for a review of the inspection.
- (8) Violation of KRS 211.350(4) by a certified electrical inspector shall constitute misconduct. (The records shall be available for examination by an authorized representative of the department upon request.)

Section 9. Complaints and Grievance Procedures. (1) A person may file a complaint against a certified electrical inspector if the person believes that an act or omission of the inspector in the performance of his duties caused an undue hardship to the person.

(2) A complaint or allegation of misconduct shall be submitted in writing to the commissioner and shall:

- (a) Include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and
 - (b) Specify the action requested of the commissioner.
- (3) Following an investigation, the commissioner shall:
- (a) Cause the matter to be heard and recommendation rendered by the Electrical Advisory Committee;
 - (b) Set the matter for public hearing; or
 - (c) Take other appropriate action to resolve or correct the matter.

Section 10. Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after a departmental hearing, to have:

- (1) Engaged in an activity which constitutes a conflict of interest, including:
 - (a) Work as an electrical contractor or electrician;
 - (b) Involvement in an activity in the electrical industry; or
 - (c) Having a pecuniary or associational interest;
- (2) Engaged in fraud, deceit or misrepresentation in obtaining certification;
- (3) Been guilty of negligence, incompetence or misconduct as established by this administrative regulation in the field of electrical inspection;
- (4) Affixed or caused to be affixed a seal of approval or issued a certificate of approval for an electrical installation subject to his inspection if he has not personally inspected the installation and found it to be satisfactory in accordance with the code;
- (5) Operated as an electrical inspector in a locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations;
- (6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or
- (7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) State-owned property including each building being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state employed certified electrical inspector shall inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) A state employed certified electrical inspector shall assert jurisdiction for the electrical inspection of a project subject to state plan review under the Kentucky Building Code.

(4) A state employed certified electrical inspector may inspect a state leased facility, upon request.

Section 12. Interpretations. If a provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee,

the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction.

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EL-1, "Application for Electrical Inspectors (April 1996 Edition)", Department for Housing, Buildings and Construction; and

(b) Form SFM-EL-1A, "Renewal Application for Electrical Inspector Certification (April 1996 Edition)", Department for Housing, Buildings and Construction.

(2) This material may be inspected, copied, or obtained at the Department of Housing, Buildings and Construction, Electrical Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: There are approximately 283 certified electrical inspectors 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: This amendment will have no impact on either cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The amendment itself will not increase costs or paperwork.

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: There are no direct or indirect costs or savings.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork requirements created by this amendment.

(4) Assessment of anticipated effect on state and local reve-

nues: State or local revenues should not be affected with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Certification fees will cover the administrative costs of this amendment.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There will be no economic impact with implementation of this amendment.

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: Electrical Advisory Committee considers and approves amendments within limits defined.

(8) Assessment of expected benefits: This method will reduce the delinquent renewals and provide for examination where too long a period of time without continuing education.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare created by this amendment. Public safety only slightly enhanced by greater assurance of appropriate inspections.

(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:

(a) Necessity of proposed regulation if in conflict: No known statute, regulation or policy in conflict with this proposed amendment.

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

(10) Any additional information or comments: The reference material is not being amended.

(11) TIERING: Is tiering applied? No. Applies equally to those who were delinquent or need reinstatement.

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

815 KAR 45:025. Commission meetings and proceedings.

RELATES TO: KRS 95A.040, 95A.050(1), HB 62

STATUTORY AUTHORITY: KRS 95A.050(1); (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth definitions as well as rules and procedures governing the manner and form of meetings and proceedings initiated and conducted by the Commission on Fire Protection Personnel Standards and Education, and to clarify by what means the commission will provide training for firefighters and conduct its meetings.

Section 1. Definitions. (1) "Commission" as defined by KRS 95A.210(1). [means the Commission on Fire Protection Personnel Standards and Education.]

(2) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(3) "Department" means the Department of Housing, Buildings and Construction.

(4) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(5) "Fire department" means and includes a fire department organized under KRS Chapter 75, a fire protection district, a volunteer fire department, [or] a municipal, county or urban-government fire department or other agency or organization recognized by the commission.

(6) "Fire protection personnel" means an employee or member of a "fire department" whether paid or unpaid, who is engaged in any of the following:

(a) Fire prevention;

(b) Inspecting buildings for compliance with building, fire, energy and life-safety codes and compliance with the Architectural Barriers Act;

(c) Fire suppression;

(d) Fire and arson investigation;

(e) Fire-related emergency medical and rescue work;

(f) Other allied fields recognized and approved by the commission.

(7) "Fire protection instructor" or "fire service training officer" means any person certified, pursuant to KRS 95A.040(2)(b) as qualified to instruct fire protection personnel.

(8) "KCTCS" means the Kentucky Community and Technical College System.

Section 2. (1) Voting on reports, recommendations, and contracts. In order for any of the following decisions or actions to be made, a majority of the commission members shall have cast affirmative votes.

(a) Recommending administrative regulations to the commissioner pursuant to KRS 95A.050(3) to establish procedures for certification that training and education programs meet minimum standards pursuant to KRS 95A.040(2)(a);

(b) Entering into contracts with other agencies or persons pursuant to KRS 95A.050(2);

(c) Recommending to the commissioner administrative regulations prescribing the qualifications and certification procedures for fire protection instructors pursuant to KRS 95A.040(2)(b); or

(d) Making studies, recommendations and reports to the governor or legislature pursuant to KRS 95A.040(1).

(2) Public meetings. It shall be the policy of the commission that all its proceedings shall be open to the public and to the press and other news media representatives, unless forbidden by law. This policy shall also apply to the proceedings of any subcommittee of the commission.

(3) Parliamentary rules. The commission shall be governed by Roberts Rules of Order for the orderly conduct of commission meetings or subcommittee meetings. [adopt appropriate rules for the orderly conduct of commission or subcommittee meetings.]

(4) Complaints; advisory opinions. At any regular meeting, the commission may receive complaints, render decisions, deliver advisory opinions, or authorize or request studies and reports by personnel in the State Fire Marshal's Office for any of the purposes set forth in KRS 95A.040, 95A.050, and any administrative regulation adopted thereunder.

(5) Subcommittees. The commission may establish and govern the subcommittees of its members as it may deem advisable or desirable for the orderly conduct of its business.

Section 3. Administrative Support for Commission. (1) Staff services. Personnel of the division shall provide administrative and technical services to the commission as the commissioner deems necessary or desirable, upon the request of the commission.

(2) Training services. The commission may contract with whom it deems necessary as approved by the commission [the Department for Adult and Technical Education] to develop curricula and training delivery plans, in conjunction with that department's advisory committee, for the entire range of local fire department duties, technology and activities. In addition, KCTCS [the Department for Adult and Technical Education] may furnish school facilities in and among the vocational and technical schools under its jurisdiction for this training. [The Department for Adult and Technical Education may be awarded a sum from the commission's budgeted funds in order to pay the salary of a clerk to assist the Department for Adult and Technical Education with maintenance of records and files and the performance of other clerical tasks associated with training of fire protection personnel and instructors and the certification of fire protection personnel, instructors and training programs.]

(3) Codes enforcement. The commission may contract with the division to provide training to fire protection personnel in building, fire and life-safety codes enforcement, energy code enforcement, Architectural Barriers Act enforcement, and the legal and administrative aspects of fire safety and building inspections.

Section 4. Coordination Among Agencies. Upon approval by the commission, the Department for Adult and Technical Education may provide on-job field training and classroom training of instructors and fire protection personnel and may be reimbursed by the commission for such functions as may be permitted by law. Jefferson Community College, Northern Kentucky University, Eastern Kentucky University,

and any other qualified person or agency, may provide faculty or educational services, lodging, meals or other administrative support for the training of instructors and fire protection personnel, and may be reimbursed in accordance with a contract entered into by the commissioner pursuant to KRS 95A.050(2) and in furtherance of any purpose assigned by the law to the commissioner, the department, or the commission relating to the training or provision of technical assistance to fire protection personnel.]

GERALD STEWART, Chairman

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

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Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: The Commission on Fire Protection Personnel Standards and Education.

(2) Direct and indirect costs or savings on the: There will be no costs or savings involved with this amendment. It impacts only the Fire Commission.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: None; only revised regulations dealing with Fire Commission meetings and proceedings.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No revenue required other than outlined in KRS Chapter 95A.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods not necessary.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This regulation merely governs the method of operations of the Fire Commission.

PUBLIC PROTECTION AND REGULATION CABINET

Commission on Fire Protection

Personnel Standards and Education

Office of State Fire Marshal

(Amendment)

815 KAR 45:035. Education incentive.

RELATES TO: KRS Chapter 95A

STATUTORY AUTHORITY: KRS 95A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.240(1)

authorizes the Commission on Fire Protection Personnel Standards and Education to establish [issue such] administrative regulations [as are] necessary to properly administer the Firefighters Foundation Program Fund. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of local governments and individual paid firefighters to share in the fund, and to clarify the eligibility requirements for a qualified firefighter who has been off duty for illness or other reasons to return to the service and receive incentive pay without having to be treated as a new firefighter. [This amendment is necessary to comply with technical requirements of KRS Chapter 13A and to add the forms for applying for incentive pay.]

Section 1. Definitions. (1) "Allowable sickness, injury or other medical causes" means reasons for which time off the job is granted by the local government for sickness, injury, or other medical causes.

(2) "Certified training" means firefighter training given by a certified instructor and approved and recorded by the commission.

(3) "Commission" [means] as defined by KRS 95A.210(1).

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Fiscal year" means the period July 1 through June 30 of each twelve (12) month period.

(6) "Fund" as defined by KRS 95A.210(2).

(7) "Professional [Full-time] firefighters" means an individual described in KRS 95A.210(4) [individuals] who work a minimum of 2,080 hours per year as a member of a fire department or fire protection district. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations, but does not include a public safety officer [officers] or a [any] peace officer who has responsibility for the prevention and detection of crime other than arson.

(8) "Incentive pay" means monies from the fund used to supplement compensation paid to professional [full-time paid] firefighters.

(9) "Leave of absence" means [for the purpose of this administrative regulation shall mean] a leave granted by the local government [for] [by] which the firefighter is employed and for which leave the fire department or its workers' compensation carrier provides a form of compensation.

(10) "Local government" as defined by KRS 95A.210(3).

Section 2. Eligibility. (1) A [Each] local government which meets the following requirements shall be eligible to participate and share in the distribution of funds if it has made application on Form KPF-1, July 14, 1998, [forms prescribed by the commission and outlined in Section 6 of this administrative regulation] and if the commission has determined that the local government has met the eligibility criteria as

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

stated in KRS 95A.230.

(a) [(1)] The commission shall review the qualifications of firefighters employed by local fire department units after the effective date of this administrative regulation to determine the basic training, if any, which the firefighter may be required to successfully complete prior to being eligible to participate in the fund;

(b) [(2)] The fire department shall comply with all rules and administrative regulations issued by the commission to facilitate the administration of the fund and further the provisions of KRS Chapter 95A;

(c) [(3)] The fire department shall comply with all provisions of law applicable to local firefighters; and

(d) A [(4) Any] firefighter who does not possess a high school degree or its equivalent and who has been deemed eligible to participate in the fund pursuant to KRS Chapter 95A who terminates firefighter service, forfeits his eligibility and shall meet the minimum educational requirement to reparticipate in the fund.

(2) [(5)] A firefighter who possesses sufficient training to meet the basic training requirements established by the commission and who terminates or is granted a leave of absence from firefighter service for a period exceeding one (1) year (365 days) shall forfeit his eligibility. Eligibility [and] shall be reestablished for a firefighter who returns to service upon completion of 100 hours of training and meets [meet] the minimum training requirements set forth in subsection (6) of this section [to reparticipate in the fund]. If his separation or leave of absence does not exceed one (1) year, he shall be considered eligible for participation in the fund. After the first year, a firefighter shall also have the additional amount of time equal to the required time off to acquire his 100 hours of required annual training to maintain his eligibility.

(3) [(6)] If a [an individual] firefighter is off duty due to allowable sickness, injury, or other medical cause in his first year of employment, he shall have an additional amount of time equal to the required time off to acquire the balance of his initial 400 hours of required training. After the first year, a firefighter [an individual] shall also have the additional amount of time equal to the required time off to acquire his 100 hours of required training to maintain his eligibility. The firefighter shall be eligible to receive incentive pay upon completion of 100 make-up hours.

(4) [(7)] A copy of the high school diploma or GED certificate for each firefighter, if required, shall be maintained by the local unit and shall be available for review by appropriate commission personnel.

(5) [(8)] If, after having successfully completed a certified basic training course, a firefighter transfers from one (1) participating local unit to another, he shall be eligible to receive payments from the fund if he continues to meet the requirements of the fund as established by the commission.

(6) [(9)] If a firefighter transfers from one (1) fire department to another, paid or volunteer, all certified training he has received shall be recognized by the fire department to which he has transferred and shall be credited [considered] toward his eligibility for participation in the fund.

(7) [(10)] A firefighter shall not receive monies from this fund for employment with more than one (1) employer and shall not receive dual payment.

Section 3. Participation Requirements. (1) Application shall be made by local governments for new participation. Applications shall be filed on Form KPF-1, July 14, 1998, [the applicable forms in Section 6 of this administrative regulation] and shall be accepted from February 1 through April 30 of each year for payment to begin July 1 of that fiscal year. A local government [Local governments] failing to make application within the specified dates shall not be considered for participation until the next application filing period.

(2) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to a [any] local government that does not comply with the requirements of KRS Chapter 95A or the rules and administrative regulations issued by the commission.

Section 4. Local Unit Distribution of Funds. (1) The local unit shall submit a monthly incentive request on Form KPF-2, July 1, 1998, requesting incentive pay for their eligible firefighters. Upon receipt of the incentive check, the local unit shall return Form KPF-2A, July 1, 1998, to the commission to acknowledge receipt of the monthly incen-

tive pay.

(2) The local unit shall include the incentive compensation paid to each firefighter from the fund as a part of the firefighter's salary in determining all payroll deductions.

(3) [(2)] The local unit shall provide each firefighter with a check stub or separate receipt upon which the gross amount of incentive funds paid to the firefighter shall be identified.

(4) [(3)] The local unit shall disburse incentive funds during the month for which the funds are requested.

(5) [(4)] The local unit shall maintain records to document that each participant devotes sufficient hours performing fire service training to qualify him for incentive pay.

(6) The local unit shall submit to the commission a quarterly report on Forms KPF-3 and 3A, July 1, 1998, to reconcile disbursement of incentive pay.

Section 5. Local Audits. (1) The local unit may be audited by the department pursuant to established procedures.

(2) For audit purposes, the local unit shall maintain accurate financial records. These records shall include, but are not limited to, the following:

- (a) Books of original entry;
- (b) Source documents supporting accounting transactions;
- (c) The general ledger;
- (d) Subsidiary ledgers;
- (e) Personnel and payroll records;
- (f) Cancelled checks; and
- (g) Any related document and record.

(3) These records shall be retained by the local unit until destruction is authorized by the commission or applicable requirements of the Department of Libraries and Archives.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Application for Incentive Pay, Form KPF-1, July 14, 1998.
- (b) Paid Firefighters Foundation Incentive Program Form, Form KPF-2, July 1, 1998.
- (c) Professional Firefighters Foundation Incentive Program Check Verification, Form KPF-2A, July 1, 1998.
- (d) Quarterly Fiscal Report, Form KPF-3, July 1, 1998.
- (e) Professional Firefighters Foundation Incentive Program Form KPF-3A, July 1, 1998 (to be used with Form KPF-3).
- (2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Application Forms for Incentive Pay: (1)(a) Application for incentive pay.]

APPLICATION FOR INCENTIVE PAY

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601
(502) 564-3473

CHECK ONE
() New Application
() Renewal
Paid Firefighters
Incentive

ATTENTION: Please type or print the following information:

- 1. Applicant:
City of:
Date:
County of:
- 2. Name of Fire Department:
F.D.#:
- 3. Name of Fire Chief:
Phone:
- 4. Name and Title of the Authorized Fiscal Office of Local Unit:
Name:
Title:
- 5. Attach a sheet of paper with the name of all full-time paid firefighters, their position (i.e., chief, lieutenant, engineer, driver, etc.) within the fire agency and their annual base salary, if applicable.
- 6. Name of Chief Executive Officer of Jurisdiction:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

I hereby certify that the information contained herein is true and correct to the best of my knowledge. In addition, if this application is approved, I accept and will comply with provisions of KRS Chapter 95A and the general conditions contained herein, and such further rules, regulations and policies as may be reasonable prescribed by the Commission on Fire Protection Personnel Standards and Education:

Signature of Chief Executive Officer:

Date Signed:

Title:

Subscribed and sworn before me this _____ day of _____, 19____.

My commission expires:

Notary Public:

XXXXXXXXXXXXXXXXXXXX

(b) Paid Firefighters Foundation Incentive Program Form. To be completed and filed with application form in (1)(a):

PAID FIREFIGHTERS FOUNDATION INCENTIVE PROGRAM

TO BE RETURNED WITH APPLICATION

Local Unit Name:

Local Unit #:

Fire Department Name:

Fire Department #:

Quarter ending:

Name of Firefighter last name first	New X	Social Security Number	Date Employed	Annual Comp.	Total # Hours Annually	Assigned Duty Position
=====	=====	=====	=====	=====	=====	=====
=====	=====	=====	=====	=====	=====	=====

XXXXXXXXXXXXXXXXXXXX

(2) For requesting funds from the Paid Firefighter's Foundation Incentive Program:

REQUEST FOR FUNDS PAID FIREFIGHTER'S FOUNDATION INCENTIVE PROGRAM

RETURN TO:

Commission on Fire Protection
Personnel Standards and Education
1047 U.S. 127 South
Frankfort, KY 40601

Application #:

1A Fire Dept. Name:

1B Fire Dept. #:

INCENTIVE REQUEST

1. Requesting unit:
Name:
Address:
City:
State:
Zip Code:
2. Funds requested for the month of:
3. Number of eligible firefighters:
4. Incentive pay funds requested:
5. Preceding month's incentive funds requested:
6. Preceding month's incentive funds paid out:
7. Difference between lines 5 and 6:
8. If difference exists, explain reason for shortage or overage in incentive pay funds or pension funds:

PENSION REIMBURSEMENT

9. Number of firefighters

x HAZCERS 18.47% = \$38.48 per person =

x CERS 8.83% = \$18.40 per person =

x OTHER _____ % = \$_____ per person =

TOTAL PENSION FUNDS REQUESTED

10. Signature of Authorized Fiscal Officer:

Title:

Date:

IMPORTANT: Please report at the bottom of this form any change in the name, address or phone number for the Mayor, County Judge, Fire Chief or Fiscal Officer.

Change of Name, Address, Phone Number:

Name: _____

Address: _____

Phone Number: _____

Mayor or

County Judge

Fire Chief

Fiscal Officer

GERALD STEWART, Chairman

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: Approximately 130 paid fire departments.

(2) Direct and indirect costs or savings on the: No effect on cost of living, employment or doing business will result with revision of this administrative regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation: No more compliance, reporting or paperwork than presently required.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Staff services necessary to evaluate, process and monitor the program are presently in place.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No more than presently required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: As stipulated in KRS Chapter 95A.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits: None

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Incentive pay granted to fire departments for the firefighters meeting the requirements of these regulations and KRS Chapter 95A.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(Amendment)

815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.

RELATES TO: KRS 95A.040, 95A.262(3), (4) ~~45A.080, 322.360~~

STATUTORY AUTHORITY: KRS 95A.260(1), 95A.262

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.262 requires that prior to the expenditure [any expenditures] of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans shall be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of this administrative regulation is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Facility [Center] Fund. This amendment is necessary to comply with KRS Chapter 13A drafting rules as requested by LRC staff and to add the forms to apply for firefighters training facility grants.

Section 1. Definitions. (1) "Commission" means as defined by KRS 95A.210(1).

(2) "Cost estimate" means an itemized list of labor, items or materials needed and their estimated cost at the time of bidding. It may also mean the estimated cost of land or buildings to be purchased.

(3) "Quotations or bids" means it shall contain the same information as cost estimates.

Section 2. Eligibility. [(1)] To qualify to receive aid under the Firefighter Training Facility [Center] Fund, fire departments, as recognized by the commission, [in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized fire departments] or groups or associations of fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, shall be eligible. [maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(2) Any fire department or entity eligible for and receiving funding pursuant to this administrative regulation shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commis-

sion on Fire Protection Personnel Standards and Education.]

Section 3. Participation Requirements. (1) Application shall be made to the commission on Form TFG-1, July 14, 1998. [An application as outlined in Section 5 of this administrative regulation shall be submitted to the commission.] The application shall contain, but not be limited to the following:

(a) A letter of application, containing a general statement of intent;

(b) A list of fire departments and agencies that will use the facility;

(c) A list of what is available to the applicant, such as land, free labor or materials, etc.;

(d) The name of an agent or contact person;

(e) A drawing or sketch of the proposed training facility [center], as well as building drawing if applicable; and

(f) A cost estimate.

(2) All applications shall comply with KRS 45.750 through 45.800 applicable to capital construction projects statutes and the requirements stated in subsection (1) of this section.

(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than \$10,000.

(b) Expenditures exceeding \$10,000 or in excess of the requirements of KRS 424.260, whichever applies, shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the recipient [fire department] and assure that purchases will be at the lowest cost.

(c) Capital construction exceeding the cost of \$25,000, shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.

(d) Equipment expenditures exceeding \$50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Oversight Committee.

(3) Permits shall be obtained for all electrical installations; all plumbing installations; all fuel installations; and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall determine [recommend to the State Fire Marshal] which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(2) Funds shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason any change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.

(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.

(5) If expenditures or progress is [are] made during the quarter, receipts for funds expended or progress made [during each quarter] shall be forwarded to the commission [sent] by the 15th of the following month. Progress shall be reported on Form TFG-2, July 14, 1998, and expenditures shall be reported on Form TFG-3, July 14, 1998. Receipts for January, February and March shall be in the hands of the Commission Administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Training Facility Grant Application, Form TFG-1, July 14, 1998 (2 pages).

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(b) Quarterly Progress Report, Form TFG-2, July 14, 1998.

(c) Quarterly Financial Status Report, Form TFG-3, July 14, 1998.

(2) This material may be inspected, copied or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Training Facility Grant Application Forms. (1) Training Facility Grant Application.

TRAINING FACILITY GRANT APPLICATION

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601

ALL QUESTIONS MUST BE ANSWERED OR APPLICATION WILL BE REJECTED

Please type or print

Name of Requesting Agency:
Address:
City:
County:
Zip:
Contact Person:
Telephone Number:

- | | | | |
|-----|----|-----|---|
| Yes | No | 1. | Does each department of the requesting agency maintain twelve (12) firefighters, one (1) chief and operate at least one (1) operational fire apparatus? |
| Yes | No | 2. | Does each department of the requesting agency maintain a roster of a minimum of fifty (50) percent certified firefighters? |
| Yes | No | 3. | If applicant is an organization, are all member departments aware of the application? |
| | | 4. | List all departments which will utilize the facility on a separate sheet. |
| | | 5. | Number of personnel utilizing facility? |
| | | 6. | Number of days the facility was used last year? |
| | | 7. | List departments and agencies utilizing facility last year on a separate sheet. |
| | | 8. | Nearest similar facility. |
| Yes | No | 9. | Will your facility be available to other/all departments? |
| | | 10. | Explain on a separate sheet your facility maintenance funding method. |
| Yes | No | 11. | Does requesting agency hold the title to the property? If no, please explain. |
| | | 12. | Location of facility. |
| | | 13. | List of completed projects on facility as of this date. |

- | | |
|----------|----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |

14. Please check the project this application is for:

- _____ I Drill tower
_____ II Burn/smoke building
_____ III Drafting pit
_____ IV Multipurpose building
_____ V Special project

- | | | | |
|-----|----|-----|---|
| Yes | No | 15. | Are blueprints or drawings available? If no, they must be submitted prior to disbursement of funds if your request is approved. |
| | | 16. | Estimated cost of this project: |

I, the undersigned, hereby attest that all questions have been truthfully answered to the best of my knowledge. I have read and will comply with 815 KAR 45:050 and if reasonable progress is not made on the

project granted, the grant is subject to forfeiture. I further attest that I have full authority to sign this document.

Signature:
Title:
Date:

(2) Quarterly Progress Report Form.

QUARTERLY PROGRESS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:
Quarter of _____ through _____
_____ Quarterly Report
_____ Final Report
Title of Project:

Start report here (add continuation pages as needed)

Signature of Recipient:
Typed Name and Title of Recipient:
Date:

(3) Quarterly Financial Status Report Form.

QUARTERLY FINANCIAL STATUS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:
Quarter of _____ through _____
_____ Quarterly Report
_____ Final Report

Monies Paid to: Amount Paid:

1.
2.
3.
4.
5.
Total Spent this Quarter:

I certify that to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

Signature of Authorized Certifying Official:
Typed Name and Title of Certifying Official:
Date:

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. And written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044. Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: Approximately 800 fire departments.

(2) Direct and indirect costs or savings on the: No effect on cost of living, employment or doing business will result with revision of this administrative regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation: No more compliance, reporting or paperwork than presently required.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Staff services necessary to evaluate, process and monitor the program are presently in place.

(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: Quarterly expense and progress reports are required as the recipient disburses the grant received.

(4) Assessment of anticipated effect on state and local revenues: Funds are granted to obtain and build training support aids for fire departments.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \$200,000 annually from the Firefighters Foundation Fund as stipulated in KRS 95A.262.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There should be no economic impact from the revisions of this administrative regulation.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was arrived at by the Fire Commission.

(8) Assessment of expected benefits: Will allow the approximately 18,000 firefighters to receive better hands-on training.

(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 should come about.

(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:

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Funds are granted to only fire departments or firefighter support organizations.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(Amendment)

815 KAR 45:060. Survivor benefits for death of a firefighter.

RELATES TO: KRS Chapter 95A, 136.392

STATUTORY AUTHORITY: KRS 61.315(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315 authorizes the payment of [a] survivor benefits of \$50,000 to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 1991. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of the firefighter's survivor benefits. This administrative regulation applies to both paid and volunteer firefighters. [Administrative regulation 815 KAR 45:040, Survivor benefits for volunteer firefighters, shall be repealed. This amendment is necessary to implement statutory changes and to bring the administrative regulation into technical compliance with KRS Chapter 13A.]

Section 1. Definitions. (1) "Active member" means a paid firefighter that is listed on the department roster and participates in the department's training programs and other various activities.

(2) "Commission" as defined by KRS 95A.210(1). [means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.]

(3) "Death in the line of duty" means death which occurs as a direct result of an act or acts in the performance of duty as described in these administrative regulations and shall include death which results from a heart or circulatory malfunction which is treated within forty-eight (48) hours after participation in the performance of these [said] duties or as the result [results] of illness, sickness or injury caused by the performance of these [said] duties which result in death within twelve (12) months of the [such-stated] activities as described elsewhere in these administrative regulations providing death is not caused by suicide or self-inflicted injury.

(a) If death occurs after twelve (12) months and is believed to be related to the above stated causes, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose.

(4) "Child or children" means stepchildren, legally adopted children and children born posthumously.

(5) "Firefighter" as defined in KRS 61.315(1).

(6) "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident which the symptoms of such malfunction are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as described in these administrative regulations.

(7) "Performance of duty" means a firefighter acting in the performance of his duties [for the purpose of these administrative regulations] when engaged in the following activities if the activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization:

(a) [of] Firefighting;

(b) Fire drills or other related training;

(c) Rescue or emergency activities; [provided such activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization.]

(d) [(a) These activities shall include] Repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department;

(e) [upon the authorization of the chief of the fire department or other authorized person in charge or while] Answering an [any] emergency call;

(f) ~~[calls for any purpose or while]~~ Riding in or upon the fire or emergency apparatus which is owned or used by the fire department;
 (g) ~~[or while]~~ Performing other duties of ~~the~~ ~~[such]~~ fire department as authorized by the jurisdiction which the department serves; and
 (h) ~~Attending~~ ~~[-~~
 (b) ~~These activities shall include organized~~ meetings related to the fire service and travel to and from ~~the~~ ~~[such]~~ meetings whether local, state, or national, as long as he is representing his local, state or national fire related organization.

Section 2. Requirements for Eligibility. (1) Survivors. Benefits shall be paid to the surviving spouse, surviving children or both; or the surviving parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits if the firefighter is killed in the line of duty.

(a) If the firefighter has been medically diagnosed a having had or receiving ~~[any]~~ medication for the above illnesses within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from the firefighter's doctor that the firefighter has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, the eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 if the firefighter is killed in the line of duty.

(b) If a firefighter ~~[an active member]~~ of a fire department is medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, their survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from their doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of the ~~[said]~~ statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(3) Autopsy. The commission reserves the right to request an autopsy providing sufficient cause can be shown for this request. If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be furnished to the commission.

Section 3. Application. (1) Upon the death in the line of duty, ~~as defined by this administrative regulation,~~ of a ~~[paid]~~ firefighter, the fire department of which the firefighter was a member at the time of death shall notify ~~[in writing,~~ the commission's administrator ~~[in the Office of State Fire Marshal,~~ of the death immediately. Upon receipt of the notification, the administrator shall send Form KPF-4, July 14, 1998, ~~[the forms outlined in Section 7 of this administrative regulation]~~ to the notifying fire department in care of the chief as well as Form KPF-5 ~~[the forms]~~ to the known survivors of the deceased firefighter.

(2) Upon receipt of Forms KPF-4 and KPF-5, July 14, 1998, ~~[the forms furnished by the commission,~~ the chief and survivors or their representative shall properly fill out the ~~[said]~~ forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the properly completed ~~[filled-out]~~ forms, a committee of the commission appointed by the chairman of the commission shall review the forms ~~[applications]~~ and forward them with their recommendations to the full commission for determination of eligibility. If there are questions about the forms ~~[application]~~, the committee and the administrator may seek clarification of the questions on behalf of the commission.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the Firefighter's Death Benefit, the sum of \$50,000 shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the commission's administrator for payment to the eligible survivor or survivors.

Section 5. False and Fraudulent Statements. A ~~[Any]~~ person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS Chapter 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the state treasury of those funds which were received through these false or fraudulent statements or representations.

Section 6. Appeals. (1) Decisions of the commission negatively affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the ~~[said]~~ survivor shall have been afforded an opportunity to be heard on the matter ~~[matters]~~.

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. The ~~[Said]~~ appeal shall be to the circuit court of the circuit where the controversy originated.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Report of Firefighter's Death, Form KPF-4, July 14, 1998.

(b) Claim for Survivor Benefits, Form KPF-5, July 14, 1998.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Application Forms for Reporting Firefighters Death. (1) Form for notifying commission of the death of a firefighter.

Commission on Fire Protection Personnel Standards and Education 1047 U.S. 127 South Frankfort, KY 40601	For Commission Use Only Case No. _____ S.S. No. _____ Date _____
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REPORT OF FIREFIGHTERS DEATH

1. Name and address of public safety agency, organization or unit in whose service death occurred (include zip code).

PART I. NOTICE OF LINE OF DUTY DEATH OF FIREFIGHTER

2. Name of deceased firefighter:
 3. Date of injury:
 4. Date of death:
 5. S.S. No.
 6. Deceased firefighter's last mailing address:
 7. Name of decedent's superior officer:
 8. Supervisor's area code and phone number:
 9. Was injury contributed to by: Yes No Unknown

Firefighter's intentional misconduct?	___	___	___
Firefighter's intent to bring about his own death?	___	___	___
Firefighter's voluntary intoxication?	___	___	___
Any person who may be entitled to benefit?	___	___	___
(Attach explanations for any "yes" answers)			

10. Firefighter's employment status when injury occurred
 ___ Full time ___ Part time ___ Volunteer ___ Other (Specify)

PART II. PLEASE CHECK AND ATTACH ALL APPLICABLE REPORTS RELATING TO THE DIRECT CAUSE OF OR PROXIMATE CAUSE OF DEATH.

11. Certified copy of original reports
 Medical report (attending physician) _____
 Coroner's report _____
 Autopsy report _____
 Investigation report* _____

*If no investigation report exists, please provide statement of circumstances leading to death.

12. If known, give name and address of witness(es) with whom firefighter was involved when injured, if not provided in the above re-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

ports.

PART III. INFORMATION CONCERNING POSSIBLE CLAIMANTS (Provision of this information does not constitute finding for or against an interim payment of benefits or final award of benefits):

13. Names, relationship and address of persons in precedence order and applicability categorized as follows:

Name (last-first-middle)	Date of birth	Address (include city-state-zip)
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Surviving Spouse

Children

Surviving Dependent

Parent(s)*

*List surviving dependent parents only when neither spouse nor children survive decedent.

14. Has a legal guardian been appointed for any of the above mentioned children? (If yes, give name and mailing address of guardian)

GUARDIAN(S) NAME	ADDRESS (include zip code)	GUARDIAN FOR (list children)
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PART V. CERTIFICATIONS. A false answer to any question in this statement may be grounds for nonpayment of benefits and may be punishable by fine or imprisonment. All the information you give will be considered in reviewing the claim and is subject to investigation.

15. Employing organization—To the best of my knowledge and belief, the above stated information is true and complete.

TYPED NAME AND TITLE SIGNATURE DATE

ORGANIZATION ADDRESS PHONE NO.
(include zip code)

16. Is there a retirement/disability board which will consider the facts of this case in order to determine eligibility for other benefits?
Yes ___ No ___
If yes, please give address and telephone number of the board.

REMINDER: ARE ALL REQUIRED DOCUMENTS ATTACHED (SEE PART II)?

(2) Form for notifying commission of claim for survivor benefits following the death of a firefighter.

Commission on Fire Protection Personnel Standards & Education 1047 U.S. 127 South Frankfort, KY 40601	For Commission Use Only Date received _____
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CLAIM FOR SURVIVOR BENEFITS

- Name of deceased (last-first-middle):
- Social Security #:
- Date of injury:
- Date of death:
- Name and address of (public safety agency, organization or unit in whose service death occurred)

INSTRUCTIONS: A claim should be filed when an eligible firefighter (regardless of employment status) has died of a personal injury sustained in the line of duty. WHO SHOULD FILE: (1) surviving spouse (complete Part I); (2) child or children of the deceased (complete Part II); and (3) dependent parent or parents of the deceased (complete Part III). All claimants must complete Part IV. When documentation is required, a properly certified copy of the record will suffice.

PART I. INFORMATION ON SURVIVING SPOUSE. When at the time

of the firefighter's death, the firefighter was survived by a husband or wife, this Part should be completed. If there are qualified children of the deceased, Part II must also be completed. (Attach marriage certificate, divorce decree or separation agreements as applicable to marital relationship with decedent.)

- Name (last-first-middle):
- Social Security No.:
- Mailing address (include zip code):
- Marital status at time of firefighter's death:
___ Married ___ Separated ___ Divorced ___ Other
Attach necessary documentation such as marriage certificate, divorce decree or separation agreement.
- Was the firefighter married at any time to anyone else?
___ Yes ___ No ___ Unknown
If yes, submit documents to show dissolution of prior marriage such as death certificate.
- Does deceased firefighter have any eligible children from previous marriage? ___ Yes ___ No
If yes, include under Part II or explain on separate sheet and attach to this form.

PART II. INFORMATION ON CHILDREN. If the firefighter was survived by a natural, illegitimate, adopted or posthumous child or step-child (or children) who, at the time of the firefighter's death, was eighteen (18) years of age or under, over eighteen (18) and a student; or over eighteen (18) and incapable of self-support because of physical or mental disability, this Part should be completed. Attach copy of birth certificates, adoption papers or other evidence of parent-child relationship, as appropriate.

- Name (last-first-middle):
Date of birth:
Address (if not same as item #8):

Has a legal guardian been appointed for any of the above mentioned children? (If yes, give name and mailing address of guardian of each child.) (Legal guardianship documents will be required in the event benefits will be awarded to children under guardianship.)

GUARDIAN(S) NAME	ADDRESS (include zip code)	GUARDIAN FOR (list children)
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PART III. OTHER CLAIMANT. If at the time of death, the firefighter was not survived by a spouse or children and there was a parent or parents of the deceased dependent upon him for support, this Part should be completed. Attach a copy of the firefighter's birth certificate or other evidence of parent-child relationship as appropriate.

NOTE: IF ANSWER TO EITHER ITEM 13 OR 14 IS YES, DO NOT COMPLETE PART III.

- Is there a surviving spouse of deceased firefighter? ___ Yes ___ No
- Is there a surviving child or children of deceased firefighter? ___ Yes ___ No

CLAIMANT(S) IN THE CIRCUMSTANCE OF NO SURVIVING SPOUSE OR CHILDREN

- Name (last-first-middle):
Mailing address (include zip code):
- Statement of dependent parents where there is no surviving spouse or children.
 - Amount contributed by firefighter toward claimant's support during the twelve (12) months prior to injury or death: \$ _____
 - Claimant's earnings from his employment during the twelve (12) months prior to firefighter's injury or death: \$ _____
 - Other income of claimant from all other sources during the twelve (12) months prior to firefighter's injury or death: \$ _____
 - Investments: \$ _____
 - Pensions: \$ _____

(3) From people other than deceased firefighter: \$ _____

(4) Other sources: \$ _____

PART IV. STATEMENTS AND CLAIM. All claimants are required to complete this Part. The purpose of this claim is to establish survivorship eligibility and assert the rights to benefits. The filing of this claim does not constitute a determination by the Commission on Fire Protection Personnel Standards and Education that benefits will or will not be awarded to the claimant(s). This claim may be prepared by a person acting on behalf of the claimant(s) such as a parent, legally appointed guardian, other legal representatives, or duly designated representatives of the claimant(s). Evidence of authority to represent claimant(s) should be attached.

17. Statement of financial need: Has an immediate financial hardship been incurred as a result of this death? Yes No. If yes, provide a brief statement of financial circumstances and need. If more room is needed, use additional sheets.

I hereby make claim for compensation for myself as, or in behalf of, (spouse, child/children or other eligible claimants) listed above, as a result of the death of the above named firefighter who sustained fatal injury in the line of duty. Every statement and information set forth above is true to the best of my knowledge and belief.

A false answer to any question in this statement may be grounds for nonpayment of benefits and may be punishable by fine or imprisonment. All the information you give will be considered in reviewing the claim and is subject to investigation.

Signature of claimant or authorized representative:

Date:

Phone number:]

GERALD STEWART, Chairman

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: Approximately 800 fire departments.

(2) Direct and indirect costs or savings on the: There will be no costs or savings involved with this amendment.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

(c) Compliance, reporting, and paperwork requirements, includ-

ing factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No more than presently exists.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Staff services necessary to evaluate, process and monitor the program are presently in place.

(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: No more than presently required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: As stipulated in KRS 61.315.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits: None

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict in statute or 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:

(11) TIERING: Is tiering applied? No. This regulation treats all survivors of firefighters equally.

PUBLIC PROTECTION AND REGULATION CABINET

Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(Amendment)

815 KAR 45:080. Volunteer fire department aid.

RELATES TO: KRS Chapter 95A, 136.392

STATUTORY AUTHORITY: KRS 95A.262(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Commission on Fire Protection Personnel Standards and Education is required by KRS 95A.262 to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation sets out standards and procedures for determining the use of volunteer fire department aid. [This administrative regulation contains the substance of 815 KAR 46:010 which has been repealed.]

Section 1. Definitions. (1) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training as defined [recognized] by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of defined and certified training annually.

(2) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.

(3) "Commission" [means] as defined by KRS 95A.210(1).

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with suffi-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

cient space to carry fire hose and other fire suppression equipment.

(5) ~~["Full-time paid firefighter" means an individual who works for a minimum salary of \$8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the Department of Housing, Buildings and Construction or the Commission on Fire Protection Personnel Standards and Education;~~

(6) ~~"Volunteer fire department" means a fire department recognized by the commission as having [Department of Housing, Buildings and Construction upon recommendation of the commission, which has] a membership [consisting] of more [less] than fifty (50) percent of its members being full time volunteer [paid] firefighters.~~

(6) [(7)] "Newly formed department" means a fire department which has organized to the point of having a minimum of twelve (12) members, a chief and having either in their possession or on order at least one (1) operational fire apparatus. The department shall also have available from any source for the year in which the allotment is to be made funds, equipment, land and buildings of sufficient value to match or exceed the amount of the aid allotment.

Section 2. Eligibility. (1) To qualify to receive aid under the volunteer fire department aid law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments registered as nonprofit corporations shall maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus, as required by KRS 95A.262(2).

(2) ~~A [Any] fire department or entity eligible for and receiving aid; pursuant to this administrative regulation;] shall have a minimum of fifty (50) percent of its firefighters [personnel] certified as required by this administrative regulation. [recognized by the commission.]~~

(3) ~~Effective January 1, 2001, no firefighter who is listed on a fire department roster for purposes of qualifying that department for volunteer fire department aid may be listed as part of a roster qualifying any other fire department for volunteer fire department aid.~~

(4) ~~A fire department or entity anticipating receiving aid shall maintain a current roster of those firefighters who qualify them for the following year's volunteer fire department aid check and submit a copy of the roster to the commission.~~

(5) ~~After December 31, 2000, if two (2) or more fire departments contain the name of the same firefighter on its roster, that firefighter shall not be used to qualify a fire department.~~

(6) ~~A fire department or other eligible entity requesting aid for any year shall provide proof of purchase expenditures for the previous year's aid. The proof shall be submitted by June 30 of each year.~~

(7) Certification of personnel shall be determined from Form KFS-2, July 14, 1998 [the firefighter application form outlined in Section 6 of this administrative regulation] which shall be submitted to the commission regarding active or inactive status of existing members as well as departure of members and entry of new members.

(8) [(4)] New members of a fire department shall have two (2) years to become certified before being counted as personnel to determine qualification of the fifty (50) percent of personnel certified for eligibility of state-aid funding.

(9) [(5)] To be eligible to receive funds, a newly formed fire department shall have fifty (50) percent of its membership with at least half of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each successive year [thereafter], they shall meet the requirements of the commission to retain certification.

Section 3. Participation Requirement. (1) It shall be the responsibility of the chief officer or his appointed representative of the [each] department to furnish the [any] information required by the commission for determination of eligibility.

(2) All training hours for the department for the previous twelve (12) months shall be submitted by December 31st.

(3) A [Any] volunteer fire department seeking aid pursuant to the authority of KRS Chapter 95A shall file Form KSA-1 and KFS-3, July 14, 1998, and submit to [an application form as outlined in Section 6 of this administrative regulation which may be obtained from] the office of

the commission.

Section 4. Purposes for which Volunteer Aid May be Used. (1) An approved equipment list of items which can be purchased with volunteer fire department aid pursuant to this administrative regulation shall be supplied with each check. [Verification and Inspection. (1) The application for aid shall contain or have attached a detailed statement of the following:

(a) Equipment to be purchased;

(b) Repairs to be made;

(c) Other purposes for which the allotment is to be expended;

(d) Other information as the commission may require to give proper consideration to the request;]

(2) Funds shall not be expended for an item not on the approved list unless written permission to spend the funds for other purposes is granted by the fire department aid administrator. [If a new fire department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.]

(3) Proof of purchase shall be submitted in the form of invoices and cancelled checks and shall be recorded on Form KSA-2, July 14, 1998, and submitted to the commission. [The fire department aid coordinator shall upon receipt of the application advise the commission as to the validity of the qualifications and approval for grant-in-aid.]

(4) Proof of purchase documentation shall be returned by June 30 of the year following receipt of the check.

(5) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment. The inspection may also include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Processing Applications for and Expenditure of Aid. (1) Allotment shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(2) If approved allotment is insufficient to cover the cost of equipment or other approved purposes, funds granted for a [any] fiscal year may be deposited in any bank authorized by the applicant to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the commission giving reasons why additional time is needed. This shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(3) If an allotment is granted to a fire department and is [not] to be used for the purchase of equipment other than that listed on the approved equipment list or for any other purpose, [for which it was granted;] the chief of the fire department shall:

(a) Request, in writing, permission to use the allotment for other equipment or purposes; or [Contact the commission directly giving the reason why he wishes to make a change in the original equipment list; and

(b) Resubmit a new equipment list which shall be approved; or]

(b) [(c)] Refund the grant-in-aid allotment.

(4) An amount [Amounts] expended for expense of firefighters in attending fire related school or classes shall not exceed ten (10) percent for a [any one (1)] fire department. This shall be an item entered on Form KSA-2, July 14, 1998, with receipts [the regular equipment list].

(5) If expenditure is made of any allotted funds, copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission. If the grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be furnished to the commission. A [Any] false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Fire Department Information, Form KSA-1, July 14, 1998.

(b) Firefighter Application for Certification of Personnel, Form KFS-2, July 14, 1998.

(c) Fire Department Application, Form KFS-3, July 14, 1998.

(d) Proof of Purchase, Form KSA-2, July 14, 1998.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Participation Forms: (1) Fire-fighter application form for certification of personnel:

COMMONWEALTH OF KENTUCKY
COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION
FIRE FIGHTER APPLICATION

___ Add new firefighter EDUCATION
 (check highest level)
___ Change data on firefighter ___ 1. Less than 8th grade
 ___ 2. 8th grade
___ Delete firefighter record ___ 3. Some high school
 ___ 4. High school graduate
(NOTE: Certified copy of ___ 5. GED
Death Certificate must ___ 6. Some college
be attached on delete) ___ 7. Associates degree
 ___ 8. Associates degree plus
 ___ 9. Bachelors degree
 ___ 10. Bachelors degree plus
 ___ 11. Masters degree
 ___ 12. Masters degree plus

Name (last, first, middle initial):
Social Security #:
Birthdate (month, date, year):
Race: (1) White ___ (2) Black ___ (3) Other ___
Sex: Male ___ Female ___
Original employment date (month, day, year):
Years of Experience:
County #:
County Name:
Fire Department #:
Employment date in this dept. (month, day, year):
Status (Active/Inactive):
Status Date (month, day, year):
Classification (check one)
Paid: (1) ___
Volunteer: (2) ___
I.F.B.: (3) ___
Other (specify) (4) ___
Department Title:

GENERAL OFFICE USE ONLY:

Certification Code:
Certification Date (month, day, year):

AUTHORIZING SIGNATURE:

Date (month, day, year):

XXXXXXXXXXXX

(2) Application for qualification of volunteer fire department seeking aid:

Date _____

APPLICATION FOR QUALIFICATION

Name of Fire Department:
City:
County:
Legislative District #:
City Classification:
Municipal Rating:
Insurance Rating:

Is department owned and governed by the city () county () or privately ()

If department is city owned and governed, give the amount of money

appropriated by city to fire department for compensation of firefighter:
for purchase of new equipment:
for maintenance of present equipment:
or give lump sum of total allotment by city for any or all needs:
are appropriations granted annually or as needed?

If department is county owned and governed, give the amount of money appropriated by county to fire department for compensation of firefighter:

for purchase of new equipment:
for maintenance of present equipment:
or give lump sum of total allotment by county for all or any needs:

If department is privately owned, do you solicit fees from property owners on an annual basis for department? yes () no (). If so, how much yearly average:

are these fees allotted for compensation of firefighter:
or purchase of new equipment and buildings:
or for maintenance of present equipment and buildings:

Describe any other source of income received by the fire department:

Name of chief:
Address:
Name of assistant chief:
Address:

Number of firefighters on the department subject to call at all times:

Number of full-time paid firefighters:

Number of volunteer firefighters who receive some compensation:

Number of qualified (some training) extra firefighters who can be called to assist either a paid or volunteer department in emergency:

When and how much are the volunteers paid:

Is the chief paid? If so, how much:

Is the assistant chief paid? If not, does he receive compensation as a volunteer assistant chief? If so, how much:

Are all volunteer firefighters appointed by the chief or governing body:

Name of all full-time or regular volunteer firefighters who are carried on personnel roster:

Number of hours of drilling conducted each month:
Who conducts the drills:

How many firefighters attend Kentucky Fire School each year:

Do you have training classes each year conducted by Vocational Education:

How many attend?
Does the chief or any member of the fire department attend any district meetings?
Name of district meeting:

EQUIPMENT UNDER JURISDICTION
OF FIRE DEPARTMENT

Type of Apparatus:
Number and type:
Number and type:
Number and type:
Number and type:
H.P. of motor:
Type of Pump (centrifugal, rotary, piston):
Capacity of Pump:
Pump single or double stage:
Front or midship mounted:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Size of booster tank (gallons):
Number of booster hose reels:

Describe briefly the year and model of each apparatus and give general condition:

Amount of 2 1/2 inch hose (in feet) carried on apparatus:
Amount of 1 1/2 inch hose (in feet) carried on apparatus:
Amount of 3/4 or 1 inch rubber covered hose (in feet) carried on booster reels:

Ladders carried on this apparatus (number, length, type):
Fire extinguishers carried on this apparatus (number, type, size):
Air packs carried on this apparatus (number, size):
Pike poles:
Plaster hooks (number, length):
Hand lights (number, volts):
Crow or claw bars (number):
Hydrant wrenches (number, type):
Spanners (numbers):
Suction hose (feet):
Rope (feet, size):
Hose adaptors (number, type/size):
Foam solution (kind/amount):
Foam nozzles (type):

How often are trucks inspected and motor started to test motor, battery and tires:

GENERAL INFORMATION

Firefighter coats (number):
Firefighter pants (number):
Firefighter helmets (number):
Firefighter gloves (number):
Fire blankets (number, size):
Firefighter boots (number):
Salvage covers (number, size):
Portable electric generator (number, capacity):
Flood and/or spot lights (number):
Smoke ejector (number, size):
Extra hose kept at fire station (feet, size):
Portable pumps in department (number, size):
On what apparatus is it carried:
Type of alarm system (kind, size):
Where is alarm system located:

Brief description of fire station, type of construction, location, owner, how heated:

How often is hose removed from apparatus to test, drain, clean and reloaded?

What facilities do you have for cleaning and drying dirty or wet hose?

Miscellaneous remarks concerning department:

1. Is your department organized under Chapter 75 as a fire prevention district?
2. Is your department organized under Chapter 67.320 as a county fire department?
3. Is your department incorporated by the Secretary of State? If so, please attach a copy of papers.
4. If none of the above, how is it organized?

Be absolutely sure that either of these four questions be answered correctly, if either question pertains to your department.

Fire Chief:
Approved by Mayor or County Judge Executive:
Chairman:]

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: 740 predominately volunteer and volunteer fire departments.

(2) Direct and indirect costs or savings on the: No effect on cost of living, employment or doing business will result with revision of this administrative regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Existing personnel presently in place to administer this program.

(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: Less paperwork required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Firefighters Foundation Fund KRS 95A.262.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There should be no economic impact from the revisions of this administrative regulation.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods necessary; only revising present regulations.

(8) Assessment of expected benefits: Less paperwork and recording required of volunteer fire departments.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

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

- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? Yes. Tiering is applied in the sense that state aid is granted only to volunteer fire departments meeting the requirements of KRS 95A.262 and these regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
 2. State what unit, part or division of local government this administrative regulation will affect. Volunteer fire departments.
 3. State the aspect or service of local government to which this administrative regulation relates. Fire service.
 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: Qualifying fire departments will be eligible to raise money for facilities and equipment for having trained personnel under this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET Commission on Fire Protection Personnel Standards and Education Office of State Fire Marshal (Amendment)

815 KAR 45:090. Certification and qualifications of fire protection instructors.

RELATES TO: KRS 95A.040(2)(b)

STATUTORY AUTHORITY: KRS 95A.050(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95.040(b) authorizes the Commission on Fire Protection Personnel Standards and Education to certify fire protection instructors. This administrative regulation sets forth the prerequisite for and justification of those instructors. [This administrative regulation contains the substance of 815 KAR 45:030, which is being repealed.]

Section 1. Definitions. (1) A "certified professional firefighter" means a firefighter who meets the requirement of KRS 95A.210 and 95A.230.

(2) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually to maintain certification.

(3) [(2)] "Commission" [means] as defined by KRS 95A.210(1).

[(3)] "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(4) [(6)] "Educational methodology course" means a course meeting the objectives of NFPA 1041 and conducted by:

(a) KCTCS [Kentucky Tech];

(b) A Kentucky college or university;

(c) The National Fire Academy;

(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the Fire Commission; or

(e) An agency approved by the Fire Commission to train within its jurisdiction.

(5) [(7)] "Fire department" means a fire department recognized by the commission as defined in KRS 75.400 and Chapter 95. [:

(a) A fire department organized under KRS Chapter 75;

(b) A fire protection district;

(c) A volunteer fire department; or

(d) A municipal, county or urban-county government fire department.]

(6) [(8)] "Fire protection personnel" means an employee or members of a fire department recognized by the commission. [as defined herein:

(a) Whether paid or unpaid; and

(b) Who is engaged in:

1. Fire prevention;

2. Inspecting buildings for compliance with building, fire, energy and life-safety codes and the Architectural Barriers Act;

3. Fire suppression;

4. Fire and arson investigation;

5. Fire-related emergency medical and rescue work; or

6. Other allied fields.]

(7) [(9)] "Fire protection instructor" or "fire service training officer" means a person certified pursuant to KRS 95A.040(2)(b) and this administrative regulation as qualified to instruct or oversee fire protection personnel.

(8) "KCTCS" means the Kentucky Community and Technical College System.

Section 2. Level I Fire Protection Instructors. Persons certified as Level I fire protection instructors shall be authorized to deliver training to the fire department of which they are a member.

(1) Requirements for certification. An individual shall be certified by the commission as a Level I instructor if satisfactory written evidence is submitted to the commission that the individual meets the following criteria:

(a) Has submitted a completed application that has been approved by his fire chief;

(b) Is a high school graduate or the equivalent;

(c) Has two (2) years experience as a firefighter;

(d) Is a Kentucky certified firefighter; and

(e) Submits proof that he has completed a sixteen (16) hour National Fire Academy Instructional Techniques class or a class that has been approved by the commission.

(2) Certification terms. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) Certification shall be renewed if an applicant has:

1. Taught at least thirty-two (32) hours, prior to the expiration of his certification; or

2. Attended a sixteen (16) hour National Fire Academy Instructor class, or an equivalent approved by the commission.

(b) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on Form KFI-1, July 14, 1998. [renewal forms as outlined in Section 8 of this administrative regulation.]

Section 3. Level II Fire Protection Instructors. Persons certified as Level II instructors shall be authorized to deliver training to a [any] fire department within the Commonwealth upon invitation by that agency.

(1) Requirements for certification. An individual shall be certified by the commission as a Level II fire protection instructor if satisfactory written evidence is submitted to the commission that the individual:

(a) Is qualified by the following:

1. Has certified firefighter status;

2. Has submitted a completed application that has been approved by his fire chief;

3. Is a high school graduate or the equivalent; and

4. Has had four (4) years experience as a firefighter; and

(b) Is further qualified by having completed one (1) of the following:

1. Has completed a minimum of thirty-two (32) hours of an educational methodology course; or

2. Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter; or

3. Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum; or

4. Holds a valid instructor's certificate issued by an out-of-state fire

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

training agency approved by this commission.

(2) Certification term. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on Form KFI-2, July 14, 1998. [~~renewal forms as outlined in Section 8 of this administrative regulation.~~]

(b) The following shall be required of an applicant seeking renewal of his certification:

1. He shall have taught a minimum of sixty (60) hours during his three (3) year certification period; or

2. He shall have taught a minimum of thirty (30) hours and shall reattend the thirty-two (32) hour educational methodology course.

Section 4. Level III Fire Protection Instructors. Persons certified as Level III fire protection instructors shall be authorized to deliver training to fire departments or to train persons for Level I and II certification and to train Level II instructors to become Level III fire protection instructors.

(1) An applicant shall be certified as a Level III instructor if the following has occurred:

(a) The fire department of which the applicant is a member applies for his recognition by the commission as a Level III instructor;

(b) The applicant interviewed with the commission, if requested; and

(c) The following written information has been submitted:

1. A completed application and resume;

2. Proof of the applicant's current certification as a Level II fire protection instructor; and

3. Sufficient evidence of having assisted with the delivery of at least one (1), ~~thirty-two (32)~~ forty (40) hour educational methodology course or instructional technique class prior to requesting approval as a Level III instructor.

(2) Certification term. Certification shall be made for a period of three (3) years unless the commission determines that the certification shall be revoked, for cause.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor to submit an application for renewal prior to expiration of certification. Renewal [~~forms~~] shall be on Form KFI-3, July 14, 1998. [~~as outlined in Section 8 of this administrative regulation.~~]

(b) A renewal applicant shall have delivered at least one (1) educational methodology course or instructional technique class during his three (3) year certification period.

(c) A renewal applicant shall have taught a minimum of sixty (60) hours during his certification period.

(d) A renewal applicant shall attend at least one (1) instructor trainer workshop approved by the commission.

Section 5. Fire Protection Instructor Current Status. (1) A fire protection instructor who is certified by the commission pursuant to this administrative regulation shall be reclassified as a Level II fire protection instructor and shall conform to this administrative regulation.

(2) To retain current certified status as an instructor, an individual shall meet the renewal criteria for the level for which he is certified.

(3) If an instructor does not meet Level II requirements, he shall revert to Level I status.

(4) If an instructor does not meet the criteria for Level I status, his fire protection instructor certification shall be revoked.

Section 6. Revocation of Certification. The commission may revoke certification if, after reasonable notice and a hearing, it is determined that there was:

(1) A material misstatement or misrepresentation in any document furnished the commission to obtain the issuance or renewal of a certification;

(2) Falsification of training records; or

(3) An act of misconduct, negligence, malfeasance.

Section 7. Appeal. (1) A fire protection instructor notified of an intent to revoke his instructor certification, may request a hearing before the commission by submitting a request to be heard, in writing, within fifteen (15) days from the date of receipt of the letter of notification.

tion.

(2) A hearing shall be conducted at the next regularly scheduled meeting of the commission or within thirty (30) days, whichever is first.

(3) The decision of the commission shall be rendered in writing within ten (10) days of the termination of the hearing.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Level I Certification Application and Renewal, Form KFI-1, July 14, 1998.

(b) Level II Certification Application and Renewal, Form KFI-2, July 14, 1998.

(c) Level III Certification Application and Renewal, Form KFI-3, July 14, 1998.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Application and Renewal Forms for Fire Protection Instructor. (1) Level I certification application and renewal form.

COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION

CERTIFICATION AS LEVEL I FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)

New Applicant

Renewal

FOR CENTRAL OFFICE USE ONLY

Date certified / /

Code Level Certified to Teach:

Status Active/Inactive

Status Date: / /

Certification Type (V/P)

Social Security No.:

Name (last, first, middle initial):

Date of birth (month, day, year):

Fire department #:

Name:

County #:

Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level I Fire Protection Instructor shall be for the purpose of delivering training to the fire department of which they are a member.

Requirements for Certification: An individual may be certified by the commission as a Level I Fire Protection Instructor if satisfactory written evidence is provided to the commission that he is qualified by the following:

- High school graduate or equivalent. (attach copy of diploma or GED certificate);
- Two (2) years experience as a firefighter. Entry date:
- Kentucky certified firefighter. Certification date:
- Applicant has successfully completed a sixteen (16) hour National Fire Academy Instructional Techniques class or its equivalent conducted by:

Agency:

Instructor (signature, #):

Certification Terms:

Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:

(a) It shall be the responsibility of the fire department to see renewal

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

process is completed if recertification for that instructor is desired.

- (b) Renewal applicant must have taught a minimum of thirty-two (32) hours during his three (3) year certification period or reattended a sixteen (16) hour National Fire Academy Instructor Class or equivalent approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:

Signature of applicant:

XXXXXXXXXXXXXXXXXXXX

(2) Level II Certification Application and Renewal Form:

COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION

CERTIFICATION AS LEVEL II FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)

FOR CENTRAL OFFICE USE ONLY

New Applicant _____
Renewal _____

Date certified: ____/____/____
Code Level Certified to Teach: _____
Status Active/Inactive: _____
Status Date: ____/____/____
Certification Type (V/P): _____

Social Security No.:

Name (last, first, middle initial):

Date of birth (month, day, year):

Fire department #:

Name:

County #:

Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head:

Certification of a Level II Fire Protection Instructor shall be for the purpose of delivering training to the fire department within the commonwealth upon invitation by that agency.

Requirements for Certification: An individual may be certified by the commission as a Level II Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she is qualified by the following:

- High school graduate or equivalent. (attach copy of diploma or GED certificate)
- Four (4) years experience as a firefighter. Entry date:
- Kentucky certified firefighter. Certification date:
- Applicant has successfully completed a minimum of thirty-two (32) hours educational methodology course, meeting the objectives of NFPA 1041 conducted by:

Agency:

Instructor (signature, #):

or

Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter (attach copy of certification)

or

Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum.

Name of institution

Department head signature:

or

Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by the fire commission. (attach copy of certificate)

Agency:

Agency head (signature):

Certification Terms:

Certification shall be made for a period of three (3) years, unless the commission determines sooner that the certification should be revoked.

Certification Renewal:

- (a) It shall be the responsibility of the individual instructor and his agency to submit this application for renewal.

- (b) Renewal applicant must have taught a minimum of sixty (60) hours during his three (3) year certification period or reattended a thirty-two (32) hour educational methodology course and taught a minimum of thirty (30) hours.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:

Signature of Applicant:

XXXXXXXXXXXXXXXXXXXX

(3) Level III Certification Application and Renewal Form:

COMMISSION ON FIRE PROTECTION PERSONNEL STANDARDS AND EDUCATION

CERTIFICATION AS LEVEL III FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT)

FOR CENTRAL OFFICE USE ONLY

New Applicant _____
Renewal _____

Date certified: ____/____/____
Code Level Certified to Teach: _____
Status Active/Inactive: _____
Status Date: ____/____/____
Certification Type (V/P): _____

Social Security No.:

Name (last, first, middle initial):

Date of birth (month, day, year):

Fire department #:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Name:
County #:
Name:

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above:

Signature of Chief or Agency Head:

Certification of a Level III Fire Protection Instructor shall be for the purpose of qualifying Level I and Level II Fire Protection Instructors and preparing Level II Fire Protection Instructors to become Level III Fire Protection Instructors:

Requirements for Certification: An individual may be certified by the commission as a Level III Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she:

- Attach a copy of resume.
- Presently certified as Level II Fire Protection Instructor
- Applicant has successfully assisted in delivery of an educational methodology class based on NFPA 1041 conducted by:

Agency:
Instructor (signature):

- Applicant may be required to undergo an interview by the commission.

Certification Terms:

Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:

- (a) It shall be the responsibility of the individual instructor to submit this application for renewal prior to expiration of certification.
- (b) Renewal applicant must have delivered at least one (1) educational methodology course during his three (3) year certification period; and
- (c) Renewal applicant must have taught a minimum of sixty (60) hours during his certification period.
- (d) Renewal applicant must attend at least one (1) instructor trainer workshop approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky:

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith:

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date:
Signature of Applicant:]

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the

hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: Approximately 800 fire departments.

(2) Direct and indirect costs or savings on the: No effect on cost of living, employment or doing business will result with revision of this administrative regulation.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: No more than presently exists.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Staff services necessary to evaluate, process and monitor the program are presently in place.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No more than presently in place.

(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: Firefighters Foundation Funds in KRS Chapter 95A (administrative costs).

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: There should be no economic impact from the revisions of this administrative regulation.

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

(b) Kentucky:

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

(8) Assessment of expected benefits: Will allow better certification and training methods for fire protection instructors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

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

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Governed by no other statute or 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:

(11) TIERING: Is tiering applied? Yes. This regulation merely updates all the forms and simplifies the application process.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(Amendment)

815 KAR 45:100. Volunteer fire department loan fund.

RELATES TO: KRS 95A.262(4), (5), (13), (14)

STATUTORY AUTHORITY: KRS 95A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.262 authorizes the Commission on Fire Protection Personnel Standards and Education to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation is necessary to establish the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

Section 1. Definitions. (1) ~~["Act" means KRS 95A.262.~~

(2) ~~"Accessory equipment"~~ means ladders, hoses, self-contained breathing apparatus, portable pump and hard suction hoses, nozzles, power extrication tools and protective equipment necessary to carry out the ordinary functions of supporting fire fighting activities.

(2) (3) ~~"Apparatus equipment"~~ means pumpers, tankers and other large equipment used for fighting fires and emergencies. This equipment is more specifically categorized as follows:

(a) ~~"Pumper"~~ means any pumper which can pump 500, 750, 1,000, 1,250 or 1,500 gallons per minute at 150 pounds per square inch net pumping pressure.

(b) ~~"Tanker"~~ means a mobile water supply fire apparatus with a water capacity of 1,000 gallons or more and a minimum flow rate to pump connection of 500 gallons per minute except when a booster pump is provided.

(c) ~~"Rescue-pumper"~~ means an apparatus capable of pumping a minimum of 250 gallons per minute at 150 PSI net pumping pressure, carrying a minimum of 500 gallons of water.

(3) (4) ~~"Approved"~~ means approved by the commission or its authorized designee for a particular purpose.

(4) (5) ~~"Commission"~~ [means] as defined by KRS 95A.210.

(5) (6) ~~"Committee"~~ means the loan committee of the Commission on Fire Protection Personnel Standards and Education.

(6) (7) ~~"Communications equipment"~~ means equipment or system, or both, necessary for the transmission and reception of signals, by voice, required to support the operations of the volunteer fire department.

(7) (8) ~~"Eligible"~~ means a volunteer fire department that has met the training requirements and is in good standing for receipt of state aid pursuant to 815 KAR 45:080 and the loan request requirements of this administrative regulation.

(8) (9) ~~"Emergency"~~ means fire department equipment, apparatus or facilities have been damaged, destroyed or rendered inoperable and established firefighting capacity is reduced to a level affecting public safety.

(9) (10) ~~"Facilities"~~ means any structure or portion of a structure intended for storage or protection of firefighting equipment ~~[and shall not include meeting halls, social rooms or any other facilities not directly related to firefighting, but]~~ including rooms or spaces designed and used for firefighting training.

(11) (11) ~~"Fund"~~ means volunteer fire department low interest loan fund created pursuant to KRS 95A.262(14).

(10) (12) ~~"Local government"~~ as defined by KRS 95A.210(3).

(11) (13) ~~"NFPA"~~ means the National Fire Protection Association.

(12) (14) ~~"Protective equipment"~~ means clothing or equipment used by firefighters which affords protection from injury to the wearer or user including, but not limited to, fire coats, boots, helmets and turnout pants meeting current NFPA standards.

(13) (15) ~~"UL"~~ means Underwriters Laboratories.

(14) (16) ~~"Volunteer fire department"~~ means a fire department recognized by the Commission on Fire Protection Personnel Standards and Education as having [Department of Housing, Buildings and Construction upon recommendation of the commission, which has] a membership [consisting] of more [less] than fifty (50) percent of its

members being full-time volunteer [paid] firefighters.

(15) (17) ~~"Volunteer fire department loan fund"~~ means the fund established pursuant to KRS 95A.262(14).

Section 2. Eligibility. (1) A volunteer fire department may apply to the commission to receive low interest loans for the purchase of major equipment and facility construction pursuant to the requirements of this administrative regulation.

(2) Eligibility to participate in the loan fund shall be limited to those volunteer fire departments meeting the training requirements of KRS 95A.262(2) and ~~[-which]~~ continue in good standing to receive [the] state aid, and which the commission finds are unable to obtain loans from conventional financial institutions at the rate of three (3) percent.

(3) A loan shall be considered from only one (1) fire department when more than one (1) department resides at the same physical location.

Section 3. Loan Purposes and Prohibitions. (1) Purposes. The commission shall consider a loan [loans] for the following purposes[; only]:

(a) ~~The acquisition of apparatus equipment;~~

(b) ~~The acquisition of communication equipment;~~

(c) ~~The acquisition of accessory equipment or protective equipment;~~

(d) ~~The construction of new facilities;~~

(e) ~~The [and] modernization of existing facilities; and~~

(f) ~~The [;~~

~~repair or rehabilitation of apparatus equipment where it has been determined that existing apparatus equipment no longer meets the standards of the NFPA and where the repair or rehabilitation, or both, of the equipment will bring it in compliance with NFPA standards.~~

(2) Prohibitions. A loan granted under this administrative regulation shall not be used for the following:

(a) ~~[Acquisition of existing facilities;~~

(b) ~~Operating expenses;~~

~~[(c) To reduce a debt or other obligation incurred before a loan is approved;]~~

~~[(b) [(d)] For payment of fees for the designing or planning of facilities or preparation of application; or~~

~~[(c) [(e)] For investment or reinvestment.~~

Section 4. General Loan Requirements. (1) Loan period. A loan period shall not exceed twelve (12) years. The period of time for repayment of the loan shall depend upon the amount of the loan and shall be set forth in [pursuant to] the loan agreement. Except in the case of approved emergency loans, the minimum amount of a loan shall be \$5,000.

(2) Title of property. Any apparatus equipment or facilities financed by a loan from the fund shall be titled in the name of the volunteer fire department or in the name of the political subdivision with the commission as lien holder for the property. In the event the commission is supplying secondary funding, the commission shall become holder of a secondary encumbrance.

(3) Fire department matching funds. ~~[As]~~ A prerequisite to obtaining a loan [loans] for facilities, vehicles or rehabilitation of vehicles or equipment, the volunteer fire department shall verify the availability of unobligated funds in the amount of twenty-five (25) ~~[twenty-(20)]~~ percent of the total cost of the facility, vehicle or rehabilitation or equipment.

(4) Financial responsibility. A copy of the last twelve (12) bank statements must accompany the loan application.

(5) Repayment of loans.

(a) Interest on the principal amount of the loan shall accrue at the rate of three (3) percent per annum and shall be due and payable on the unpaid balance annually.

(b) The principal of the loan shall be repaid proportionally over the period of the loan. The principal may be reduced at anytime through advanced payment.

(c) The principal and interest of the loan shall be payable at the office designated on the loan approval form, with the payment being deducted from the state aid allotment for that year with any additional payment due or desired be made by check made payable to the Kentucky State Treasurer.

(d) A payment [All payments] shall be made before the close of

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

business on the due date or if [they] shall be considered delinquent.

(e) Delinquent accounts shall not receive further loans or grants for state aid or training facilities until the delinquency is cured. If the delinquency of the account extends beyond three (3) months of distribution of the state aid check, foreclosure or repossession procedures shall begin.

(f) A ~~Any~~ portion of future state aid grants may be committed by the volunteer fire department to satisfy its loan agreement.

(g) Insurance. The volunteer fire department shall provide collateral protection insurance for the apparatus, equipment and facility construction sufficient to secure and protect the loan.

(6) ~~[(5)]~~ Emergency loans. An eligible volunteer fire department [departments] may be granted an approved emergency loan [loans] pursuant to this administrative regulation.

Section 5. Loan Requirements for Fire Department Facility Construction. A request [in addition to the other applicable requirements of the administrative regulation, requests] for a construction loan [loans] for fire department facilities shall meet the requirements of this section and other applicable requirements of this administrative regulation.

(1) A facility loan [Facility loans] shall be granted ~~only~~ for establishing or modernizing those facilities that house firefighting equipment.

(2) A facility loan [Facility loans] shall not exceed seventy-five (75) [eighty (80)] percent of the total cost of the construction of the facility or \$75,000 [50,000], whichever is less.

(3) A facility loan [Facility loans] shall not be used for land acquisition.

(4) ~~Facility loans shall not be granted or used for the refinancing of debts incurred or contracts entered into prior to the loan.~~

(5) Land title. The title to the land upon which facilities are to be constructed or modernized under the loan shall be in the name of the volunteer fire department or the local government which the volunteer fire department serves.

(5) ~~[(6)]~~ Clear title. The volunteer fire department or the political subdivision for which the volunteer fire department provides service shall have clear title to the land upon which the facility is to be constructed or modernized.

(6) ~~[(7)]~~ Real property liens. Concurrent with the receipt of the loan, the volunteer fire department shall provide a copy of the deed and execute a lien document to be filed in the county court clerk's office in which the property is located.

(7) ~~[(8)]~~ Plans approval. Final plans for ~~any~~ construction shall be submitted for approval to the Department of Housing, Buildings and Construction or to an authorized local building official with a copy to the commission. The volunteer fire department shall be responsible for complying with the Kentucky Building Code, the Americans with Disabilities Act and other applicable laws. If any change to the plans or specifications is desired or required, the volunteer fire department shall furnish all additional labor and materials necessary to complete the project and the improvements in compliance with the changes to the plans and specifications.

(8) ~~[(9)]~~ A certificate of occupancy shall be submitted to the commission by the volunteer fire department prior to release of loan funds.

Section 6. Apparatus Equipment. (1) Loan limits.

(a) The amount of a loan for the purchase of a ~~any~~ single apparatus equipment shall not exceed \$75,000 [50,000] or seventy-five (75) [eighty (80)] percent of the total cost, whichever is less. The apparatus being purchased with the loan funding shall not be more than twenty (20) years old and a copy of a pump test conducted within the last year must accompany necessary documentation for the loan.

(b) The amount of a loan for the repair or rehabilitation for a single apparatus equipment shall not exceed \$35,000 or seventy-five (75) [eighty (80)] percent of the cost of repair or rehabilitation, whichever is less, and the apparatus shall not be more than twenty (20) years old.

(2) Apparatus loans. An apparatus loan [Apparatus loans] shall be for the purpose designated in the loan request and approved by the commission for the following purposes:

(a) The purchase of firefighting apparatus equipment;

(b) The rehabilitation of existing apparatus equipment for the purpose of upgrading the apparatus to meet applicable National Fire Protection Association standards; and

(c) Repair of existing apparatus.

(3) Mandatory description or specification of equipment.

(a) New apparatus. The volunteer fire department shall submit one (1) complete set of specifications of the new apparatus.

(b) Repairs and rehabilitation. For the repair or rehabilitation of existing apparatus equipment, the volunteer fire department shall submit one (1) complete set of specifications along with three (3) estimates from qualified manufacturers for the repair or rehabilitation. If less than three (3) estimates are available, a statement shall be submitted explaining the reason why there are less than three (3).

(c) Purchase of used apparatus equipment. For used apparatus equipment, the volunteer fire department shall submit documentation of the type and quality of the equipment.

(d) Refurbished fire apparatus meeting the following criteria will be considered by the loan committee:

1. Certification of refurbished equipment.

2. Pump test at time of purchase.

3. Loan committee reserves the right to request additional information.

(e) Loans will only be granted on repairable equipment and apparatus which are not more than twenty (20) [twenty-five (25)] years old and a pump test shall be submitted upon completion of repairs and must meet NFPA pump test requirements and acceptance.

(4) Compliance with National Fire Codes. The volunteer fire department shall submit to the commission verification that the new equipment is NFPA 1901-91 equipment.

(5) Prerequisite materials. ~~[Concurrent with receipt of the loan,]~~ The volunteer fire department shall record a lien on the affected vehicle title documents in the local county court clerk's office.

Section 7. Protective, Accessory and Communication Equipment.

(1) An equipment loan [Equipment loans] shall be used for the purchase of protective, accessory and communication equipment[only].

(2) Equipment compliance.

(a) A volunteer fire department shall select protective and accessory equipment that shall be labeled as having been tested and listed by an approved nationally recognized testing agency.

(b) A volunteer fire department shall select communications equipment identified as meeting Federal Communications Commission regulations, 5 CFR Part 89.

(3) The amount of a loan for the purchase of equipment shall not exceed \$75,000 or seventy-five (75) percent of the total cost price quote accepted by the borrower and submitted by the borrower as the accepted quote for purchase.

(4) Security interest. The commission shall retain a security interest in the property for the life of the loan.

Section 8. Loan Request Procedure. (1) An applicant seeking [Each request for] a low interest loan shall submit [be made on the commission's Volunteer Fire Department Loan] Form FPPSE-1, April, 1993, to the commission [which is hereby incorporated by reference; and all information and documents required by the form shall be attached thereto by the applicant before filing with the commission. Copies are available at the Commission Office in the Department of Housing, Buildings and Construction, 1047 U.S. 127 south, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday].

(2) The commission administrator shall review the application and status of the volunteer fire department to determine if the minimum criteria for obtaining the loan has been met.

(3) The commission administrator shall notify the volunteer fire department of the disposition of the [its] loan application, forwarding final forms to those eligible volunteer fire departments whose applications are satisfactory.

Section 9. Establishing Priorities. (1) A loan [Loans] shall be reviewed for the applicant's stated purpose in the following order of preference:

(a) A request [Requests] for replacement or repairs of unsafe or unusable fire apparatus, equipment or facilities.

(b) A request [Requests] for replacement of outmoded fire apparatus, equipment or facilities.

(c) A request [Requests] for additional apparatus, equipment or facilities because of unusual demands or present service.

(2) Priority shall first be given to applicants establishing the greatest need, utilizing the following criteria, not excluding other considera-

tions.

- (a) Financial need.
- (b) Low economic base.
- (c) Unusual fire hazards.
- (d) County fire death rate.
- (e) Population over sixty-five (65).
- (f) Population growth.
- (g) Tax exempt properties.
- (h) New construction.
- (i) Natural disaster.
- (j) High mileage/usage.
- (k) Existing equipment.

(3) Approval [Approvals] shall be granted in order of need and availability of funds for each qualifying volunteer fire department.

Section 10. Formal Application and Qualification Procedure. (1) To qualify for a loan, an eligible volunteer fire department shall submit [the commission's Volunteer Fire Department] Form FPPSE-2, April, 1993, to the commission [which is hereby incorporated by reference, together with the required documents attached, to the commission for final qualification. Copies are available at the Commission Office in the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday].

(2) The commission shall render its decision at its next regularly scheduled meeting. Approved emergency loans may be granted prior to the regularly scheduled meeting.

(3) An [Any] eligible volunteer fire department aggrieved by a decision of the commission, may petition the commission, in writing, for reconsideration and the commission, upon receiving the request, shall provide the applicant with an opportunity to be heard at its next meeting.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form FPPSE-1, April, 1993, Loan Application Request Form.
- (b) Form FPPSE-2, April, 1993, Low Interest Loan Application.

(2) This material may be inspected, copied or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite 5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 24, 1998, at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, (five work days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person:

Contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Bob Burch

(1) Type and number of entities affected: Approximately 750

volunteer fire departments

(2) Direct and indirect costs or savings on the: No effect on cost of living, employment or doing business will result with the implementation of this amendment.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented:

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

1. First year following implementation: No more paper work than is presently required.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Staff services necessary to evaluate, process and monitor the program are presently in place.

(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: Appropriate records to oversee and service loans.

(4) Assessment of anticipated effect on state and local revenues: Loans are made available to local volunteer fire department.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds from the Firefighter's Foundation Program Fund in the amount of \$1,000,000 per year is used to support this program as prescribed in KRS 95A.262.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Allows local areas to up-grade equipment and facilities who may not be in a financial position or have the available credit line to borrow otherwise.

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: Method selected provides most practical and least burdensome as determined by the Fire Commission.

(8) Assessment of expected benefits: Allows Fire Commission to loan up to \$75,000 to volunteer fire departments due to the increase in state aid and the stability of the fund with the \$1,000,000 annual transfer and repayments being deposited by the borrower.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The intent of amending this administrative regulation is due to the state aid increases to allow volunteer fire departments to borrow a larger sum of money for more varied projects.

(11) TIERING: Is tiering applied? Yes. Tiering is applied in the sense that loans are only available to volunteer fire departments that otherwise cannot obtain the same level of credit and they are granted on a need priority basis.

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. Participating volunteer or predominately volunteer fire departments only.

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

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: The purpose of the program is to provide low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer fire departments which do not have other sources of funds at rates which are favorable given their financial resources. KRS 95A.262 provides funds from the Firefighters Foundation Program Fund in the amount of \$1,000,000 each year for the next 10 years for the program and there should be no significant impact on local government expenditures and revenues except that matching funds equal to 20% of the loan must be provided by the volunteer fire department or local government toward completion of the project for which the loan was secured.

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(Amendment)

900 KAR 2:020. Appeals.

RELATES TO: KRS 216.567

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, [194-050;] 216.567, 1998 Ky. Acts ch. 426, sec. 6 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is authorized by KRS 216.567 to establish the manner in which appeals are to be presented on any decision on [ratings;] citations or penalties assessed pursuant to KRS 216.535 et seq. This administrative regulation is designed to set forth the procedure by which appeals from the [assignment of ratings pursuant to 900 KAR 2:030, and] imposition of citations and assessment of penalties pursuant to 900 KAR 2:040 shall be conducted. [Executive Order 96-862; effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Citation" means a written notice of violation issued pursuant to KRS 216.555.

(3) "Hearing officer" is defined in KRS 13B.010(7).

(4) "Party" means the licensee operating a long-term care facility.

Section 2. (1) ~~If [Upon the assignment of a rating for a long-term care facility pursuant to KRS 216.550, or whenever]~~ the cabinet has reason to believe there has been a violation of any requirement enforced by the cabinet pursuant to KRS 216.555, or ~~[whenever the cabinet]~~ assesses a penalty pursuant to KRS 216.557 or 216.560, it shall issue and serve by certified mail or by personal service on the licensee of the facility, the administrator, or designated representative as defined in 900 KAR 2:010, or its agent for service of process a written notice of [rating;] citation or penalty. Said notice shall set forth the [rating assigned;] citation made or penalty assessed, together with the specific findings of the cabinet alleged to result in the action taken and shall advise the licensee of the facility of his right to appeal the imposition of such [rating;] citation or penalty at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Health Services. Upon receipt of the written request for hearing, the secretary shall designate a hearing officer.

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing. Notice of the hearing shall be served by certified mail, return receipt requested, to the last known address of the parties, or by personal service, not less than twenty (20) days in advance of the hearing date. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, administrative regulations and administrative action by the cabinet involved, and shall comply with KRS 13B.050(3).

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(6) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding. The record shall consist of those items listed in KRS 13B.130, including:

(a) The notice of [rating;] citation or penalty assessed which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer containing the findings of fact, conclusions of law and final decision.

(7) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 216.570. Any appeal of a Type A or Type B citation shall in no way be construed to limit the authority of the cabinet to act pursuant to KRS 216.573 or KRS 216.577 for failure to correct a Type A or Type B violation in a timely manner.

(8) In addition to the grounds for disqualification set forth in KRS 13B.040(2)(b), no hearing officer shall participate in any hearing involving a long term care facility with which he has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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 com-

ments 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 governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

**CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(Amendment)**

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 194A.030, 194A.060, 216B.040, 216B.130, [1996 Ky. Acts ch. 371, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040 authorizes the Cabinet for Health Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to annually adjust expenditure minimums provided in KRS Chapter 216B. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and creates the Office of Certificate of Need under the Cabinet for Health Services.] This administrative regulation provides

for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1998 [1996] and ending July 14, 1999 [1997].

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning July 15, 1998 [1996] and ending July 14, 1999 [1997] to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census implicit price deflator for construction shall be used in making these adjustments. The change in the deflator for the twelve (12) month period ending January, 1998 [1996] represents a 3.18 [four-and-one-half (4.5)] percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from July 15, 1998 [1996] to July 14, 1999 [1997] as follows:

(1) The expenditure minimum of \$1,500,000 for capital expenditure shall be increased to \$1,655,678 [+567,500].

(2) The expenditure minimum of \$1,500,000 for major medical equipment shall be increased to \$1,655,678 [+567,500].

JOHN H. GRAY, Executive Director

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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: Hiren B. Desai, 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: John Gray

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

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

1. First year following implementation: This administrative regulation maintains the compliance, reporting and paperwork requirements contained in 900 KAR 6:015E.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues. The certificate of need program is an established program that has been in existence for 25 years. This administrative regulation does not alter the fees already associated with the certificate of need process.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received on this issue.

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The Cabinet for Health Services is mandated by statute (KRS Chapter 216B) to promulgate administrative regulations setting forth certificate of need procedures.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The certificate of need process was established by the Kentucky General Assembly to help contain health care costs in order that the citizens of the Commonwealth might enjoy cost-effective health care.

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

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented there will be no control over the proliferation of health facilities and health services in the Commonwealth.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all health services and health facilities in the Commonwealth.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only those local governments that hold or apply for certificates of need.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services and health facilities provided by local governments.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation affects health services provided by local government by setting forth the requirements for obtaining and maintaining certificates of need.

CABINET FOR HEALTH SERVICES Office of Certificate of Need (Amendment)

900 KAR 6:050. Certificate of need administrative regulation.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 13A.350, 194A.030, 194A.060, 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is required by statute to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary. This administrative regulation sets forth those administrative regulations necessary to the orderly administration of the Certificate of Need Program.

cate of Need Program and to promulgate administrative regulations as necessary. This administrative regulation sets forth those administrative regulations necessary to the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters.

(4) "Days" means calendar days.

(5) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(6) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth.

(7) "Formal review" means the review of those applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 7 [6] of this administrative regulation.

(8) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(9) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(10) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer disease facility beds.

(11) "Nonsubstantive review" means expedited review of an application for certificate of need which has been granted nonsubstantive review status pursuant to the provisions of KRS 216B.095 and Section 8 of this administrative regulation if granted status pursuant to KRS 216B.095(3)(f).

(12) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(13) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(14) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(15) "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why the person should not be required to obtain a certificate of need or not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of such receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until such time as the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) All applicants for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B, or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and two (2) copies of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 3.

tion 4 of this administrative regulation.

(3) Neither formal nor nonsubstantive review of an application for a certificate of need shall begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant may not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the legal applicant, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete, may only be amended at a public hearing, and may then only be amended to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need provided that the location is within the county listed on the certificate of need application, and provided that the applicant file a written request with the cabinet within thirty (30) days of the date of approval. Such request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency and psychiatric residential treatment facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

1. February; and

2. August.

(b) Public notice for hospice and home health agencies shall be given on the third Thursday of the following months:

1. March; and

2. September.

(c) Public notice for mobile services ~~[and private pay/third-party payor home health agencies]~~ shall be given on the third Thursday of the following months:

1. April; and

2. October.

(d) Public notice for ground ambulance providers, ~~[air ambulance providers;]~~ and day health care programs, shall be given on the third Thursday of the following months:

1. May; and

2. November.

(e) Public notice for personal care beds and rehab agencies shall be given on the third Thursday of the following months:

1. June; and

2. December.

(f) Public notice for long-term care beds and intermediate care beds for Mental Retardation and Developmentally Disabled facilities shall be given on the third Thursday of June.

(g) Public notice for organ transplantation, magnetic resonance imaging, lithotripter, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July.

(h) Any proposals not listed above shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application must be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) ~~[Within]~~ Fifteen (15) days prior to ~~[of]~~ the deadline for deeming an application complete for the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review granted pursuant to Section 8 of this administrative regulation. Applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status ~~shall~~ [will] be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) will be mailed to affected persons.

(6) Deeming an application complete means only that the applicant has minimally responded to the necessary items on the application. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval of a certificate of need.

(7) ~~[(6)]~~ If the cabinet finds that the application is incomplete, the cabinet shall provide the applicant with written notice of the information necessary to complete the application and shall notify the applicant that the cabinet will not deem the application complete unless within ten (10) days of the date of the cabinet's request for additional information.

mation:

(a) The applicant submits the information necessary to complete the application by the date specified in the request; or

(b) The applicant requests in writing that the cabinet review its application as submitted.

(8) [(7)] If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) [(8)] If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that:

(a) The application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) A decision to grant or deny nonsubstantive review status shall [will] be made within ten (10) days of the date that the application was deemed complete.

(c) The cabinet shall give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) will be mailed to affected persons.

(10) [(9)] If the [applicant fails to provide the information necessary to complete the] application, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the [its] application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) [(10)] Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty-five (25) days prior to the date that the deferred application is placed on public notice [prior to the date that the application must be declared complete as provided for in Section 5 of this administrative regulation].

(12) Deeming an application complete means only that the application is sufficiently complete to be reviewed for approval or disapproval. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current state health plan.

(b) Whether the proposal is consistent with applicable biennial budget authorizations and limitations.

(c) Whether the proposal would adversely impact health care costs in the Commonwealth.

(d) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(2) Need.

(a) Whether the applicant has identified a need for the proposal in the geographic area defined in the application.

(b) Whether the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. Whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. Whether the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, and whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(a) Whether it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system within the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth.

(b) If it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system in the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth, whether such linkages have been or will be established.

(5) Costs, economic feasibility, and resource availability.

(a) Whether it is economically feasible for the applicant to implement and operate the proposal.

(b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet.

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (e), the cabinet may grant nonsubstantive review status to an application for which a certificate of need is required in circumstances wherein:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there are no standards or review criteria in the state health plan.

(b) The proposal involves the establishment or expansion of an ambulatory surgery center by an ambulatory surgery center that is existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians.

~~[(c) The proposal involves a physician-owned magnetic resonance imaging service currently serving a family practice residency program at a regional medical center.]~~

(2) If an application is denied nonsubstantive review status, the application shall automatically be placed in the formal review process.

(3) If an application is granted nonsubstantive review status, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(4) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings.

(5) If an application for certificate of need is granted nonsubstantive review status there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status shall not be reviewed for consistency with the State Health Plan. The cabinet shall approve applications for certificate of need that have been granted nonsubstantive review status, unless the presumption of need is rebutted by clear and convincing evidence that there is not a

need for the proposed facility or service in the geographic area defined in the application.

(6) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status within thirty-five (35) days of the date that notice is given that nonsubstantive review status has been granted.

(7) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 [46] of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Written notification of approval shall include:

(a) Verification that the review criteria for approval have been met;

(b) ~~If the application is inconsistent with any review criteria, the reasons for approval despite the inconsistency;~~

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, where applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review. If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing. If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing. [An applicant may defer review of an application by notifying the cabinet of its wish to defer review of its application at any time prior to the entry of a decision to approve or deny the application.] If a hearing has been scheduled [or held on the application], the applicant shall also notify all parties to the proceedings in writing of the applicant's intent [decision] to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

(5) An application shall not be deferred more than one (1) time.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need at any time prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the

applicant's decision to withdraw the application.

(2) If an application is withdrawn, the applicant shall file a new letter of intent before resubmitting the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need provided:

(a) The person ~~health facility or health service~~ is licensed by the cabinet to provide the service necessary to alleviate the emergency; and

(b) The cabinet is notified in writing within five (5) days after the commencement of the service required to alleviate the emergency.

(2) The notice to the cabinet shall contain the following information:

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) If applicable, the name and addresses of the person to whom emergency services are being provided.

(3) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 3 of this administrative regulation.

(4) The person providing the emergency service may continue to alleviate the emergency circumstances until such time as the emergency ceases to exist or the cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers [Transfer] of Certificates [a-Certificate] of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615 [216B.061(5)].

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission provided that:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(4) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and such endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Service's Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined

in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area, via the CON newsletter when applicable not less than ten (10) days prior to the date of the hearing; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons [all persons] who requested the hearing withdrawn their request(s) by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled, [agree in writing to its cancellation; agreement of other affected persons shall not be required.]

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference are to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer may tape record the conference or if requested by a party to the proceedings arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters.

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefilled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any non-substantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file two (2) copies of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Witness List, Form #3;

(b) Exhibit List, Form #4 and attached exhibits; and

(c) Notice of Appearance, Form #5.

(8) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(9) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, upon other matters relevant to the issues.

(10) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(11) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously

identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(12) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(13) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(14) Witnesses shall be examined under oath or affirmation.

(15) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(16) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original and provided that the documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #4) and filed with the hearing officer and other parties at least seven (7) working days before the hearing for formal review applications and five (5) working days for nonsubstantive review applications.

(17) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(18) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(19) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(20) In the case of a hearing on an application for a certificate of need, the hearing officer may, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(21) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing; or

(c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of writ-

ten documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of any person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988)*, in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations or is subject to penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(3) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(4) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(5) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(6) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(7) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(8) If a violation is found to have occurred, the cabinet shall take action as provided by KRS Chapter 216B.

Section 19. Administrative Escalations. (1) No person may obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits provided there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section, shall constitute a substantial change in a project and shall require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be presumed to be a willful violation of KRS Chapter 216B and shall be subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #7, at the six (6) month intervals

specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall:

(a) Determine whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (5)(a) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment shall provide plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects [not] involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than three (3) ~~additional~~ ~~two (2)~~ extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements.

(20) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(22) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) The cabinet shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of

need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The cabinet may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of the certificate of need as determined by a biennial review.

(6) The cabinet shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion Form, Form Number #8.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the state health plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the state health plan but for which a certificate of need is not required, shall notify the cabinet that such a service or equipment has been added within ten (10) of such addition.

(2) Notification of the Addition of a Health Service or Equipment (Form #10) shall be used in making such notification.

Section 24. Acquisition and Relocation of Nonconforming Nursing Facility. (1) Any person proposing to acquire a nursing facility in excess of 300 beds that is not in substantial compliance with 902 KAR 20:310 shall provide a notification of intent to acquire pursuant to KRS 216B.065.

(2) The nursing facility acquired pursuant to subsection (1) of this section may be relocated to more than one (1) location, provided that all the beds remain within the county of location of the original facility.

(3) Applications to relocate the nursing facility acquired pursuant to subsection (1) of this section, shall be filed pursuant to KRS 216B.095.

(4) Once relocated and licensed, any person proposing to acquire the relocated nursing facilities shall provide notifications of intent to acquire pursuant to KRS 216B.065.

Section 25. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

(a) Letter of Intent (Form #1);

(b) Certificate of Need Application - Formal and Nonsubstantive Review (Form #2A);

(c) Certificate of Need Application for Ground Ambulance and Air

Ambulance Service Providers (Form #2B);

(d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C);

(e) Witness List (Form #3);

(f) Exhibit List (Form #4);

(g) Notice of Appearance (Form #5);

(h) Administrative Escalation (Form #6);

(i) Six (6) Month Progress Report (Form #7);

(j) Advisory Opinion Request (Form #8);

(k) Acquisition of a Health Facility, Notice of Intent (Form #9);

(l) Notification of the Addition of a Health Service or Equipment (Form #10).

(2) These forms may be inspected and copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN H. GRAY, Executive Director

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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: Hiren B. Desai, 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: John Gray

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

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

1. First year following implementation: This administrative regulation maintains the compliance, reporting and paperwork requirements contained in 900 KAR 6:050.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues. The certificate of need program is an established program that has been in existence for 25 years. This administrative regulation does not alter the fees already associated with the certificate of need process.

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process. The agency also collects fees for the filing of applications.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received on this issue.

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The Cabinet for Health Services is mandated by statute (KRS Chapter 216B) to promulgate administrative regulations setting forth certificate of need procedures.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The certificate of need process was established by the Kentucky General Assembly to help contain health care costs in order that the citizens of the Commonwealth might enjoy cost-effective health care.

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

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented there will be no control over the proliferation of health facilities and health services in the Commonwealth.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all health services and health facilities in the Commonwealth.

FISCAL NOTE ON LOCAL GOVERNMENT

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

4. How does this administrative regulation affect the local government or any service it provides? NA

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

902 KAR 14:080. Class I ground ambulance providers.

RELATES TO: KRS 189.910 to 189.950, 211.950 to 211.956, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 194A.030, 211.952, 216B.020(4), 216B.042, 216B.095, 216B.410 [EO-96-862, 1996 Ky. Acts ch. 233]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 216B.042 requires that the Cabinet for Health Services regulate health facilities and health services. KRS 211.952(2)(c) requires the cabinet to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. The function of this administrative regulation is to provide [provides for the] minimum licensing requirements for Class I ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS)" means a Class I ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital Medicare care such as:

1. Basic life support services (BLS);
2. Advanced airway management such as endotracheal intubation;
3. Defibrillation;
4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician; and

(b) Meets the requirements established in Sections 1 through 10 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis.

(2) "Back-up ambulance" means an ambulance as defined in KRS 211.950 which complies with the requirements of Section 4(5) through (9) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(3) "BLS" means a ground ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;
2. Cardiopulmonary resuscitation;
3. Airway management;
4. Cervical spine control;
5. Breathing assistance;
6. Hemorrhage control; and
7. Basic patient movement procedures; and

(b) Meets the requirements established in Sections 1 through 7 and Section 8, if applicable, of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis.

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance provider for direction to the patient scene.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance provider medical personnel who may be paid or volunteer, full time or part time.

(10) "Interfacility care" means BLS or ALS emergency or non-emergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(11) "Licensing agency" means the Cabinet for Health Services, Department for Public Health.

(12) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(13) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(14) "Primary ambulance" means an ambulance as defined in KRS 211.950(1) which is licensed by the cabinet to be a principle vehicle utilized by an ambulance provider for the provision of:

- (a) Emergency care and transportation; or
- (b) Nonemergency runs.

(15) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(16) "Provider" means a Class I ground ambulance provider as defined in KRS 211.950(2), and 211.952(1)(c)2.

(17) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g.,

needles, glass ampules, etc.).

(18) "Specialized ground ambulance provider" means a Class I ground ambulance provider which meets the requirements of Section 11 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency or scheduled basis that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:

1. Equipment requirements;
2. Personnel requirements;
3. Hours of operation.

Section 2. Class I Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class I providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class I, or specialized Class I emergency medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet.

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;
2. Number and location of substations, if any, to be operated by the licensee;
3. Designation of the specific geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service area for all emergency calls. The provider shall not be precluded from responding to calls outside of its geographic service area when providing:

- a. Mutual aid to another ambulance provider;
- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or

d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility;

4. Designation of the levels of care which the ambulance provider shall be authorized to provide (i.e., BLS or ALS, or specialized BLS or ALS); and

5. Designation of the number of primary ambulances to be operated by the provider.

(d) No new or replacement back-up ambulances shall be licensed. A provider with currently licensed back-up ambulances shall, upon application for renewal of the license, declare the total number of ambulances to be operated with no distinction made between primary and back-up vehicles. This total shall not exceed the total number of ambulances previously licensed.

(f) Each ambulance licensed shall be staffed, equipped, and available to respond to emergency calls at all times.

(g) Each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(h) The licensee shall:

1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and

2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(i) The licensing agency procedures shall not preclude the ambu-

lance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

a. Written notice of the make, model, license number, and vehicle identification number; and

b. Assurances that the temporary replacement ambulance meets the requirements of this administrative regulation;

2. A temporary replacement ambulance shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

3. If the ambulance provider plans to utilize the replacement ambulance for more than thirty (30) days, the provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

4. The licensing agency shall be notified if the replaced unit is back in service.

(j) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class I provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastrophe;

(c) An ambulance operated by the United States government;

(d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence;

(e) A person proceeding to alleviate emergency circumstances pursuant to 900 KAR 6:050, Section 12 (6:040, Section 9); and

(f) An ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(4).

Section 3. Class I Management Requirements. A Class I ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) An original, microfilm, electronic equivalent ~~(as authorized under KRS 216B.410(1)), or similar copy procedure of a [EMS] run form as authorized in KRS 216B.410 [EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report"]~~ for all runs originating in Kentucky pursuant to the following requirements of subparagraphs 1, 2, 3, and 4 of this paragraph:

1. Prior to April 1, 1999, a Class I provider shall utilize:

a. The EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report" (2/91); or

b. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), filling in all nonshaded portions of the run report form as appropriate for each patient and each run.

2. Effective April 1, 1999, a Class I provider shall utilize:

a. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), filling in all nonshaded portions of the run report form as appropriate for each patient and each run;

b. A run form developed by the Class I provider that shall:

(i) Contain all of the required run data of the EMS-8A and EMS-8B (9/98); and

(ii) Be submitted to the cabinet for review and approval prior to being utilized to ensure consistency with the reporting requirements of

KRS 216B.410(1); or

c. An electronic ambulance run reporting system which shall:

(i) Contain all of the required run data of the EMS-8A and EMS-8B (9/98); and

(ii) Provide required run form data to the cabinet in a format compatible with the electronic information system requirements of the cabinet. To ensure consistency with the reporting requirements of the cabinet the cabinet shall, upon request by the provider, supply a copy of file layout requirements to the provider.

3. A copy [1-Copies] of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

4. [2-] The third copy of the run form, or an electronic equivalent in a format consistent with the electronic information system requirements of the cabinet, shall be forwarded to the cabinet or to a data contractor designated by the cabinet within thirty (30) days following the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant that shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files that shall, as a minimum, contain evidence of:

1. Training;

2. Experience;

3. Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;

4. Current and valid driver's license;

5. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service;

6. Health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

b. Health records which meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Vehicle maintenance;

2. Standard operating procedures (SOPS);

3. Patient protocols;

4. Ambulance response;
5. Transport limitations; and
6. Patient destination.

Section 4. Class I Operating Requirements. (1) A Class I ambulance provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ambulance provider. The following priorities shall be followed for establishing a mutual aid agreement:

- (a) A Class I provider which is licensed to serve the same service area;
- (b) A Class I ground ambulance provider which serves part of the same service area or a contiguous service area.
- (2) A Class I ground ambulance provider may also enter into additional mutual aid agreements with other Kentucky licensed Class I ground ambulance providers on an occasional basis to meet the needs of its service area for providing scheduled nonemergency transportation.
- (3) If a Class I ground ambulance provider is unable to respond to an emergency call, the provider shall activate their mutual aid agreement with the closest available Class I ground ambulance provider.
- (4) If a Class I ground ambulance provider receives and declines a request for an emergency interfacility transfer, the licensee shall activate its mutual aid agreement. If none of the mutual aid partners are willing or able to accept the emergency interfacility transfer, any Kentucky licensed Class I ground ambulance provider may accept the transfer.
- (5) A provider who accepts a transfer outside of its service area shall require documentation from the facility or the provider licensed for the service area indicating that a good faith effort was made to utilize the provider licensed for the area.
- (6) If a Class I ambulance provider also makes nonemergency runs, at least one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the geographic service area of the licensee.
- (7) In areas where fire departments, rescue squads, or other organizations provide first response to medical emergencies, in order to provide for the coordinated delivery of emergency medical services and the orderly transfer of patients to the ambulance service upon their arrival, the Class I ambulance provider shall enter into a mutual aid agreement with the first response organization. These agreements shall be in writing and shall address the following:
 - (a) The type of mutual aid assistance to be provided (e.g., ALS or BLS medical care, ALS or BLS medical first response, extrication);
 - (b) Response personnel including levels of training and provisions for joint in-service training where appropriate;
 - (c) Response vehicles including unit identifiers and the station or location from which the vehicles will be operated;
 - (d) How and what manner the mutual aid agreement shall be activated including dispatch and notification procedures;
 - (e) Radio and other communications procedures between the ambulance provider and the other response agency;
 - (f) On-scene coordination and scene control including medical direction when several agencies respond to same incident;
 - (g) Exchange of patient information, records, and reports;
 - (h) Terms of the agreement including effective date and provision for amendment or termination.
- (8) Ambulances used in the provision of Class I ambulance services shall:
 - (a) Be maintained in good operating condition and in full repair;
 - (b) Be designed to provide for the medical care and transportation of patients;
 - (c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.
 - (d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.
- (9)(a) The Class I ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal

shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A Class I ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(10) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the exterior surface of the ambulance.

(11)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(12) The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(13) Nothing in this administrative regulation shall be construed to prevent a licensed Class I provider from providing medical first response emergency prehospital care at or below the level for which they are licensed through the utilization of the following:

- (a) Designated, provider owned response vehicles;
- (b) Provider or personally owned supervisor vehicles;
- (c) Employee personally owned vehicles.

(14) The licensed Class I provider shall determine the minimum equipment required for tiered response vehicles operating under their license.

(15) Class I medical first response vehicles shall be operated in accordance with the provisions of KRS 189.910 to 189.950.

(16) Vehicles used to provide medical first response services shall be insured by the employee or through the insurance policies of the Class I provider.

(17) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the ambulance provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If an ambulance provider is unable to secure a written affiliation agreement with the dispatch center, the ambulance provider shall have on file proof of a good faith attempt to obtain an affiliation agreement;

(b) A Class I ambulance shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) A Class I provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

(18)(a) In accordance with policies and procedures of the Class I provider concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

1. The hospital emergency room of the patient's choice; or
2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude Class I provider per-

sonnel from transporting a patient to:

1. A hospital emergency room other than the one (1) chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one (1) chosen by the patient or his physician if the Class I provider is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952(5).

(c) The Kentucky emergency medical service ambulance run report form [(EHS-8A)] shall require ambulance service personnel to state:

1. The name and city of the hospital to which the patient was transported; and

2. If the destination was chosen by the:

a. Patient;

b. Patient's physician; or

c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) A BLS Class I provider shall be staffed to provide, at least two (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(4) The driver on each BLS or ALS ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. The training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each prehospital emergency or nonemergency BLS ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver, shall have certification or licensing for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

~~[(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.~~

~~[(9) A Class I ground ambulance service may provide nonemergency transportation to individuals for whom no medical care is required or indicated during transport and for whom no emergency medical treatment is provided at the final destination. If a Class I provider chooses to make such runs, the ambulance run report form must be completed for each run to show that no medical care was required or indicated. For such runs, the ambulance shall be staffed by a minimum of one (1) person, who may also be the driver, licensed or certified for one (1) of the following levels:~~

~~(a) EMT-first responder;~~

~~(b) EMT;~~

~~(c) Paramedic; or~~

~~(d) Licensure as a registered nurse by the KBN or as a physician by the KBML.]~~

Section 6. Equipment and Supplies. A Class I ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

(1) Suction, ventilation, and blood pressure equipment.

(a) Fixed and portable suction apparatus including:

1. Rigid tonsillar catheters; and

2. Flexible catheters in the sizes six French (6F), 8F, 10F and 14F;

(b) Disposable bag-valve-mask ventilation units in 250 ml, and 1000 ml with oxygen reservoir with adult and infant size masks (capable of use with oxygen);

(c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and

(d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.

(2) Oxygen equipment.

(a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;

(b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);

(c) Oxygen humidifier and attachment for use on the fixed oxygen tank;

(d) Adaptor and tubing;

(e) Transparent simple oxygen masks for adults, children, and infants;

(f) Transparent nonrebreather oxygen masks for adults and children; and

(g) Nasal cannulas for adults, children, and infants.

(3) Bandages and tape.

(a) Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;

(b) Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;

(c) Ten (10) soft roller self-adhering bandages, various sizes;

(d) Four (4) rolls of adhesive tape, minimum of two (2) sizes;

(e) Ten (10) triangular bandages with large safety pins; and

(f) Two (2) sterile burn sheets.

(4) Miscellaneous supplies.

(a) Eye protector pads and shields;

(b) One (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;

(c) Shears for bandages;

(d) Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the ambulance;

(e) Two (2) penlights;

(f) Two (2) sterile obstetrical kits;

(g) One (1) bottle of syrup of ipecac (with current expiration date) or one (1) bottle of activated charcoal (if in suspension, shall have current expiration date);

(h) Sterile irrigation fluids with current expiration date, if stocked

on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations;

(i) Thermometer.

(5) Splints and immobilization devices.

(a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;

(b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, ladder splints, or acceptable substitute approved by the cabinet);

(c) Immobilization devices.

1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

2. Long spine board with cervical immobilization accessories;

3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.

(d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;

(e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.

(6) Safety supplies and equipment.

(a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;

(b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;

(c) One (1) pocket mask with an isolation valve per patient attendant;

(d) One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;

(e) One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;

(f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towelettes;

(g) Hospital type disinfectants;

(h) Plastic bags for disposal of waste materials;

(i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;

(j) Two (2) clean blankets, sheets, and pillowcases;

(k) Tissues or similar substitute; and

(l) An emesis container or similar substitute.

(7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication and Other Rescue Equipment. (1) A Class I provider shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

(a) Two (2) pairs of eye protection goggles;

(b) Two (2) pairs of heavy work gloves;

(c) Two (2) hard hats;

(d) One (1) spring loaded window punch or acceptable substitute; and

(e) Six (6) reflective triangles, at least ten (10) inches in height, flares, or equivalent warning devices.

(2)(a) For response to trauma scenes, a ground ambulance provider shall provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:

1. Two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;

2. One (1) pair of pliers, vise grip;

3. One (1) wrench, with adjustable, stable open end;

4. One (1) set of screw drivers, four (4) sizes, regular blade;

5. One (1) set of screw drivers, four (4) sizes, Phillips type;

6. One (1) double action tin snip;

7. One (1) crow bar with pinch point;

8. One (1) hacksaw with twelve (12) blades; and

9. One (1) hammer, three (3) pound size;

10. One (1) fire axe;

11. One (1) wrecking bar;

12. One (1) bolt cutter, with one and one-fourth (1 1/4) inch jaw opening;

13. One (1) four (4) ton porta-power jack and spreader tool;

14. One (1) shovel, short handle, with pointed blade;

15. One (1) shovel, long handle, with pointed blade;

16. One (1) come-along tool; and

17. Two (2) fire proof blankets.

(b) A Class I provider which has a written agreement for this provision with a rescue squad, fire department, or an emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. Medical Directors. (1) An ALS Class I provider shall have a written agreement with a physician medical director.

(2) An ALS Class I provider shall provide evidence that the medical director shall:

(a) Be a physician licensed by the KBML;

(b) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualifications of the medical director have been reviewed by the KBML to assure compliance with 201 KAR 9:171, Section 2(6);

(c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support, or have on file written approval from the KBML;

(d) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) through (5); and

(e) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 9. Class I ALS Providers. (1) A Class I ALS provider shall meet the requirements of Sections 1 through 8 of this administrative regulation. It shall also meet the following additional requirements:

(a) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the KBML.

(b) ALS services shall be provided on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ALS provider.

(c) In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of the twenty-four (24) hour, seven (7) day a week requirement to a new ALS provider.

(d) A waiver of this requirement shall not exceed a period of twelve (12) months. If requested by the ALS provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(2) In addition to the BLS equipment required in Section 6 of this administrative regulation, at the point of patient contact and transportation, a Class I ALS provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection 1(a) of this section and shall include the following:

(a) An endotracheal intubation set consisting of:

1. Laryngoscope handle in adult and pediatric sizes;

2. Straight laryngoscope blades in sizes 0, 1, and 2;

3. Curved laryngoscope blades in sizes 3 and 4;

4. Extra batteries and bulbs for blades and handles; and

5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes (uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0);

(b) Stylettes in adult and pediatric sizes;

(c) Magill forceps in adult and pediatric sizes;

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;

(e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;

(f) Bite block;

(g) A portable monitor defibrillator that:

1. Is capable of displaying a visual display of cardiac electrical activity;

2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range which is suitable for pediatric and adult usage;

4. Has adult and pediatric external paddle electrodes capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

5. Is capable of being operated from internal rechargeable batteries;

6. Has synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administrative regulation;

7. Has a patient monitoring cable which has the following accessories:

a. Electrode paste or gel or equivalent;

b. Electrode pads or equivalent for use with the patient monitoring cable; and

c. One (1) additional roll of paper for hard copy printout.

(h) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in eighteen (18) to twenty-five (25) gauge;

(i) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;

(j) Appropriate containers for the collection of blood samples;

(k) Tourniquet appropriate for use with venipuncture procedure;

(l) Dextrostix (r) or equivalent for the measure of blood glucose levels;

(m) Disposable, individually packaged antiseptic wipes;

(n) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;

(o) Intravenous catheter over needle devices in twelve (12) to (24) gauge;

(p) Butterfly needles in nineteen (19) and twenty-three (23) gauge;

(q) Intraosseous needles;

(r) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;

(s) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18 French adult, and sizes 50 or 60 cc catheter tipped syringes or equivalent;

(t) Water soluble lubricant; and

(u) Infant or neonate suction apparatus.

(3) A Class I ALS provider shall stock and maintain drugs and medications as required by:

(a) Protocols established in accordance with Section 8 of this administrative regulation; and

(b) Local, state, and federal statutes and regulations;

(4) Controlled drugs shall be stored in a locked compartment or equivalent approved by the cabinet. An ambulance provider which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.

(5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (u) of this section, and supplies and equipment listed in subsection (2), (3), and (4) of this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require a Class I ALS provider to maintain the equipment required in subsections (2), (3) and (4) of this section if the equipment is not required by the medical protocols of the ALS Class I ground ambulance provider.

Section 10. Advanced Life Support Personnel. (1) Each licensed Class I ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(2) If medical first response emergency medical service vehicles are utilized by the Class I ALS provider, the vehicles shall:

(a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.

(b) Have available the minimum equipment and supplies required

by Sections 6, 7, and 9 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance provider under the provisions of a written mutual aid agreement on file with both providers.

Section 11. Class I Specialized Providers. (1) A Class I provider which does not provide prehospital emergency care to the general public, such as industrial based providers, neonatal transfers, and interfacility transfers requiring BLS or ALS shall be licensed as a Class I specialized provider.

(2) A BLS Class I specialized provider which complies with Sections 1 through 7, and 8 if applicable, of this administrative regulation, if applicable, and an ALS Class I specialized provider which complies with Sections 8 and 9 of this administrative regulation, may, with prior approval by the licensing agency, be allowed certain variances.

(3) A specialized license shall specify the limitations of the provider which have been approved by the cabinet;

(4) In reference to Section 4(1) of this administrative regulation, a Class I specialized provider shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(16)(a) of this administrative regulation, a Class I specialized provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A BLS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(7) An ALS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 9 of this administrative regulation, with certain variations as approved by the cabinet.

(8) A Class I specialized provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 12. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: [and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.]

(a) [(+)] Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91).

(b) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98).

(c) Form EMS-8B, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98).

(d) [(2)] "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406.

[(2) This material may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, 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: Robert Calhoun

(1) Type and number of entities affected: Approximately 280 licensed Class I ground ambulance 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. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state unless a local ambulance service elects not to use the state EMS run sheet and develop a run sheet or data reporting system for their agency.

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

1. First year following implementation: Updates reporting requirements which have been required by KRS 216B.410 since 1984; and permits flexibility in collecting and reporting data which should assist in containing cost.

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: Cost for printing the state EMS run sheet will increase the number of pages will be increased in order to include all of the required data, however costs to the promulgating administrative body may be less if local ambulance providers elect to develop an electronic data system or develop and print a unique EMS run sheet print for use by that agency.

(a) Direct and indirect costs or savings:

1. First year: Assuming 10% of local ambulance services develop their own data system or run sheet, the state could realize a savings of approximately \$4,400.

2. Continuing costs or savings: Assuming 20% of local ambulance services have developed their own data system or run sheet, the state could realize a savings of approximately 8,800 per year.

3. Additional factors increasing or decreasing costs:

a. The number of local ambulance services which elect to continue utilizing the state run sheet will determine the number of run sheets the state will continue to print;

b. The cost of printing the revised state run sheet will be increased because the number of pages required will be increased.

c. Since costs for printing include volume discounts, the number of run sheets needed may increase or decrease costs.

(b) Reporting and paperwork requirements: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS 216B.410.

(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 have a beneficial effect on public health by facilitating statewide collection and analysis of ambulance run data. Dissemination of the data will enable each ambulance provider to better assess the quality and availability of local prehospital emergency medical services.

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

(c) If detrimental result would result, explain detrimental effect: Without a uniform reporting system, the effectiveness of prehospital ambulance services could not be determined and there would not be a standard by which to compare the effectiveness of an ambulance service with other services in the state.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or 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. Tiering was not applied because the run form reporting requirements of this administrative regulation apply uniformly to all licensed Class I ground ambulance providers.

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. Local governments which operate Class I ground ambulance services.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only those local governments which have licensed ground ambulance services.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the provision of emergency medical services.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation may affect a local government by increasing costs of collecting run data, if the local government elects to develop their own run form rather than utilize the run form provided by the cabinet.

CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation (Amendment)

902 KAR 20:036. Operation and services; personal care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), 320.210(2), 1998 Ky. Acts ch. 228, sec. 2, ch. 424, sec. 1 [~~320.240(14)~~, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require [mandate] that the Cabinet for Health Services regulate health facilities and health services. This administrative regulation establishes [provides for the] licensure requirements for the operation of [personal care homes] and the services to be provided by personal care homes. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (example: being able to feed, bathe and/or dress oneself), communication (example: being able to place phone calls, write letters and understanding instructions), and socialization (example: being able to shop, being considerate of others, working with others and participating in activities).

(2) "Activities services" means social and recreation opportunities to stimulate physical and mental abilities, encourage and develop a sense of usefulness and self respect and encourage participation in a variety of activities.

(3) "Administrator" means a person who:

(a) Has sufficient education to: maintain adequate records; submit reports requested by the board; and interpret any written material related to all phases of facility operation and resident's care. The administrator shall [must]: be literate; be a high school graduate or have passed the General Education Development Test; be twenty-one (21) years of age or older; or

(b) Is licensed as a nursing home administrator as provided by KRS 216A.080.

(4) "Ambulatory" means able to walk without assistance.

(5) "License" means an authorization issued by the Certificate of Need and Licensure Board for the purpose of operating a personal care home and offering personal care services.

(6) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or a wheelchair and capable of independent bed-to-chair transfer or bed-to-chair transfer with minimal assistance.

(7) "Nonambulatory" means unable to walk without assistance.

(8) "Nonmobile" means unable to move from place to place.

(9) "Personal care" means services to help residents to achieve and maintain good personal hygiene including but not limited to: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, washing, grooming and cutting of hair.

(10) "Qualified dietician or nutritionist" means a person who:

(a) Has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) Has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) Has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(11) "Residential care" means services which include but are not limited to: room accommodations, housekeeping and maintenance services, dietary services and laundering of resident's clothing and bed linens.

(12) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. A personal care home is an establishment [~~Personal care homes are establishments~~] with permanent facilities including resident beds. Services provided include continuous supervision of residents, basic health and health-related services, personal care services, residential care services and social and recreational activities. A resident [~~Residents~~] in a personal care home shall [must] be sixteen (16) years of age or older and be ambulatory or mobile nonambulatory, and [are] able to manage most of the activities of daily living. Persons who are nonambulatory or nonmobile shall not be eligible for residence in a personal care home.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the operation of the personal care home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(b) The licensee shall establish policies for the administration and operation of the service.

(2) Administrator. All personal care facilities shall have an administrator who shall be responsible for the operation of the facility and shall delegate such responsibility in his or her absence.

(3) Admission.

(a) Personal care homes shall admit only persons who are sixteen (16) years of age or older and who are ambulatory or mobile nonambulatory and whose care needs do not exceed the capability of the home. Persons who are nonambulatory or nonmobile shall not be eligible for admission to a personal care home.

(b) A [No] personal care home shall not [may] care or be responsible for the care of more residents than the capacity indicated on the license, regardless of where housed.

(c) Upon admission the resident and a responsible member of his family or committee shall be informed in writing of the established policies of the home to include but not be limited to fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) Upon admission each resident shall have a complete medical evaluation including medical history, physical examination and diagnosis (may be copy of discharge summary or health and physical report from physician, hospital or other health care facility if done within fourteen (14) days prior to admission).

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Adult and child protection. Personal care homes shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children pursuant to KRS Chapters 209 and 620.

(6) Transfer and discharge. Personal care homes shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents.

(a) Personal care homes shall have written transfer procedures and agreements for the transfer of residents to other health care facilities which can provide a level of inpatient care not provided by the personal care home. Any facility which does not have a transfer agreement in effect but has attempted in good faith to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) The administrator shall initiate transfer through the resident's physician or appropriate agencies when the resident's condition is not within the scope of services of a personal care home.

(c) In the event of transfer to another health care facility a current summary of the resident's medical record shall accompany the resident. When a transfer is to another level of care within the same facility a copy of the resident's record or current summary thereof shall accompany the resident.

(7) Tuberculosis Testing. All employees and residents shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(8) Personnel.

(a) Operators and employees of personal care homes shall comply with 1998 Ky. Acts ch. 424, sec. 1.

(b) Current employee records shall be maintained and shall include a record of each employee's training and experience, evidence of current licensure, registration or certification where required by law, health records and evaluation of performance, along with employee's name, address and social security number.

(c) [(b)] All employees shall [must] be of an age in conformity with state laws.

(d) [(e)] Any employee contracting an infectious disease shall not appear at work until the infectious disease can no longer be transmitted.

(e) [(d)] All dietary employees shall [must] wear hair nets.

(f) [(e)] In-service training. All personal care home employees shall receive in-service training to correspond with the duties of their respective jobs. Documentation of in-service training shall be maintained in the employee's record and shall include: who gave the training, date and period of time training was given and a summary of what the training consisted of. In-service training shall include but not be limited to the following:

1. Policies of the facility in regard to the performance of their duties;
2. Services provided by the facility;
3. Recordkeeping procedures;
4. Procedures for the reporting of cases of adult and child abuse, neglect or exploitation pursuant to KRS Chapters 209 and 620;
5. Patient rights as provided for in KRS 216.510 to 216.525;
6. Methods of assisting patients to achieve maximum abilities in activities of daily living;

7. Procedures for the proper application of physical restraints;
8. Procedures for maintaining a clean, healthful and pleasant environment;
9. The aging process;
10. The emotional problems of illness;
11. Use of medication; and
12. Therapeutic diets.

(g) [(f)] Staffing requirements.

1. The number of personnel required shall be based on: the number of patients; amount and kind of personal care, supervision, and program needed to meet the needs of the residents as determined by the definitions of care and services required in this administrative regulation.
2. If the staff to resident ratio does not meet the needs of the residents, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.
3. The administrator shall designate a person for each of the following areas who will be primarily responsible for the coordination and provisions of services (personnel may be required to perform combined duties):
 - a. Recordkeeping;
 - b. Basic health and health related services; and
 - c. Activity services.
4. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.
5. One (1) attendant shall be awake and on duty on each floor in the facility at all times.
- (9) Medical records. The person in charge of medical records shall assure that a complete medical record shall be kept for each resident with all entries current, dated and signed. Entries should be made in ink, ballpoint, or typed. Each record shall include the following:
 - (a) Identification information, including:
 1. Resident's name;
 2. Social Security, Medicare and Medical Assistance identification number (if appropriate);
 3. Marital status;
 4. Birthdate;
 5. Age;
 6. Sex;
 7. Home address;
 8. Religion and personal clergyman, if any (with consent of resident);
 9. Attending physician, dentist and podiatrist, if any; address and phone number for each one;
 10. Next of kin or responsible person, address and telephone number;
 11. Date of admission and discharge;
 12. In the event of transfer, a copy of the summary of resident's records; and
 13. Monthly recording of the resident's weight.
 - (b) If admitted from another facility a discharge summary or transfer summary.
 - (c) Admitting medical evaluation.
 - (d) Physician's report on annual medical evaluation of the resident.
 - (e) Physician progress notes indicating changes in resident's condition, at time of each visit by the physician and consultant.
 - (f) Orders for medication or therapeutic services.
 - (g) Nurses' or staff notes indicating changes in resident's condition as they occur.
 - (h) Reports of accidents or acute illnesses of any resident.
 - (i) Reports of social services, dental, laboratory, x-ray and special reports of consultants or therapists when the resident receives these services.
 - (j) Medication and treatment sheets including all medications, treatments and special procedures performed indicating date and time. Entries shall be initiated by the personnel rendering treatment or administering medication.
 - (k) Reports of the use of physical restraints, the procedures used, and the checks and releases of physical restraints.

(l) A record of resident's discharge destination.

(10) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years, or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Basic health and health related services. All personal care homes shall provide basic health and health related services including: continuous supervision and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self administration of medications, storage and control of medications, when necessary, and making arrangements for obtaining therapeutic services ordered by the resident's physician which are not available in the facility. All personal care homes shall meet the following requirements relating to the provision of basic health and health related services:

(a) The person in charge of the facility shall be responsible for obtaining medical care by a licensed physician promptly in cases of accident or acute illness of any resident. Such instances shall be recorded in the resident's medical record.

(b) Medications or therapeutic services shall not be administered or provided to any resident except on the order of a licensed physician or other ordering personnel acting within the limits of their statutory scope of practice [~~advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14)~~]. Administration of all medications and provisions of therapeutic services shall be recorded in the resident's medical record.

(c) If orders are received by telephone, the order shall be recorded on the individual's medical record and signed by the physician or other ordering personnel acting within the limits of their statutory scope of practice [~~advanced registered nurse practitioner or therapeutically-certified optometrist~~] within fourteen (14) days.

(d) A written report of any incident or accident involving a resident (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator, and any staff member who may have been witness to the incident. The report shall be filed in an incident file.

(e) Controlled substances. A [No] home shall not keep any controlled substances or other habit forming drugs, hypodermic needles, or syringes except under the specific direction of a physician. Controlled substances shall be kept under double lock (i.e., in a locked box in a locked cabinet). There shall be a controlled substances bound record book with numbered pages, in which is recorded the name of the resident; the date, time, kind, dosage, and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the resident shall be destroyed in accordance with 21 CFR 1307.21.

(f) All medicines shall [must] be plainly labeled with the resident's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. All medicines kept by the home shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall [must] be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall [must] be stored separately from those administered by mouth and injection. Provisions shall [must] also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with existing federal and state laws and regulations.

(g) If a resident manifests persistent behavior that may require psychiatric treatment, the resident's physician shall be notified in order to evaluate and direct the resident's care. If the resident's condition does not improve enough for his continued stay in a personal care facility, the physician shall initiate transfer of the resident to an appropriate facility as soon as possible.

(h) Use of restraints.

1. No restraints shall be used except as permitted by KRS 216.515(6).

2. Restraints that require lock and key shall not be used.

3. Restraints shall be applied only by appropriately trained personnel.

4. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression.

(i) Each resident shall have an annual medical evaluation by a physician. The results of this evaluation shall be recorded in the resident's medical record.

(j) Communicable diseases. If a resident or prospective resident is suspected or known to have a communicable disease for which a reasonable probability of disease transmission exists in the personal care home, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the resident with the communicable disease and the other residents.

(2) Residential care services. A [All] personal care home [homes] shall provide residential care services to all residents including: room accommodations, housekeeping and maintenance services, and dietary services. A [All] personal care home [homes] shall meet the following requirements relating to the provisions of residential care services:

(a) Room accommodations.

1. Each resident shall be provided a bed equipped with substantial spring, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the residents comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The home shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors and a night light.

3. Residents shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for residents.

5. Residents may have personal items and furniture when it is physically feasible.

(b) Housekeeping and maintenance services.

1. The home shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen should be on hand at all times. Soiled clothing and linens shall receive immediate attention and should not be allowed to accumulate. Clothing or bedding used by one (1) resident shall not be used by another until it has been laundered or dry cleaned.

3. Laundering of resident's normal personal clothing and bed linens. Resident's personal clothing and bed linens shall be laundered by the home as often as is necessary. Resident's personal clothing shall be laundered by the home unless the resident or the resident's family accepts this responsibility. Residents capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Resident's personal clothing laundered by the facility shall be marked to identify the resident-owner and returned to the correct resident.

4. Safety. The home shall take appropriate precautions to insure safety of residents, visitors and employees.

5. Maintenance. The premises shall be well kept and in good repair. Requirements shall include but not be limited to:

a. The facility shall insure that the grounds are well kept and the exterior of the building and including the sidewalk, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest

control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. Care shall be taken to use the least toxic and least flammable effective insecticides and rodenticides. The compounds shall be stored under lock.

(c) Dietary services.

1. Dining area. A dining area shall be available for the residents.

2. Therapeutic diets. If the facility provides therapeutic diets, and the designated person responsible for food services is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

3. Menu planning.

a. Menus shall be planned in writing and rotated to avoid repetition. Nutrition needs of residents shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus shall [must] be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and menus shall be kept on file for thirty (30) days.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician.

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all residents. Adjustments shall be made when medically contraindicated.

d. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be attractively served at the proper temperatures and in a form to meet individual needs. A file of tested recipes, adjusted to appropriate yield, shall be maintained. Food shall be cut, chopped, or ground to meet individual needs. If a resident refuses food served, substitutes shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

f. Ice water shall [must] be readily available to the residents at all times.

5. Sanitation. Personal care homes shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005.

(3) Personal care services. All personal care homes shall provide services to assist residents to achieve and maintain good personal hygiene including the level of assistance necessary with:

(a) Washing and bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with washing and bathing, the facility shall provide soap, clean towels, and wash cloths for each resident. Toilet articles such as towels, brushes and combs shall not be used in common.

(b) Shaving.

(c) Cleaning and trimming of fingernails and toenails.

(d) Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

(e) Washing, grooming, and cutting of hair.

(4) Activity services.

(a) A [All] personal care home [homes] shall provide social and recreational activities to: stimulate physical and mental abilities to the fullest extent; encourage and develop a sense of usefulness and self respect; prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age, be of sufficient variety that they meet the needs of the various types of residents in the home.

(b) A [All] personal care home [homes] shall meet the following requirements relating to the provision of activity services:

1. Staff. A person designated by the administrator shall be responsible for the activity program. (Volunteer groups may be enlisted to assist with carrying out the activities program.)

2. There shall be a planned activity period each day. The schedule shall be current and posted.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

3. The program shall be planned for group and individual activities, both within and outside of the facility.
4. The person responsible for activities shall maintain a current list of residents on which precautions are noted regarding a resident's condition that might restrict or modify his participation in the program.
5. A living or recreation room and outdoor recreational space shall be provided for residents and their guests.
6. The facility shall provide supplies and equipment for the activities program.
7. Reading materials, radios, games and TV sets shall be provided for the residents.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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: There are presently 195 licensed personal care homes.
- (2) Direct and indirect costs or savings to those affected:
 - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: No additional reporting requirements imposed.
 2. Second and subsequent years: None
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.
 1. First year: \$500 for printing regulation.
 2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.
 3. Additional factors increasing or decreasing costs: No additional factors.
 - (b) Reporting and paperwork requirements: No additional paperwork.
 - (4) Assessment of anticipated effect on state and local revenues: No effect.
 - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.
 - (6) To the extent available from the public comments received,

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

- (a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.
- (b) Kentucky: No public comments addressing this issue were received.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

905 KAR 1:330. Child protective services.

RELATES TO: KRS 431.600, 600.10, 605.130, 620.010 to 620.050, 620.990, 1998 Ky. Acts chs. 57, 303, 339, 426, sec. 601
STATUTORY AUTHORITY: KRS [194.050]; 605.150, 620.180, 42 USC 5106a, 1998 Ky. Acts ch. 426, sec. 34(1), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 426, sec. 34(1) [KRS 194.050] requires the Secretary for the Cabinet for Families and Children [Human Resources] to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children [Human Resources]. This administrative regulation sets forth the procedures for child protection investigations of abuse, neglect, or dependency by the Department for Community-Based [Social] Services in compliance with KRS 605.150 and 620.180.

Section 1. Definitions. (1) "Child protective services" means preventive and corrective services directed toward:

- (a) Safeguarding the rights and welfare of abused, neglected or dependent children [Strengthening family life];
 - (b) Improving the abilities of parents to carry out parental responsibilities;
 - (c) Assuring for each child a safe and nurturing home;
 - (c) Improving the abilities of parents to carry out parental responsibilities;
 - (d) Strengthening family life [Safeguarding the rights and welfare of abused, neglected or dependent children];
 - (e) Assisting parents or other persons responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of a child; and
 - (f) Identifying and correcting conditions in society which contribute to the neglect, abuse or dependency of a child.
- (2) "Failure to locate" means the identifying information about the family is insufficient for locating them or the family has moved and their new location is not known.
- (3) "Found and substantiated" means a type of physical abuse, sexual abuse, neglect or dependency not originally reported by the referral source was found and substantiated during the investigation;
- (4) "Prior involvement" means:

(a) Either the child or caretaker are currently registered protection and permanency [DSS] clients or have been registered clients within one (1) year of the reported fatality; or

(b) A protective service investigation was completed in regard to the child or caretaker, regardless of the status of the investigation, within one (1) calendar year preceding the reported fatality.

(5) ~~"Some indication" means some indicators that abuse, neglect or dependency may exist or some circumstances or conditions are sufficient to arouse suspicion;~~

(6) "Substantiated" means an admission of abuse, neglect or dependency by the persons responsible or a judicial determination of abuse, neglect or dependency or strong circumstantial or other supportive indicators that abuse, neglect, or dependency by the persons responsible exist;

(6) [(7)] "Unsubstantiated" means there is insufficient [no] evidence, indicators or justification for suspicion of abuse, neglect or dependency.

Section 2. Receiving a Report. (1) The Department for Community-Based [Social] Services shall accept reports of child abuse, neglect or dependency as governed by KRS 620.030.

(a) The home telephone numbers of family services workers, family services office supervisors, and the child abuse hotline shall be made available to agencies in the community who may encounter child abuse, neglect or dependency for emergency reports after normal office hours unless a formalized on call system exists.

(b) The intake worker shall attempt to elicit from the person reporting the suspected abuse, neglect or dependency as much information about the child's circumstances, as possible, including:

1. Specific information as to the nature and extent of abuse or neglect;

2. The causes of the abuse;

3. The location of the child and family;

4. Determine if there have been previous incidents;

5. Witnesses to the incident which caused the child's conditions;

6. Whether the reporting person or others have taken any action;

7. Present danger to child or staff; and

8. The reporting persons identity and relationship to the child assuring him that his identity shall not be revealed unless the court orders his name divulged.

(c) Anonymous reports which give sufficient information and report abuse, neglect or dependency by a caretaker shall be investigated.

(2) Acceptance criteria.

(a) The department shall receive and investigate reports of physical abuse if there are reported to be or have been observable marks on a child which were allegedly inflicted nonaccidentally by a caretaker. The department may accept a report of physical abuse or risk of physical injury if no observable marks are seen and if:

1. There are reports of a child being hit in critical areas of the body, which may include [including but not limited to:] the head, face, neck, genitals, abdomen, and kidney areas;

2. There are reports of threats of physical injury; or

3. There are allegations of injuries to a child which are the result of altercations between the child and the custodian. The worker shall explore the precipitating factors, the degree of appropriateness of force used by the caretaker and the need for further services to assist in eliminating the violent behavior in the home.

(b) The department shall receive and investigate reports which allege neglect of a child by a caretaker which may result in harm to the physical health and safety of the child in the following areas:

1. Hygiene neglect exists if:

a. A child has physical symptoms that require treatment due to poor care; or

b. The child's physical health and safety is negatively affected due to an act or omission by the caretaker;

2. Supervision neglect exists if the caller has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;

3. Food neglect exists if a child shows symptoms of:

a. Malnutrition;

b. Dehydration;

c. Food poisoning; or

d. Not having been provided adequate food for a period of time that interferes with the health needs of the child based on age and

other conditions;

4. Clothing neglect exists if a child suffers:

a. Illness;

b. Exposure; or

c. Frostbite due to inadequate clothing or the clothing is insufficient to protect the child from the elements.

5. Environmental neglect exists if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;

6. Educational neglect exists if the school system has exhausted their resources to correct the problem and the caretaker's negligence prevents the child from attending school or receiving appropriate education; and

7. Medical neglect exists if a child is not receiving medical assessment or treatment for an injury or illness or disability which if left untreated may:

a. Be life-threatening;

b. Result in permanent impairment;

c. Interfere with normal functioning and worsen without treatment;

or

d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease.

(c) The department shall receive and investigate reports which allege sexual abuse of a child committed or allowed to be committed by a caretaker or the risk that an act of sexual abuse, sexual exploitation, or prostitution shall be committed on a child. Pursuant to 1998 Ky. Acts ch. 426, sec. 601, and ch. 339, sec. 1, each investigation of reported or suspected child sexual abuse shall be conducted by the multidisciplinary team, if available. Reports of sexual abuse shall include contacts and interactions in which a child is used to sexually stimulate or gratify another person. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease and the child exhibits physical or behavioral indicators of abuse.

(d) The department may receive and investigate reports which allege risk of sexual harm to a child, if there are factors which cause a person to believe that an act of sexual abuse may be committed on a child.

(e) The department shall receive and investigate reports which allege emotional injury or risk of emotional injury of a child by a caretaker as governed by 1998 Ky. Acts ch. 57, sec. 2(20) [KRS 600.020(20)].

(f) The department shall receive and investigate reports which allege a child is dependent as governed by KRS 600.020(16) [(45)].

Section 3. The cabinet shall not investigate reports of abuse or neglect by a noncaretaker but shall comply with KRS 620.030(1).

(1) Staff shall keep a log of these referrals specifying the date received and date referred to the Commonwealth's or county attorney and local law enforcement.

(2) Staff may at the request of local law enforcement provide assistance in interviewing alleged child abuse victims.

(3) Staff may refer to other agencies referrals not requiring mandatory child protection services investigations.

(4) The following criteria shall be used in identifying referrals not requiring investigation:

(a) The victim of the report is age eighteen (18) or over;

(b) There is insufficient information to locate the child or explore leads to locate;

(c) The problem described does not meet the statutory definitions of abuse, neglect or dependency;

(d) Reporter notifies the department that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;

(e) If the report concerns custody changes or custody related issues or lifestyles issues without allegations of abuse, neglect or dependency;

(f) Corporal punishment appropriate to the age of the child without injuries, marks or bruises or substantiated risk of harm. This type of corporal punishment by foster parents shall be reported;

(g) Allegations of abuse or neglect of a fetus;

(h) Allegations of spouse abuse to a married youth, under the age eighteen (18). These reports shall be forwarded to the adult services worker.

(i) If the report concerns a specific incident previously investigated and no new information or change in the child's circumstances is

communicated.

Section 4. Report of Suspected Child Abuse, Neglect, Dependency. Following the receipt of the report, the DSS-115, the [Report of] Suspected [Child] Abuse, Neglect, Dependency, or Exploitation Reporting Form [herein] incorporated by reference, shall be completed and the report investigated. Investigations shall be conducted according to the following time frames as governed by KRS 620.040(1):

(1) If the report indicates the child is in imminent danger, the investigation shall be initiated within the hour.

(2) If the report indicates nonimminent danger of physical or sexual contact, effort shall be made to have personal contact with the child and family within twenty-four (24) hours, but contact shall be made within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(3) If the report indicates nonimminent danger, not involving physical or sexual contact, the investigation shall be initiated within twenty-four (24) hours. Efforts shall be made to have personal contact with the child and family within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.

(4) Reports of dependency if a child is not in imminent danger shall be investigated within forty-eight (48) hours.

Section 5. Reports of Abuse, Neglect, and Dependency. (1) If a report of alleged child abuse, neglect or dependency in an approved foster home or adoptive home is received, the supervisor shall immediately contact the service region administrator or designee [family services district manager] who shall designate a worker to conduct the investigation. If abuse, [or] neglect or dependency is substantiated [or there is some indication], a review of the home shall be completed. The decision to close or continue using the home shall be made by the service region administrator or designee [family services district manager] based on pertinent available information.

(2) If a report of alleged child abuse or neglect in a licensed child care facility, private child care or a day care center is received the worker shall notify the Division of Licensing and Regulation. This notification shall be documented in the case and may be done by phone and followed up in writing. If possible, the investigation shall be coordinated and conducted jointly; however, if not possible within the designated time frame, the worker shall proceed with the investigation. In joint investigations the DCBS worker providing protection and permanency services [DSS-worker] shall with the Division of Licensing and Regulation staff:

(a) Conduct an entrance interview with the facility administrator or designee outlining the nature of the report without disclosing the name of the reporter; and

(b) Discuss their findings privately prior to conducting an exit interview.

(3) ~~If a report of alleged child abuse or neglect in a Cabinet for Human Resources operated treatment facility is received the worker shall immediately telephone the Office of Inspector General who shall investigate the report. The phone contact shall be followed by completing a DSS-115 and further action shall not be taken unless specifically requested by the Office of Inspector General.~~

(4) Reports of abuse or neglect involving school personnel.

(a) If allegations of child abuse or neglect have been made about a school employee, with the incident occurring during school time or other school related activities, the worker shall:

1. Complete the DSS-115, Suspected Abuse, Neglect, Dependency, or Exploitation Reporting Form and forward copies to appropriate law enforcement and county or commonwealth attorney;

2. Interview child and natural parents or legal guardians. Conduct the interview away from school grounds, if possible;

3. Interview the alleged perpetrator away from the school grounds if possible.

(b) If the referral is unsubstantiated, further action shall not be taken. Information regarding the finding of the report may be shared with the alleged perpetrator and the custodial parent. Other information shall be requested through open records procedures.

(c) If the referral is substantiated ~~[or shows some indication of abuse or neglect]~~: the worker shall notify the appropriate supervisor of the alleged perpetrator that an investigation has been conducted, ~~[and of]~~ the results of the investigation, ~~and that the alleged perpetrator has the right to appeal pursuant to 905 KAR 1:320.~~

(4) ~~[(5)]~~ If a report of alleged child abuse or neglect in a certified family child care home is received the worker shall notify the Department's Division of Child Care [Services Branch].

Section 6. Prior Reports. (1) Before investigating the referral regarding a child unknown to the local office, the worker shall ~~[district data center shall be contacted to]~~ determine the existence of:

(a) Prior reports;

(b) ~~[or if there exists]~~ A closed case; or

(c) ~~A~~ case opened elsewhere in the state.

(2) This information shall be documented in the case record but failure to secure this information shall not delay the investigation within the stated time frames.

Section 7. Initial Investigation. Information necessary for determining the validity of the report, and if valid, the existence of imminent danger and risk to the child shall be obtained during the investigation. Investigations shall entail face-to-face contact with the alleged victim[~~Victims~~], if of appropriate age, ~~[and]~~ If possible, parents or caretakers, appropriate household and family members, and alleged perpetrators shall be interviewed.

(1) If determining whether to interview the child, ~~[or]~~ parent or caretaker first, consideration shall be given to the:

(a) Nature of the referral;

(b) Current location of the child;

(c) Indicated risk to the child; and

(d) Known violence on the part of the parent.

(2) A child shall not be interviewed in the presence of the alleged perpetrators or others who may put pressure on the child.

(3) If the worker is unable to contact the parents or caretaker, he shall notify the supervisor and document the case record.

(4) Collateral contacts shall be interviewed if the validity or severity of the report cannot be determined from the interviews. Collateral sources may include:

(a) Officers of the court;

(b) School personnel;

(c) Neighbors;

(d) Medical personnel;

(e) Law enforcement officers; and

(f) Personnel of other agencies.

(5) Medical and psychological examinations may be required if the report alleges that the child has suffered sufficient physical harm of a serious nature, ~~[emotional harm]~~ or emotional injury. The worker, if possible, shall obtain a copy of the report.

(6) The worker shall cooperate with law enforcement.

(a) Child sexual abuse investigations shall be investigated jointly with law enforcement. The investigation shall be initiated within time frames established in Section 4 of this administrative regulation.

(b) Attempts shall be made to ensure that the worker shall not impede the criminal investigation; however, the worker's primary responsibility shall be the protection of the child.

(7) To prevent a child from experiencing multiple interviews a videotaped interview may be appropriate.

Section 8. Alleged Perpetrators Age Twelve (12) or Older. Reports involving perpetrators in a caretaking role under the age of twelve (12), shall be investigated. However, the child shall not be identified as the alleged perpetrator on the DSS-150, Child Protection Investigation Results, ~~[Initial Results of Child Abuse, Neglect, Dependency Investigation, herein]~~ incorporated by reference.

Section 9. Interviewing Children in Schools. Worker's shall have the authority to investigate child abuse, neglect or dependency reports at school without parental consent. The worker shall inform appropriate school personnel of the need to interview a child regarding a referral. Details of the allegation and investigation shall only be given to school personnel with a legitimate interest in the case.

Section 10. Notice of Results of Investigation. The worker shall complete the notification section of the DSS-115, and forward it ~~[forwarded]~~ to law enforcement officials and the county or commonwealth attorney within seventy-two (72) hours of receipt of the report, exclusive of weekends and holidays as governed by KRS 620.040(1).

Section 11. Medical Neglect of Disabled Infants. (1) The department shall be notified of known or suspected instances of the withholding of medically indicated treatment of disabled infants with life threatening conditions in hospitals or health care facilities. Federally funded hospitals and health care facilities shall be given the department's toll-free child abuse hotline number.

(2) If a report is received, hotline staff shall notify a child protective services specialist in central office if received during working hours or a designated person at home if received outside working hours.

(3) Central office staff shall contact one (1) of the department's medical consultants who shall investigate the report.

Section 12. Denied Entry to a Home for a Protective Service Investigation. (1) The worker shall not enter a home during the investigation of a report if an adult is not present in the home.

(2) If there is reason to believe the child is in imminent danger, law enforcement shall be contacted for assistance.

(3) [(2)] If the parents or caretakers of a child refuse the worker entry to the child's home or refuse to allow the child to be interviewed, the worker with approval of the supervisor may request an order from the court.

(a) If the court issues a search warrant the worker may accompany law enforcement officers if the warrant is served;

(b) With the exception of removal of a committed child, the worker shall not remove a child from the home without a court order to remove;

(c) If the court refuses to issue a search warrant, the family service worker shall document the attempts to secure one in the narrative.

Section 13. Risk Assessment. During an investigation of alleged child abuse and neglect, the worker shall assess the strengths of the family and risk to the child by completing the Child Risk Assessment, the Family Assessment, and the Staff Assessment Forms [DSS-897; Child Protective Services Risk Assessment Guidelines, herein incorporated by reference]. The worker shall not be required to complete these assessments [the DSS-897] if the:

(1) Child is found dependent;

(2) Alleged perpetrator is not the child's primary caretaker;

(3) Investigation determines the referral to be unsubstantiated or unable to locate; or

(4) Investigation of a child fatality determines there are no surviving children in the home, [-or

(5) ~~The supervisor deems the use of the DSS-897 to be unnecessary, based on the training and experience of the worker, or inappropriate; and the reasons are documented in the case record.]~~

Section 14. Child Fatality or Near Fatality Investigations. (1) Reports that a child fatality or near fatality has occurred due to abuse or neglect by a parent, guardian or other person exercising custodial control or supervision of the child shall be investigated by the department.

(2) If the alleged perpetrator was not a parent or in a caretaker role, the reports shall be forwarded pursuant to [as governed by] KRS 620.030.

(3) If it is determined that the department has prior involvement, the commissioner, the Office of Communications and the general counsel of the cabinet shall be notified of the situation immediately through the established channels of communication. The notification shall include:

(a) Name and age of victim;

(b) Known circumstances around the fatality or near fatality death;

(c) Description of physical injuries or medical condition of the child;

(d) Names, ages and location of other children in the family;

(e) Brief description of the department's history with the family caretaker;

(f) Actions taken by the department to date and future actions to be taken; and

(g) Involvement of other professionals in the case.

(4) It may be advisable that staff who have had prior direct involvement with the case not be assigned to conduct the investigation.

(a) The assigned investigator, if feasible, shall consult with social workers who have direct involvement with the case prior to investigating.

(b) A joint investigation with law enforcement shall be conducted if

possible. The designated investigator shall:

1. Be cooperative, but not usurp the roles of law enforcement or the coroner or interfere with their respective investigations; and

2. ~~[-The investigator shall]~~ Contact appropriate law enforcement and coroner to clarify roles and establish a common channel of communication, particularly if the intake information indicates other children are present in the household.

(c) Worker safety in a potentially dangerous setting shall be considered during the course of the investigation. Collateral contacts with medical personnel, the coroner and other appropriate persons may be made to assess potential danger to staff.

(5) The worker shall determine the safety of any surviving children through immediate assessment to assure their safety. The risk assessment guidelines shall be completed if there are surviving children in the home, unless ~~[the family services office supervisor deems]~~ the use of the risk assessment guidelines is inappropriate as specified in Section 13 of this administrative regulation. ~~[And]~~ The reason for omission of the risk assessment shall be [is] documented in the case record. This assessment shall include [includes]:

(a) Arranging for physical examinations to check for injuries to the surviving children, if indicated;

(b) Determining whether there has been any history of prior abuse, neglect to the children or other family members by the alleged perpetrator;

(c) Interviewing the children to assess present emotional condition and to determine to what extent they may have witnessed family violence;

(d) Interviewing the parent or caretaker to observe interaction with children and to discuss parent or family history of the caretaker;

(e) Making collateral contacts with neighbors, schools and extended family;

(f) Determining whether the surviving children were present during the time the deceased child received injuries and witnessed what occurred; and

(g) Initiating mental health counseling immediately, if appropriate, for the emotional stability of the children.

(6) If parental rights have been terminated and there has been ongoing contact or other special circumstances, the decision to notify biological parents shall be made by the service region administrator [manager] or designee. The Department of Public Advocacy, Protection and Advocacy Division, shall be notified if a child, identified as a protection and advocacy client, dies as a result of abuse or neglect and the perpetrator is in a caretaker role.

(7) In the case of the death of a youthful offender, the sentencing circuit court and the Parole Board shall be notified.

(8) If a fatality occurs in either a foster home, ~~[Cabinet for Human Resources facility;]~~ psychiatric unit or hospital or private child care facility, and parental rights are intact, efforts shall be made to immediately notify the parents. The judge of the committing court and the guardian ad litem for the deceased child shall be informed of the fatality in writing within three (3) working days after receipt of the report.

(9) Public disclosure may occur in a case of child abuse or neglect that has resulted in a child fatality or near fatality as governed by 1998 Ky. Acts ch. 303, sec. 2(6). ~~[The following procedures apply to staff in a Cabinet for Human Resources facility if a death occurs:~~

~~(a) Emergency medical services and police shall be contacted immediately. Location and phone number shall be posted by the telephone in each program;~~

~~(b) The program director, branch manager, and division director through normal chain of command shall be notified immediately. The division director shall notify the Commissioner for Social Services;~~

~~(c) Staff on duty shall not disturb the body or the immediate area beyond any action necessary to provide emergency resuscitation techniques, or to check for vital signs;~~

~~(d) Notification shall be given to the local office of the coroner in compliance with KRS 72.020;~~

~~(e) Notification to the family and community worker shall be delivered, after direction by the program director, who shall select the individual to present the information in a therapeutic manner to the person;~~

~~(f) Detailed documentation shall be entered in the case record by staff describing the event, including:~~

~~1. The time the coroner was notified;~~

~~2. The time pronouncement of death was given;~~

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

3. Names of staff involved; and

4. Notification of parents and guardians. Pertinent notifications and significant facts related to the death shall be fully documented.

(g) A final report shall be prepared by the program director to be submitted to the Commissioner for Social Services through established channels.

(h) The record of the juvenile shall be maintained at the facility until a final report of the coroner is entered into the record. A copy of this report shall be sent to the Commissioner for Social Services through established channels.]

(10) Funeral arrangements shall remain the responsibility of the natural parents unless parental rights have been terminated.

(a) Staff shall explore with the natural parents their ability to accept financial responsibility for the funeral. Personal and family resources, including trust fund and insurance in the name of the child, shall be exhausted prior to approval of department funds for funeral and burial expenses. Costs shall have prior approval by the appropriate level of supervision.

(b) The selection of a funeral home, mortician, casket, and burial lot shall be based on estimates of cost which are reasonable and on consideration of the choice of the natural parents.

(c) Clothing for burial may be provided by the natural family, foster family, or may be purchased by the department staff.

(d) Flowers may be selected by the department staff and billed to the department.

(e) Arrangements for religious services may be made with a clergyman of the faith of the natural parents. If the faith of the natural parents is unknown, a clergyman of the faith of the foster parents may conduct services.

Section 15. Determining the Validity of the Report. After the interviews and the necessary information is gathered, the social worker shall determine the validity of the report and submit the result [DSS-150;] within thirty (30) working days of the receipt of the report from the reporting person, unless there are extenuating circumstances which are documented in the narrative. The family services office supervisor or designee shall review and evaluate the results of the investigation [- sign and date the original DSS-150].

Section 16. Central Registry. The central registry consists of a list of names of perpetrators in substantiated cases of child abuse and neglect in which the right of the appeal has been waived or the initial finding has been upheld. [(1) Reports of alleged abuse, neglect, or dependency are computerized for the purposes of compiling statistical information, aiding in diagnostic treatment, and providing management with a means for program evaluation.

(2) Reports that are found to be unsubstantiated or unable to locate shall include:

- (a) Child demographics;
- (b) The type of report alleged;
- (c) Source of report; and
- (d) Status of case;]

(1) [(3)] Reports that are found to be substantiated, [and some indication] shall include:

- (a) Both child and alleged perpetrator demographics;
- (b) Specific characteristics relating to the report;
- (c) Type of report; and
- (d) Status and relationship of alleged perpetrator to child involved.

(2) [(4)] The only information that shall be released from the child abuse, neglect, or dependency central registry is statistical information. Social agencies demonstrating a legitimate interest may be told if a case exists in the registry, but all requests for details related to that case shall go through open records process.

Section 17. Photographs. Photographs may be taken of a child during a protective service investigation without parental consent. If it appears that photographs of an abused or neglected child is [children are] necessary for proof of abuse or neglect, it is advised that law enforcement take the photographs. If a family services worker takes the photographs, there shall be a witness and documentation made of the subject, date, and witnesses to the photograph.

Section 18. Case Planning. (1) If a case is to be opened, a maximum of fifteen (15) working days shall be allowed to open the case

and complete the case plan.

(a) Priority for opening cases shall be given to cases in which the child is at greatest risk for harm.

(b) Within ten (10) working days of the decision to open a case, the family services office supervisor shall assign or transfer the case for treatment.

(2) The case plan shall be based on assessment and goal formation. It shall include a limited number of attainable, specific objectives agreed upon between the social worker and the family. The case plan shall take into account the following:

(a) The assets and strengths of the family unit and its members;

(b) The options, priorities and needs of the family unit and its members;

(c) The clarification and definition in behavior-specific terms of what needs to change and what new skills need to be learned;

(d) The identification and impact of community forces over which the family may have little or no control;

(e) The opinions of expert consultants regarding medical, mental health, legal and other factors;

(f) The input from referring agencies; and

(g) The resources available within the agency and the community and delineation of roles and functions to bring about the specified changes.

(3) The social worker shall develop a treatment plan designed to provide a safe environment for the child and engage the commitment and cooperation of the family. Family members and children of appropriate age shall be encouraged to participate in the development and updating of case plans.

(4) A copy of the case plan shall be given to the parent or caretaker. The case plan shall be reviewed by the family, worker and supervisor, to include case closure assessment no less frequently than every six (6) months.

(5) A DSS-154, Service Complaint [Request for Hearing], shall be given to the family advising them of the right to a fair hearing in compliance with 905 KAR 1:320.

(6) If adoption [termination of parental rights] becomes the goal, case planning and service delivery shall continue until the termination of parental rights judgment order is received.

Section 19. Service Delivery. Service delivery shall be provided as outlined and stated in the case plan. Service delivery shall encompass identified expectations of the family, staff and the implementation of resources in the community. Service recordings shall be completed within thirty (30) days of the contact and shall reflect progress toward treatment goals. [Recordings shall be signed and dated by the worker;]

Section 20. Case Closure. (1) The decision to close a case which has received services shall be based on evidence that the original factors resulting in the abuse, neglect or dependency have been resolved to the extent that the family can protect the child and can, at least minimally, meet the needs of the child. A child protective services case shall not be closed if withdrawal of services places the child in danger. Consideration for closure of a child protective service case may occur if the following conditions are met:

(a) The child is no longer in need of protection;

(b) The goals have been achieved; or

(c) The client is not making progress toward treatment goals and there are no legal grounds for intervention.

(2) The closing summary of the child protective services case shall be included in the case record. A brief narrative regarding the case and the reasons for closure shall be entered. The summary may include:

(a) Number of months of child protective services;

(b) Agencies still involved in the case;

(c) Assessment of family functioning and of conditions that have changed to make closure possible;

(d) Reason and date of closure.

(3) [The form shall be signed and dated by the worker.] Notification to client of closure with a DSS-154-A shall be documented in the case pursuant to [as required by] 905 KAR 1:320.

Section 21. [Material] Incorporated by Reference. (1) The following material is incorporated by reference:

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(a) ~~[The]~~ DSS-115, "Suspected Abuse, Neglect, Dependency or Exploitation Reporting Form", ~~[revised] "July, 1994", Cabinet for Families and Children; [shall be herein incorporated by reference.]~~

(b) DSS-150, "Child Protection Investigation Results", "July, 1994", Cabinet for Families and Children.

(2) ~~This 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, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.~~

DEITRA PARIS, Commissioner

VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 1, 1998

FILED WITH LRC: October 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4 Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

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 include the cost of mailing 16,000 certified letters over a twelve (12) month period to all substantiated perpetrators of child abuse. This letter will provide the perpetrator the opportunity for due 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: \$29,400

2. Continuing cost or savings: \$39,200

3. Additional factors increasing or decreasing costs: Staff involved in the mailing out of these notices will not increase, there may be a portion of this cost which shifts from other programs.

(b) Reporting and paperwork requirements: The cost of coordinating and mailing notices in a timely way will fall on existing staff. No additional costs allotted for this item.

(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 funding sources are 50%

general funds and 50% Social Service Block Grant (SSBG) 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.

1. Kentucky: To be determined after the public hearing takes place.

2. Assessment of alternative methods; reasons why alternatives were rejected:

3. Alternatives were not considered because this requirement is a federal mandate from 42 USC 5106a.

(8) Assessment of expected benefits: The provision of due process for the alleged perpetrator in the investigation of child abuse/neglect towards children under the purview of the Department for Community Based Services.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the cabinet implements the child protective services amendments pursuant to this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 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 substantiated perpetrators of abuse/neglect investigations. Substantiated abusers will be listed on a Central Registry which will be accessed for the protection of children in a number of settings.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 USC 5106a, the requirement of maintaining a central registry of substantiated perpetrators of child abuse/neglect, and the requirement of providing due process appeal rights notification all perpetrators of substantiated abuse/neglect investigations will be added as amendments to this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate. No, the amendments described in number 3 of this document will be available and offered 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 FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

905 KAR 2:100. Certification of family child care homes.

RELATES TO: KRS 17.165, 199.898, 199.8982, 1998 Ky. Acts ch. 57, sec. 2(1), ch. 153, sec. 1, ch. 524, secs. 2(14), 3, 4, ch. 565, sec. 1, 42 USC 602

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 1998 Ky. Acts ch. 426, secs. 34(1), 158, ch. 524, sec. 4(2)(f), EO 98-731 [194.050, 199.8982, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 426, sec. 34(1) [KRS 194.050] provides that the Secretary for the Cabinet for Families and Children [Human Resources] shall adopt administrative regulations necessary to operate programs and fulfill

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

the responsibilities vested in the cabinet. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Day Care Program under the Cabinet for Families and Children.] In compliance with 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158, [KRS 199.8982,] the Department for Community-Based [Social] Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children.

Section 1. Definitions. [These definitions shall be used in this administrative regulation.] (1) "Abused or neglected child" is defined pursuant to 1998 Ky. Acts ch. 57, sec. 2(1). ["Adequate supervision" means that qualified staff devote full time and attention to the children being supervised and keep the children within sight and sound.]

(2) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Meets the requirements listed in Section 5(1)(b) through (g) of this administrative regulation. [Has obtained a criminal records check and tuberculosis skin test.]

(3) "Cabinet" means the Kentucky Cabinet for Families and Children.

(4) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.

(5) "Corporal physical punishment" as governed by 1998 Ky. Acts ch. 524, sec. 2(14), means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(6) "Commissioner" means the Commissioner for the Department for Community-Based [Social] Services.

(7) "Family child care home" as governed by KRS 199.8982 and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.

(8) "Home" means the private primary residence of the provider.

(9) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Certified family child care home;

(c) Adult day care center;

(d) Adult day health care facilities;

(e) Family care home;

(f) Group homes for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;

(h) Intermediate care facilities;

(i) Nursing facilities;

(j) Nursing homes;

(k) Personal care homes;

(l) Skilled nursing facilities;

(m) Psychiatric residential treatment facilities;

(n) Child caring facilities;

(o) Child placing agencies;

(p) Rural primary-care hospitals;

(q) Alzheimer nursing homes;

(r) Youth camps;

(s) Boarding home;

(t) Supports for community living. [Alternate intermediate services for the mentally retarded or developmentally delayed.]

(10) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:

(a) A continuing condition;

(b) A recurring condition; or

(c) A condition which has caused death or serious physical injury within the past two (2) weeks.

(11) "Infant" means a child under one (1) year of age.

(12) "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.

(13) "Provider" means an owner, operator or person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:090. A provider shall meet the requirements of Section 5(1)(a) through (g) of this administrative regulation.

(14) "Provider's own child" or "related child" means the provider's own children, [and] children in legal custody, grandchildren, nieces, nephews and stepchildren and siblings in a separate residence.

(15) "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.

~~[(15) "Related child" means a certified provider's grandchildren, nieces and nephews.]~~

(16) "School-age child" shall be considered as one (1) attending kindergarten or above.

(17) "Special needs child" means children who have multiple or severe problems and the Department for Community-Based [Social] Service staff has confirmed the need for ongoing specialized care.

(18) "Substitute provider" means a person who shall meet the requirements of Section 5(1)(a) through (g) of this administrative regulation. [:

~~(a) Who is eighteen (18) years of age;~~

~~(b) Has obtained a criminal records check and a tuberculosis skin test; and~~

~~(c) Is available to provide care in a family child care home.]~~

(19) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department shall be trained to apply the administrative regulation and have the authority to:

(a) Inspect premises;

(b) Review records required by this administrative regulation; and

(c) Review the program of family child care homes.

(3) Inspections by the department shall be unannounced.

(4) A person who has had a certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that he fully complies ~~[the applicant has the ability to comply]~~ with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158, [KRS 199.8982.]

(5) A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference ~~[herein];~~

(b) Complete the DSS-79, Self-Check List, incorporated by reference ~~[herein];~~

(c) Meet the minimum requirements as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158; [KRS 199.8982.]

(d) Submit a criminal records check conducted within the past year by the Kentucky State Police for;

1. Adult persons living in the home; and

2. Employees of the provider;

(e) Submit proof that the following persons shall be free of tuberculosis, as stated by a qualified physician or health care specialist:

1. Provider;

2. Employees; and

3. All adult persons living in the home;

(f) The following persons shall submit to checks by the cabinet or court for a record of abuse or neglect of an adult or child, or found to have committed any sexual offense:

1. Provider;

2. Employees; and

3. All adult persons living in the home;

(g) [(e)] Comply with provisions set forth in Sections 5 through 11 of this administrative regulation.

(6) Upon receipt of the application and fee, staff of the department shall:

(a) Review the application; and

(b) Conduct an inspection of the home as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158. [KRS 199-8982.]

(7) If the requirements have been met excluding the provisions of Section 5(3)(a) and (b) of this administrative regulation which shall be met within three (3) months of the application date, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;
2. Limit of children to be served;
3. Identification number; and
4. Effective and expiration dates.

(b) The certification shall be valid for the certified provider and the address listed. A change of location shall require a change of location application and inspection as specified in subsections (6) and (7) of this section.

(8) If the provider does not comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, the application shall be denied.

(9) Certification shall be renewed every two (2) years. The provider shall submit a certification renewal request, a DSS-79, a health status form, proof that he continues to meet the requirements of Section 5(1)(d), (e), and (f) of this administrative regulation, and fee one (1) month prior to the expiration of the certification.

(10) A certified family child-care home shall not have a certification suspended or revoked for failure to comply with standards of this administrative regulation until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met, except for conditions as governed by Section 3(2) of this administrative regulation.

Section 3. Denial, Suspension, or Revocation. (1) The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(a) Provider, an adult living in the provider's home or person under the supervision of the provider:

1. Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or

2. Refuses to provide a criminal records check;

(b) Provider or/and an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(c) Provider fails to comply with certification standards set forth in this administrative regulation; or

(d) Provider has had a human services center or facility registration, certification, permit or license denied for reasons set forth in paragraph (a) or (b) of this subsection or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in paragraph (a) or (b) of this subsection or revocation action.

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes a certification, the provider shall be afforded a hearing in accordance with 905 KAR 1:320. [KRS Chapter 13B.]

(2) If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

(3) A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 5. Standards for the Provider. (1) The provider and staff

shall meet the following qualifications: [Qualifications of provider and staff:]

(a) [The provider shall] Be at least eighteen (18) years of age;

(b) Submit to a criminal records check conducted within the past year by the Kentucky State Police;

(c) Be free of tuberculosis, as stated by a qualified physician or health care specialist;

(d) Not be found by the cabinet or court to have abused or neglected an adult or child;

(e) Not be found by the cabinet or court to have committed any sexual offense;

(f) [The provider shall] Meet minimum requirements as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158 [KRS 199-8982]; and

(g) [(e)] Beginning with the second year of operation, [the provider shall] participate annually in at least six (6) hours of training in child development approved by the Department for Community-Based [Social] Services in compliance with the Guidelines for Obtaining Child Day Care Training revised July 1993 incorporated by reference in 905 KAR 2:001.

(2) Staff-child ratio.

(a) A provider shall not provide care for more unrelated children than the number of children for which the family child care home is certified

(b) If more than four (4) infants, including the certified provider's own or related infants, are in care, the certified provider shall have an assistant present.

(c) A certified provider shall not care for more than six (6) children under the age of six (6) years old, including the certified provider's own or related children.

(d) The maximum number of children in the care of a certified provider, including the providers' own or related children, shall not exceed ten (10).

(3) Within three (3) months of the date of initial application for certification the provider shall:

(a) Demonstrate completion of training as governed by 1998 Ky. Acts ch. 426, sec. 158 [KRS 199-8982]; and

(b) Obtain liability insurance in the amount of \$50,000 per occurrence.

(4) The provider shall be currently certified in:

(a) Infant and child cardiopulmonary resuscitation (CPR) by:

1. The American Red Cross;
2. The American Safety Council; [or]
3. The American Heart Association; or
4. The American Safety and Health Institute. [and]

(b) Infant and child first aid by:

1. The American Red Cross; [or]
2. The American Safety Council; or
3. The American Safety and Health Institute.

[(c) This subsection shall be enforced beginning July 1, 1994. This subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth.]

Section 6. The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(3) The home shall be free of hazards and the following items shall be kept inaccessible to children:

- (a) Medications and drugs;
 - (b) Cleaning supplies, poisons and insecticides;
 - (c) Guns, knives, scissors and sharp objects;
 - (d) Power tools, lawn mowers, hand tools, nails and other equipment;
 - (e) Matches, cigarettes, lighters and flammable liquids;
 - (f) Alcoholic beverages;
 - (g) Plastic bags; and
 - (h) Litter and rubbish.
- (4) Electrical outlets not in use shall be covered.
- (5) Electric fans, floor furnaces, or freestanding heaters or fireplaces, shall be out of the reach of children or have a safety guard on

them to protect children from injury.

(6) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

- (a) Police;
- (b) Fire station;
- (c) Emergency medical care, rescue squad; and
- (d) Poison control center.

(7) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(8) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(9) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing the following nonexpired [unexpired] items:

- (a) Liquid soap;
- (b) Adhesive bandages;
- (c) Sterile gauze;
- (d) Medical tape;
- (e) Scissors;
- (f) Tweezers;
- (g) Thermometers;
- (h) Flashlight;
- (i) Cold pack;
- (j) First-aid book; and
- (k) Latex gloves.

(10) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(11) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(12) Outdoor stationary play equipment shall be securely anchored.

(13) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(14) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(15) [(+4)] Health and sanitation for the child care environment shall require that the provider:

(a) And other persons in the home:

1. Be free of the influence of alcohol or drugs while the children are in care, except those drugs prescribed by a physician;

2. Prohibit smoking in the presence of children in care;

(b) In his absence, assure that a substitute provider shall be physically present at the family child care home during hours of operation;

(c) Not be employed outside of the home during regular hours of operation;

(d) Have a home that is kept clean, uncluttered and free of insects and rodents;

(e) [(+b)] Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

(f) [(+c)] Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

(g) Wash hands with soap and water or use nonwater hand sanitizer before and after diapering a child;

(h) Use sanitary procedures when preparing and serving food;

(i) Assure that children shall not share:

1. Cups;

2. Eating utensils;

3. Wash cloths; or

4. Towels;

(j) [(+d)] Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(k) [(+e)] Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty-five (45) degrees Fahrenheit or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation

or use, as verified by a thermometer in both the refrigerator and freezer;

(l) Require that an infant's formula shall be prepared and provided by the parent, unless formula is provided as a fringe benefit to the parent;

(m) [(+f)] Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

(n) Hold infants in care during feeding and never prop bottles;

(o) [(+g)] Serve only pasteurized milk or milk products;

(p) Serve meals which include:

1. A food from each of the four (4) basic food groups; and

2. Snacks appropriate in amount and type of foods served for the ages of the children in care;

(q) [(+h)] Screen windows and doors used for ventilation;

(r) [(+i)] Have household pets vaccinated for rabies;

(s) [(+j)] Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

(t) [(+k)] Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be;

1. Provided for each child; and

2. [shall be] Changed at least weekly or if they become soiled or wet;

(u) If overnight care is provided, shall:

1. Remain awake until every child in care is asleep;

2. Sleep on the same level as infants and toddlers; and

3. Provide comfortable, clean and safe bedding for each child.

(16) [(+5)] Program for children. A plan for daily activities and routines including opportunities for outdoor play and fresh air, shall be established.

(17) Visually supervise children who are awake and be able to respond to the children immediately; and

(18) Children are not permitted off of the premises without the caregiver except for school-aged children, as long as:

(a) Their whereabouts are known; and

(b) The parents have given written permission.

(19) Use of corporal physical discipline, pursuant to 1998 Ky. Acts ch. 524, sec. 2(14), is prohibited.

(20) [(+6)] Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

(1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;

(2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:

(a) The child's name, address, and date of birth;

(b) The names of individuals to whom the child may be released;

(c) The general status of the child's health;

(d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;

(e) The names and phone numbers of persons to be contacted in an emergency situation;

(f) The name and phone number of the child's physician and preferred hospital; and

(g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.

(3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;

(4) Prohibit prescription or over-the-counter medications [or aspirin] to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian;

(5) Administer nonprescription medication to a child only with written daily request of parent or guardian; [and]

(6) Be able to recognize symptoms of childhood illnesses;

(7) Be able to provide basic first aid; and

(8) [The provider shall] Maintain a child care program which assures affirmative steps are taken to protect children from abuse or

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

neglect as governed by 1998 Ky. Acts ch. 57, sec. 2(1) [KRS Chapter 620].

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

- (1) Have written permission from a parent or guardian to transport his child;
- (2) Have a car or van equipped with seat belts which allow each child to be individually secured;
- (3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under forty (40) inches in height shall be transported in the back seat, restrained in a federally-approved motor vehicle safety seat in good repair;
- (4) Have a valid driver's license issued by the Division of Motor Vehicles;
- (5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and
- (6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 1998 Ky. Acts ch. 153, sec. 1, ch. 565, sec. 1, [186-020] and Chapters 189 and 189A.
- (7) Never leave children in a vehicle unattended by an adult.
- (8) Never use the back of pickup trucks to transport children.

Section 9. [Child] Records. The provider and the cabinet shall provide, upon request, public information pursuant to 1998 Ky. Acts ch. 524, sec. 2, [shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Families and Children or as governed by this administrative regulation.]

Section 10. The program shall ensure ongoing communication with a child's parent by:

- (1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;
- (2) Make available a copy of the certification standards to each parent;
- (3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; [and]
- (4) Post and provide to each parent copies of children and parent rights pursuant to 1998 Ky. Acts ch. 524, sec. 3; and
- (5) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes. [KRS-199-898.]

Section 11. Incorporated [The provider shall comply with the following:

- (1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.
- (2) Wash hands with soap and water before and after diapering a child.
- (3) Use sanitary procedures when preparing and serving food.
- (4) Assure that children shall not share cups, eating utensils, wash cloths or towels.
- (5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.
- (6) Prohibit smoking in the presence of children in care.
- (7) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.
- (8) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.
- (9) Infants in care shall be held during feeding and bottles shall never be propped.

- (10) If overnight care is provided, the provider shall:
 - (a) Remain awake until every child in care is asleep;
 - (b) Sleep on the same level as infants and toddlers; and
 - (c) Provide comfortable, clean and safe bedding for each child.
- (11) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.
- (12) Provide opportunities for outdoor play or fresh air.
- (13) Be able to recognize symptoms of childhood illnesses.
- (14) Visually supervise children who are awake and be able to respond to the children immediately.
- (15) Be able to provide basic first aid.
- (16) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.

Section 12. Incorporation] by Reference. (1) [The] DSS-78, "Application for Family Child Care Certification", "September, 1998", Cabinet for Families and Children, is incorporated by reference.

(2) [revised June 1996, and the] DSS-79, "Self Check List", "September, 1998", Cabinet for Families and Children is [revised July 1996, shall be herein] incorporated by reference.

(3) This material [incorporated by reference] may be inspected, [or] copied, or obtained at the Department for Community-Based [Social] Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

DEITRA PARIS, Commissioner
VIOLA MILLER, Secretary
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 1, 1998

FILED WITH LRC: October 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4 Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

- (1) Type and number of entities affected: There are approximately 772 family child care homes in Kentucky currently.
- (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: \$25,089

2. Continuing cost or savings: \$26,000

3. Additional factors increasing or decreasing costs: The cost to the agency is the salary and fringe benefits for an administrative assistant, grade 8, to process the additional criminal records checks. This position was not specifically budgeted, but funds are available through child care and development funds, which were budgeted.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Increase of one staff person to the department hired to specifically perform the required additional records checks.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue is 100% Child Care Development Fund money.

(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 USC5106a.

(8) Assessment of expected benefits: The broader protection of children through improved public access to information relating to child care certification that will provide parents with the ability to make informed choices about child day care for their children and better quality family child care homes.

(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 governmental policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No Tiering is not required as these policies will become effective statewide as the cabinet implements the child protective services amendments pursuant to this administrative regulation.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(Amendment)**

906 KAR 1:110. Critical access [Rural primary-care] hospital services.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990 [HB 310, 1992-GA]

STATUTORY AUTHORITY: KRS 216.380, 216B.042, 216B.105 [HB 310, 1992-GA, sec. 3(11)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require [HB 310 of the 1992 GA mandates] that the Cabinet for Health Services regulate health facilities and health services. [Human Resources promulgate administrative regulations necessary to implement a licensure program for rural primary-care hospitals.] This administrative regulation establishes [sets forth] quality of care and licensure standards for critical access [rural primary-care] hospitals.

Section 1. Definitions. "Licensee" means a general acute-care hospital relicensed as a critical access [the rural primary-care] hospital.

Section 2. [Special Provisions. (1) The rural primary-care hospital (RPGH) shall be licensed in accordance with 902 KAR 20:008.

(2) The RPGH shall submit a licensure application (which shall

include the types of medical conditions proposed to be treated at the RPGH) and strategic plan to the Kentucky Board of Family Health Care Providers (KBFHCP).

(3) The KBFHCP shall review the RPGH's application and plan and make recommendations to the Division of Licensing and Regulation.

(4) Prior to licensure, the Division of Licensing and Regulation shall consider the recommendations of the KBFHCP.

(5) Prior to licensure as a RPGH, a licensed acute-care hospital shall have been found to be in compliance with 902 KAR 20:009 on its last licensure survey.

(6) The RPGH shall comply with the scope of its licensure application.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the critical access hospital [RPGH] and for compliance with federal, state, and local laws and administrative regulations pertaining to the operation of the critical access hospital [RPGH].

(2) The critical access hospital [RPGH] shall be under the medical direction of a physician licensed to practice medicine in Kentucky.

(3) The licensee shall establish written policies, lines of authority, and designate the person who will be principally responsible for the daily operation of the critical access hospital [RPGH].

(4) The licensee shall develop patient care policies with the advice of a group of professional personnel identified by the licensee.

(a) The group of professional personnel shall include:

1. One (1) or more physicians licensed in the Commonwealth of Kentucky; and

2. One (1) or more persons who are not members of the [RPGH] staff.

(b) The patient care policies shall include:

1. A description of services that the critical access hospital [RPGH] shall provide directly or through contractual agreement;

2. A written program narrative describing in detail the:

a. Services to be offered;

b. Methods and protocols for service delivery;

c. Qualifications of personnel to be involved in the delivery of services; and

d. Outcomes expected to be reached through the delivery of specified services.

3. Guidelines for medical case management of health problems which include:

a. Criteria for determining if a case requires medical consultation;

b. Patient referral procedures; and

c. Maintenance of health records.

4. Procedures requiring the proper storage, handling and administration of drugs and biologicals; and

5. Procedures establishing the annual review and evaluation of services provided [by the RPGH].

(5) The critical access hospital [RPGH] shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient is:

(a) Informed of these rights and of all rules and regulations governing patient conduct and responsibilities, including a procedure for handling patient grievances;

(b) Informed of services available [at the RPGH] and of related charges including any charges not covered under Medicare, Medicaid, or other third-party payor arrangements;

(c) Informed of his:

1. Medical condition, unless medically contraindicated as documented in the patient's medical record;

2. Right to participate in the planning of his medical treatment; and

3. Right to refuse to participate in experimental research;

(d) Assisted in understanding his patient rights;

(e) Provided confidential treatment of his records and is afforded the opportunity to approve or refuse their release to any individual not involved in his care except as required by Kentucky law or third-party payment contract;

(f) Treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in the care of his personal health needs; and

(g) Informed of procedures through which to file grievances or recommendations to change policies and services. The policy shall

establish a time frame within which the critical access hospital [RPGH] personnel shall determine what corrective action to take.

(6) Personnel.

(a) The critical access hospital [RPGH] shall employ or contract with such staff as deemed essential to the [RPGH's] operation.

(b) A physician shall:

1. Be responsible for all medical aspects of the critical access hospital [RPGH];

2. Provide direct medical services in accordance with [the Medical Practice Act,] KRS Chapter 311.

3. Provide medical direction, supervision, and consultation to the staff;

4. Participate with other medical personnel in developing, executing, and periodically reviewing [the RPGH's] written policies and services;

5. Review [the RPGH's] patient records;

6. Provide medical orders and medical care services to patients [of the RPGH] in accordance with the critical access hospital [RPGH's] protocols.

[(c) A physician extender where utilized shall provide medical care services as permitted by their scope of practice and RPGH protocols.]

(7) [Transfer and linkage agreements:

(a) The RPGH shall have transfer and linkage contracts with each of the following for:

1. Secondary and tertiary hospital services;

2. Additional and specialized diagnostic and laboratory services that are not available at the RPGH;

3. Home health agency services;

4. Nursing facility services if not provided on-site;

5. Emergency medical services;

6. Pharmacy services if not provided directly by the RPGH; and

7. Dietary services if not provided directly by the RPGH.

(b) Transfer and linkage contracts with inpatient care facilities shall incorporate provisions for the:

1. Referral and transmittal of patients from the RPGH;

2. Coordination of discharge planning with the RPGH staff; and

3. RPGH to receive a copy of the discharge summary and, if necessary, the medical record of each patient referred to the RPGH.

(c) The transfer and linkage contracts shall include provisions establishing the following protocol and responsibilities between the RPGH and the inpatient care facility:

1. Transfer of patient information;

2. Transportation of patients;

3. Utilization of services, equipment, and personnel; and

4. Extent of care, whether total or partial, to be provided by the RPGH or the inpatient care facility.

(8) Medical records.

(a) The critical access hospital [RPGH] shall maintain medical records identifying all family members (a single patient may be considered a family unit). Medical records shall contain at least the following:

1. Medical and social history, including data obtainable from other providers;

2. Description of each medical visit or contact, to include condition or reason necessitating visit or contact, assessment, diagnosis, services provided, medications and treatments prescribed, and disposition made;

3. Reports of all laboratory, x-ray, and other test findings; and

4. Documentation of all referrals made, including reason for referral, to whom patient was referred, and any information obtained from referral source.

(b) Confidentiality of all individual patient records shall be maintained at all times.

(c) Transfer of records. The critical access hospital [RPGH] shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and [the RPGH] shall, upon proper release, transfer medical records or an abstract upon request.

(d) Retention of records. After patient's death or discharge, the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

(8) [(9)] Utilization review and medical audit. In order to determine

the appropriateness of the service(s) delivered, there shall be a written plan for utilization review [developed by the RPGH] which specifies the frequency of reviews and composition of the body conducting the review.

(9) [(10)] Quality assessment and performance improvement [assurance] program.

(a) The critical access hospital [RPGH] shall have a [written quality assurance] program to ensure continuous and effective mechanisms for:

1. Review and evaluation of patient care; and

2. Corrective action.

(b) The [quality assurance] program shall be approved by the licensee.

(c) The [RPGH quality assurance] program shall:

1. Establish responsibilities for the monitoring and evaluation of services;

2. Delineate the scope of care;

3. Identify specific aspects of care to be provided; [by the RPGH; and]

4. Establish and document clinical criteria to be used to monitor all aspects of care and services;

5. Systematically evaluate the standard of care to identify problems and recommend corrective actions or alternatives to improve the standard of care;

6. Establish criteria to assess the effectiveness of the corrective actions taken to improve care; and

7. Require documentation of any improvements in the standard of care, subsequent to corrective actions taken.

(10) [(11)] Contracted services. The critical access hospital [RPGH] shall be responsible for assuring that any services provided under contract shall be licensed or certified in accordance with applicable local, state, and federal regulations and statutes.

Section 3, [4:] Provision of Services. (1) [The RPGH staff shall furnish those diagnostic and therapeutic services and supplies that are commonly furnished in a physician's office or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions:

(2) The critical access hospital [RPGH staff] shall provide, either directly or through contract, basic laboratory services essential to the immediate diagnosis and treatment of the patient on a twenty-four (24) hour basis. If the critical access hospital [RPGH] provides laboratory services directly, it shall be in compliance with 902 KAR 20:016, Section 4(4). If the critical access hospital [RPGH] contracts for laboratory services, the laboratory it contracts with must be in compliance with KRS Chapter 333, including:

(a) Chemical examinations of urine by stick or tablet methods or both (including urine ketones);

(b) Microscopic examinations of urine sediment;

(c) Hemoglobin or hematocrit;

(d) Blood sugar;

(e) Gram stain;

(f) Examination of stool specimens for occult blood;

(g) Pregnancy tests;

(h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; and

(i) Test for pinworms.

(2) [(3)] The critical access hospital [RPGH] shall provide medical emergency procedures as a first response to common life-threatening injuries and acute illness, and have available the drugs and biologicals commonly used in life-saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids.

(a) [Emergency room care shall be provided on a twenty-four (24) hour basis:

(b) Examination services shall be provided by the critical access hospital [RPGH] in accordance with 902 KAR 20:012.

(b) [(c)] At least one (1) person shall be on duty at the critical access hospital [RPGH] who is minimally certified as a provider by the American Heart Association in advanced cardiac life support and certified as a basic trauma life support provider-advanced in accordance with the American College of Emergency Physicians curriculum.

[(4)] Supplemental services. A RPGH may provide additional serv-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

ices to complement the basic services of the RPCH. Additional services shall be identified and submitted to the Division of Licensing and Regulation for review prior to delivery of services. A RPCH may contract with another provider to deliver supplemental services. Supplemental services may include:

- (a) Surgical services within the scope of RPCH license;
- (b) Obstetrics within the scope of the RPCH license;
- (c) Primary care in accordance with 902 KAR 20:058;
- (d) Adult day health care in accordance with 902 KAR 20:066;
- (e) Respite care; or
- (f) Rehabilitative and therapeutic services in accordance with 902 KAR 20:016, Section 4(7).]

(3) [(5)] Dietary services shall be provided either directly or by contract in accordance with 902 KAR 20:016, Section 4(3), when an inpatient is [resides] in the critical access hospital [RPCH] for more than twelve (12) hours.

[(6)] Long-term care beds, if provided, shall be in accordance with applicable state and federal regulations as follows:

- (a) Dual licensure beds shall be in compliance with 902 KAR 20:220;
- (b) Swing beds shall be in compliance with 42 CFR 405; and
- (c) Nursing facility beds shall be in compliance with 902 KAR 20:300 and 42 CFR 483.]

Section 4. [5.] Physical and Sanitary Environment. The critical access hospital [RPCH] shall comply with the provisions of 902 KAR 20:016, Section 3(10).

Section 5. Facility Requirements. The critical access hospital shall comply with the requirements of 902 KAR 20:009 related to the services offered.

TIMOTHY L. VENO, Inspector General
JOHN MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 14, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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 Families and Children, 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: There are presently no licensed rural primary-care hospitals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public. The proposed amendments will improve access to health services for rural residents of Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. 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 Medicaid Services Division of Financial Management and Analysis (Amendment)

907 KAR 1:019. Pharmacy services.

RELATES TO: KRS 205.520, 205.6316, 314.011, 320.120, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a, b, c, d, r-8, 1998 Ky. Acts chs. 228, 531 [-320-210]

STATUTORY AUTHORITY: KRS 194A.050, 1998 Ky. Acts chs. 301, 561, 426, sec. 4(3) [194.050, 42 CFR 440.120, 447.331, 447.332, 447.333; 42 USC 1396a-d, r-8; 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 [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 sets forth the provisions

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Drug file" means the Kentucky Medicaid Program drug file consisting of every drug that may be eligible for reimbursement under the Medicaid Pharmacy Program including drugs requiring and not requiring prior authorization. ["Department" means the Department for Medicaid Services or its designee.]

(2) "Drug manufacturer" means an entity meeting the definition shown in 42 USC 1396r-8(k)(5).

(3) "FDA means Food and Drug Administration.

(4) "Legend drug" means a drug which by federal law requires a prescription by an authorized prescriber before it can be dispensed.

(5) [(4)] "Outpatient drug program" means the program of drug services provided directly by a pharmacist to a Medicaid recipient, including both the drug product and dispensing of the drug.

Section 2. Prescribed Drug [Drugs:] Coverage and Limitations [Provisions] Relating to the Outpatient Drug Program. A drug prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner, physician assistant, or podiatrist in accordance with 907 KAR 1:021 shall be provided in accordance with the coverage and limitations [provisions] specified in this administrative regulation.

(1) The drug file shall be maintained in an electronic format and shall be accessed through electronic media via the department's fiscal agent. Indicator explanatives reflecting prior authorization status are specified in an electronic format with the drug file. The drug file is updated from a contracted pharmacy pricing service. New drugs shall be covered as specified in the Pharmacy Manual Section IV A2.

(2) The Outpatient Drug Program shall not make payment for:

(a) A drug which has a FDA issued "less than effective (LTE)" rating;

(b) A drug which is determined to be "identical, related, or similar to" LTE drugs;

(c) A drug, for which the drug manufacturer has not entered into nor complies with a rebate agreement in accordance with 42 USC 1396r-8(a);

(d) A drug which has a termination date issued by the drug manufacturer;

(e) Nursing facility items as specified in the Pharmacy Manual Section IV B3;

(f) A drug or class of drug listed in 42 USC 1396r-8(d)(2) unless:

1. Specified within the drug class and placed on the drug file; or

2. Prior authorized using the prior authorization criteria of the department as specified in the Pharmacy Manual; or

(g) A drug, provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program.

(3) The Outpatient Drug Program shall make payment for a drug: [Coverage for outpatient drugs shall be limited to drugs:]

(a) For which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a); or

(b) Which has [Which are prescribed for a medically accepted indication; and

(c) That have] a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; and

(c) Which is prescribed for a medically accepted indication, as approved by the FDA or documented in official compendia.

(4) Limitations within the Outpatient Drug Program.

(a) A prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written.

(b) A recipient placed in lock-in status shall receive services in accordance with 907 KAR 1:677.

[(2) Drugs included on the Kentucky Medicaid Program Outpatient Drug List (as published by the department) may be provided without prior authorization. Prior authorization shall be required for all other drugs in accordance with 907 KAR 1:021;

(3) The drugs or classes of drugs listed in 42 USC 1396r-8(d)(2) shall be excluded from coverage unless specifically (individually by drug within the class) placed on the outpatient drug list or prior authorized using the usual prior authorization criteria of the depart-

ment as specified in the Pharmacy Manual.]

(5) Prescription requirements. [(4)] Prescribing quantities may be limited by the program as referenced in the Pharmacy Manual, section IV A.3 and 12.

[(5) A recipient placed in "lock-in" status shall receive services in accordance with 907 KAR 1:677.

(6)](a) Practitioner authorization shall be [as] evidenced by the actual signature of the prescriber [shall be required]:

1. On each prescription not telephoned in;

2. On each Schedule II controlled substance prescription; or [and]

3. If the prescriber [override] [certification of brand name necessity]] procedure is being used.

(b) For a telephone prescription except as provided in paragraph (a) of this subsection, the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

[(7) A prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written.

(8) A drug, provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program, shall not be billed as an outpatient pharmacy benefit.

(9) A drug provided to a recipient in a nursing facility (except for a patient in a head injury unit or a unit providing care for ventilator dependent patients) shall be billed as an outpatient pharmacy benefit.

(10) Legend drugs, not included on the Kentucky Medicaid Program Outpatient Drug List, and which shall prevent hospitalization or a higher level of care of the recipient, shall be considered covered for an individual recipient if prior authorized by a qualified medical professional in the department.

(11) Drugs not on the Kentucky Medicaid Program outpatient drug list may be placed on a prior authorization list and authorized as a group, in accordance with 907 KAR 1:021 for a recipient in a personal care home and for those recipients in nursing facilities who meet patient status criteria for the facility.

(12) A drug for which the Food and Drug Administration has issued a "less than effective (LTE)" rating and a drug which is determined to be "identical, related, or similar to LTC drugs" shall not be covered.]

Section 3. Prior Authorization. (1) The prior authorization procedures and policies, as specified in the Pharmacy Manual Appendix II shall be followed for a drug on the drug file which requires prior authorization.

(2) In addition to standard prior authorized drugs, as established in subsection (1) of this section, there are drugs identified on the Map 354 form, included in Pharmacy Manual Appendix III, which may be authorized singularly or as a group for a recipient in a personal care home pursuant to Pharmacy Manual Section 5L.

(3) The prior authorized drugs referenced in subsection (1) of this section may be authorized singularly or as a group for a recipient in a long term care facility who meets the patient status criteria for the facility, pursuant to the Pharmacy Manual Section 5K.

(4) A drug class may be excluded from those authorized for a recipient in a long term care facility or personal care home pursuant to subsections (2) and (3) of this section and shall require individual prior authorization in accordance with drug class parameters as recommended by the drug advisory board and approved by the commissioner or his designee.

Section 4. Drug Advisory Board. The drug advisory board was established by order of the secretary in accordance with 42 USC 1396r-8(a). Duties of the drug advisory board include the following regarding the Medicaid Outpatient Drug Program:

(1) Prospective and retrospective review;

(2) Education in relation to drug therapy;

(3) Establishment of a standard for identification of suspected fraud and abuse;

(4) Disease management; and

(5) Review of drug related matters and make recommendation to the commissioner of the department.

Section 5. Drug Status Review Process. (1) With the exception of provisions in paragraphs (a) and (b) of this subsection, in accordance with 1998 Ky. Acts ch. 561, updates and additions to the drug

file in accordance with Section 2(1) of this administrative regulation that are not otherwise excluded from coverage by Section 2(2) of this administrative regulation shall be covered without prior authorization for twelve (12) months.

(a) Consideration shall be given to whether the drug expense would favorably offset other patient care costs such as:

1. Hospitalizations;
2. Emergency room visits; or
3. Physician visits.

(b) The department determines that cost or safety concerns outweigh the benefit to Medicaid recipients. The safety risk associated with a drug may be balanced against the benefit gained by retaining the drug on the NPADF (nonprior authorized drug file). The following criteria shall be used to screen for drugs that may result in an undesirable cost or safety profile.

1. Criteria for cost include:

a. In any three (3) month period, the cost of the drug ranks in the top 200 of drugs reimbursed by Medicaid;

b. The cost per prescription exceeds twice the average cost, or is greater than the average cost of drugs within its therapeutic class;

c. The combination of cost and volume results in an increased program expense that places the drug in the top 200 of drugs reimbursed by Medicaid;

d. The number of prescriptions for the drug during the first ninety (90) days exceeds fifteen (15) percent of the total prescriptions for that therapeutic class of drugs; and

e. The drug is partially or completely reimbursed by Medicare or other payment system.

2. Criteria for safety include:

a. The drug is considered to have a potential for abuse;

b. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration;

c. The drug labeling contains a black box warning consisting of a special notation within the manufacturer's labeling calling attention to extremely serious, sometimes life threatening, adverse reactions; or the labeling contains restrictions, contraindications, warnings or cautions which exceed those for other drugs in the same therapeutic class; and

d. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

(i) Significant adverse events that were not previously known;

(ii) Significant morbidity or mortality; or

(iii) The frequency of the event significantly exceeds that which is expected for the drug.

(2) The manufacturer shall be notified that a drug may require prior authorization prior to the expiration of the first twelve (12) months. This decision shall be reviewed at the next pharmacy advisory board meeting scheduled to meet at least two (2) weeks subsequent to the date of such notification.

(3) An interested party requesting a drug status review shall submit a request in writing to the department or its designee.

(4) The department or its designee shall forward a written acknowledgment of receipt of the status review request and any preliminary drug status to the requester.

(5) The manufacturer shall provide to the department or its designee the following information for a drug product for which a status review is to be initiated:

(a) Company name;

(b) Brand product name;

(c) Generic name;

(d) FDA approval date;

(e) Date introduced into United States market;

(f) American Hospital Formulary Service therapeutic class and code;

(g) FDA approval class, 1P, 1S, and orphan drugs;

(h) FDA Approved Drug Products therapeutic equivalence code.

(Note: copy of respective page or supplement must be provided);

(i) Patent expiration date;

(j) HCFA rebate drug designation;

(k) FDA approved indication;

(l) Side effects or toxicity;

(m) Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file;

(n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not require prior authorization;

(o) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(p) Date of most recent price change;

(q) Amount of most recent price change, old price and new price;

(r) Name, address, fax number, telephone number, e-mail address of requester;

(s) A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program should this drug be made available without prior authorization; and

(t) If available, landmark clinical and pharmacoeconomic study citations.

(6) The department's review of a drug shall consider the following:

(a) If reimbursement is excluded in accordance with Section 2(2) of this administrative regulation.

(b) If the drug represents a line extension which means a new strength, dosage form, delivery system, or indication of a drug not currently requiring prior authorization. Drug products falling into this category may also be pharmaceutical equivalents or pharmaceutical alternatives as established by the FDA.

(c) If the drug represents a unique drug which include the following:

1. Schedule II/controlled substances;

2. Treatment of HIV/AIDS;

3. Orphan drug;

4. Oral birth control medication; or

5. Other drugs determined to be unique by the department upon the advice of the drug advisory board.

(7) The department or its designee shall determine whether to conduct a full review or a mini review of the drug product.

(a) A full review includes a review of the literature and differs from a mini review in its overall scope. A review may be prepared by a practitioner, pharmacist, physician, faculty, or a student of a health science learning center within Kentucky.

(b) A full review may include the following:

1. Medical literature search;

2. Pharmacoeconomic analysis;

3. Comparison to other products on the drug file;

4. Primary indication for use and therapeutic classification;

5. Prominent advantages and disadvantages of the product; or

6. A recommendation regarding status of a drug;

(c) A mini review may include the following:

1. Comparison to other products on the drug file, including cost;

2. Primary indication for use and therapeutic classification;

3. Prominent advantages and disadvantages of the product; or

4. A recommendation regarding status of a drug.

(8) Reviews with recommendations shall be forwarded to the drug advisory board, which shall make a recommendation to the department.

(9) Any person may address the drug advisory board if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(10) In addition to routine retrospective and prospective review findings, the drug advisory board may recommend specific utilization studies or intervention plans. The results of interventions implemented shall be evaluated for a period of six (6) months.

(11)(a) The department may seek additional information from sources within or outside of the Cabinet for Health Services regarding a recommendation made by the drug advisory board.

(b) Once required information is received and evaluated, a formal decision shall be made in a timely manner regarding the acceptance or rejection of the recommendation of the drug advisory board.

(c) A formal decision shall be constituted by a written directive for implementation of the recommendation from the department. If new evidence becomes available regarding a formal decision, the

department may direct that the issue be re-reviewed by the board in light of such new information.

(d) A written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:
 - a. Appropriate participating providers; and
 - b. Drug advisory board; and
2. Posted to the departmental web site on the Internet.

(e) Information concerning the drug prior authorization status process may be posted at the department's web site and the web site address may be obtained by contacting the department.

(12) An interested party who is aggrieved by a recommendation of the drug advisory board to the department may submit a written exception to the department in accordance with the following:

(a) New information that was not available to be presented at the time of the board's consideration of the matter may be submitted;

(b) It shall be received within ten (10) days of the recommendation;

(c) If the deadline for filing a written exception falls on a Saturday, Sunday or state holiday, the exception may be filed the following day. After the time for filing an exception has expired, the department shall consider all exceptions filed in a timely manner prior to acting upon the recommendation of the board;

(d) In making a final decision on a recommendation of the board, the Commissioner of the Department for Medicaid Services, or his designee, may seek additional and clarifying information from any source. Additional information submitted to the commissioner, or his designee, shall be made a part of the administrative record supporting the final decision;

(e) An appeal from the decision of the commissioner, or his designee, may be made in accordance with KRS Chapter 13B by a manufacturer of the product. Unless held in abeyance or otherwise addressed by the hearing officer, the decision of the commissioner, or his designee, shall stand until final disposition of the issue.

Section 6. Incorporation by Reference. (1) The "Pharmacy Manual", October 1998 [December 1996] Edition, Department for Medicaid Services, is incorporated by reference.

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

[Section 4. The amendments to this administrative regulation shall be implemented with regard to services provided on or after December 1, 1996.]

DENNIS BOYD, Commissioner
JOHN MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Families and Children, 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: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All pharmacy providers and recipients.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 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: Requiring a recipient his/her representative sign for receipt of medications may increase paperwork.

2. Second and subsequent years: As stated in (c) 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indeterminate increase

2. Continuing costs or savings: Indeterminate increase.

3. Additional factors increasing or decreasing costs: Number of prescriptions written.

(b) Reporting and paperwork requirements: Current paperwork may be included for additional data.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. Based on previous experience of OBRA '90 requirements that all new drugs be covered under non-prior authorized status, a substantial increase in the pharmacy budget was calculated to be approximately \$53 million. Due to the complexities of SB 351, the 12 month requirement of non-prior authorized status drugs, except for possible safety/health or cost considerations, makes a definitive fiscal impact impossible.

(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: Compliance with regulations regarding Medicaid Program with regard to recipient access to "new" drugs as mandated by SB 351. Yearly drug utilization reviews to determine most utilized and abused drugs. Education of providers regarding disease-appropriate use of drugs. Recipient signing for receipt of medication would decrease inappropriate dispensing of medication to wrong individuals.

(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: Access to new drugs and education for providers would be hindered. Failure to implement recipient signing for receipt of medication will increase inappropriate dispensing of medication to wrong individual.

(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: Physician assistants shall have prescriptive authority which should ensure additional access to medical care.

(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

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. 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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amendment)

907 KAR 1:021. Amounts payable for drugs.

RELATES TO: KRS 205.560, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 256b, 1396a-d, 1998 Ky. Acts chs. 228, 561

STATUTORY AUTHORITY: KRS 194A.050, 205.520(3), 1998 Ky. Acts ch. 426, sec. 4(3) [194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid [a] Program [of Medical Assistance]. KRS 205.560 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the department [cabinet] for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to a pharmacy [pharmacies] participating in the Medicaid [Medical Assistance] Program for [those] drugs contained on the Kentucky Medicaid [Medical Assistance] Program [Outpatient] drug file, as defined in 907 KAR 1:019, which is accessible through electronic media via the department's fiscal agent, [List (as published by the Cabinet for Human Resources) or preauthorized for individual

recipients based on medical necessity] and provided to an eligible recipient [eligible recipients] shall be determined in accordance with the following policies:

(a) An appropriate rebate agreement shall be [must have been] signed by the drug manufacturer [or labeler] or the drug shall [must] be provided based on a prior authorized [preauthorized] exemption from the rebate requirement in accordance with 907 KAR 1:019;

(b) Drug costs shall be determined in the pharmacy program using a computerized price listing service with pricing based on the actual package size utilized; and

(c) [If an average wholesale price is listed,] Reimbursement for a [the] drug cost shall be the lesser of;

1. The federal maximum allowable cost (FMAC) [or average wholesale price (AWP) minus ten (10) percent] plus a dispensing fee and unit dose add-on as appropriate [or the usual and customary billed charge] unless the prescriber [physician] has hand-written "brand medically necessary" ["do not substitute"] or "brand necessary" on the prescription;

2. The estimated acquisition cost (EAC) which shall equal the average wholesale price (AWP) minus ten (10) percent plus a dispensing fee and unit dose add-on as appropriate; or

3. The usual and customary billed charge.

(d) [If an AWP is not listed, reimbursement shall be the lesser of the FMAC or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription;

(e) If the physician has written "do not substitute" or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) (AWP minus ten (10) percent or direct price as appropriate) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate);

(f) For a nursing facility resident [residents] meeting Medicaid patient status criteria in accordance with 907 KAR 1:022, there shall not be [no] more than;

1. One (1) dispensing fee allowed per drug within a calendar month for a maintenance drug;

2. [drugs (as determined by the Medicaid agency), and no more than] Two (2) dispensing fees allowed per drug within a calendar month for other drugs; and

3. [except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than] Four (4) dispensing fees per drug [shall be allowed] within a calendar month for a nonsolid dosage form, including a topical medication preparation, Schedule II, III or IV controlled substances or legend intravenous drugs. Nonsolid dosage forms mean a covered drug item other than an oral tablet or capsule form.

4. If appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(e) For a nursing facility resident [residents] not meeting Medicaid patient status criteria established in 907 KAR 1:022 or a nonresident of a nursing facility [and nonresidents of nursing facilities], there shall not be [no] more than;

1. One (1) dispensing fee allowed per drug per calendar month for a drug [drugs] classified by the Medicaid Program as a maintenance drug; [drugs] and

2. [no more than] Four (4) dispensing fees [shall be] allowed per drug within a calendar month for a legend intravenous drug [drugs].

3. The limitation on the number of [Though] dispensing fees [are limited, this] shall not have the effect of [be construed as] placing a limit on the quantity of reimbursable drugs for which the program shall [will] pay for a [any] patient, since the reasonable cost of the drug shall be [(as defined herein) is] reimbursable as a covered service in a [whatever] quantity [is] considered medically necessary for the patient. [Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms.

(g) Whenever possible, unused drugs paid for by the cabinet shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the cabinet.]

(2) Reimbursement to a hospital [hospitals] for a drug [drugs] provided to an eligible recipient [recipients] shall be on the basis of

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

reasonable cost pursuant to 907 KAR 1:013. ~~[While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this administrative regulation shall be applicable with regard to payments for drugs provided in those settings.]~~

(3) Pharmacy claims shall meet point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

Section 2. Dispensing Fees. (1) Except as provided in subsection (2) of this section, the dispensing fee shall be four (4) dollars and seventy-five (75) cents per prescription for a drug [drugs] reimbursed through the outpatient drug program when dispensed to an [all] eligible recipient [recipients except those in nursing facilities meeting Medicaid patient status criteria].

(2) For an eligible recipient [recipients] in a nursing facility [facilities] meeting the appropriate patient status criteria requirements established in 907 KAR 1:022, the dispensing fee shall be five (5) dollars and seventy-five (75) cents per prescription for a drug [drugs] reimbursed through the Outpatient Drug Program.

(a) For a recipient identified in this subsection or subsection (1) of this section, [these recipients:] a unit dose addition to the usual dispensing fee shall be made for a drug [drugs] dispensed through the pharmacy outpatient drug program in the amount of:

1. Two (2) cents per unit dose for a unit dose drug [drugs] packaged in unit dose form by the manufacturer; and

2. Four (4) cents per unit dose for a unit dose drug [drugs] packaged in unit dose form by the pharmacist.

(b) The unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars and seventy-five (75) cents is not paid due to monthly limits on dispensing fees.

Section 3. Reimbursement to Dispensing Physicians. (1) A participating dispensing physician [physicians] who practices [practice] in a county [counties] where a pharmacy is not [no pharmacies are] located shall be [are] reimbursed for the cost of the drug [only], with the cost computed:

(a) As the lesser of:

1. The maximum allowable cost or estimated acquisition cost established [as shown] in Section 1(1) of this administrative regulation; or

2. The physician's usual and customary charge to the general public for the drug; [if less:] or

(b) In accordance with 907 KAR 3:010 [1:010] for drugs purchased on the open market for a specified immunization as established [immunizations shown] in 907 KAR 3:005 [1:009].

~~[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after July 1, 1991.]~~

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Families and Children, 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: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All pharmacy providers and all recipients.

(2) Direct and indirect costs or savings on the: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional data may be included in current paperwork.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: 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: Allows for reimbursement for prescriptions authorized by physician assistants, SB 351 gives new drug access to recipients without requiring the physician to get a prior authorization, and HB 115 will monitor the prescribing and dispensing of controlled substances for all Kentucky residents.

(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: Inconsistencies in regulations which could create confusion regarding policies and reimbursements. Possible health and safety issues regarding access to drugs for our Medicaid recipients. Increased fraud and abuse of controlled substances.

(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: There is no change in the amount of dispense fees.

(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.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. 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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amendment)

907 KAR 1:038. Hearing and vision program services.

RELATES TO: KRS 205.520, 42 CFR 440.140, 441.30, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.050, 1998 Ky. Acts ch. 426, sec. 4(3), ch. 615 [194.050, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the program of Medical Assistance. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the hearing services and vision program services for which payment shall be made by the Medicaid Program for both categorically needy and medically needy.

Section 1. Hearing Services. (1) Audiological benefits. Coverage shall be limited to the following services provided to a child under age twenty-one (21) by a certified audiologist:

(a) Complete hearing evaluation;

(b) Hearing aid evaluation;

(c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid;

(d) One (1) follow-up visit six (6) months following fitting of a hearing aid, to assure patient's successful use of the aid.

(2) Hearing aid benefits. Coverage shall be provided to a child

under age twenty-one (21) for a [monaural] hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. A recipient is limited to one (1) hearing aid per ear, annually. [A binaural hearing aid shall not be covered.]

Section 2. Vision Program Services. (1) Coverage for all age groups shall be limited to prescription services, repair services made to a frame or lens, and diagnostic services provided by an ophthalmologist or optometrist, to the extent the optometrist is licensed to perform the service and the service is covered in the ophthalmologist portion of the physician's program.

(2) Medicaid shall use the current procedural terminology codes as referenced in 907 KAR 3:005.

(3) Eyeglasses shall be provided to a child under age twenty-one (21) on a preauthorized basis.

(4) Coverage for eyeglasses shall be limited to two (2) pairs of eyeglasses per year per person. This limitation includes the initial eyeglasses and one (1) replacement per year or two (2) replacements per year.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Vision Program Manual", February, 1997, edition, Department for Medicaid Services, ~~is incorporated by reference~~;

(b) The Hearing Program Manual, July 1998 edition, Department for Medicaid Services.

(2) This material [it] may be inspected, copied, or obtained at the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Families and Children, 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: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Providers who are enrolled in Kentucky Medicaid as audiologists and hearing aid dealers.

(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: \$84,000

2. Continuing costs or savings: \$87,000

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 \$59,000 and state matching funds of 29.51% equaling \$25,000. State revenues will come from the enacted Medicaid Budget for the 1998-2000 Biennium.

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

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

(b) Kentucky: No comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: to assure access to hearing services

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

(c) If detrimental effect would result, explain detrimental effect: Those recipients who need binaural hearing aids would not have access to them.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the

local government or only a part or division of the local government. 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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Division of Financial Management and Analysis (Amendment)

907 KAR 1:039. Payments for hearing services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.050, 1998 Ky. Acts ch. 426, sec. 4(3), ch. 615 [194.050]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the 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 method for determining amounts payable by the cabinet for hearing services.

Section 1. Audiologist. (1) [~~For services provided on or after July 1, 1990,~~] The cabinet shall reimburse a participating audiologist [audiologists] at usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at sixty-five (65) percent of the median billed charge using 1989 calendar year billed charges.

(2) If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

(3) An audiologist [Audiologists] shall be entitled to the same dispensing fee for a hearing aid [aids] as shown in Section 2 of this administrative regulation.

(4) Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation [(if any)] due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

Section 2. Hearing Aid Dealers. (1) If the manufacturer of the hearing aid billed to the program has submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) That dealer price in the price schedule plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) [~~or at~~] The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) [at] The suggested retail price submitted by the manufacturer for that aid [~~whichever is less~~].

(2) If the manufacturer of the hearing aid billed to the program has not submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) The lowest dealer price submitted for a comparable hearing aid plus a professional fee of seventy-five (75) dollars for the first aid

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) ~~[or-at]~~ The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) ~~[at]~~ The lowest suggested retail price submitted for a comparable aid ~~[-, whichever is the lesser amount]. A comparable aid is [aids are] defined as an aid [aids] falling within the general classifications of fitting type, i.e. body, behind-the-ear, in-the-ear, eyeglasses.~~

Section 3. Cords. The cabinet shall make payment for a replacement ~~cord [cords]~~ at the dealer's cost, plus a professional fee set at the fixed upper limit.

Section 4. Hearing Aid Repairs. The cabinet shall reimburse a hearing aid ~~dealer [dealers]~~ for a hearing aid ~~repair [repairs]~~ on the basis of the manufacturer's charge for repair or replacement of parts, plus the dealer's cost for postage and insurance relative to the repair, plus a professional fee set at the fixed upper limit.

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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: Hiren Desai, Cabinet Regulation Coordinator, Cabinet for Families and Children, 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: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Providers who are enrolled in Kentucky Medicaid as audiologists and hearing aid dealers.

(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: \$84,000

2. Continuing costs or savings: \$87,000

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 en-

forcement of administrative regulation: Federal and state matching funds. *Federal matching funds of 70.49% equaling \$59,000 and state matching funds of 29.51% equaling \$25,000. State revenues will come from the enacted Medicaid Budget for the 1998-2000 Biennium.

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

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

(b) Kentucky: No comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To assure access to hearing services.

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

(c) If detrimental effect would result, explain detrimental effect: Reimbursement for a second hearing aid would not be allowed, thereby preventing access to the second hearing aid.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. 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 dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(Amendment)

907 KAR 1:360. Preventive and remedial public health [care] services provided through interagency agreement.

RELATES TO: KRS 205.520, 42 CFR 431.615

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 Ky. Acts ch. 426, sec. 4(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance] in accordance with requirements of 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 provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the coverage and payment conditions for preventive public and remedial health [care] services provided eligible medical assistance recipients through interagency agreement between the Medicaid single state agency and the state health department.

Section 1. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Department for Public Health [Services] for the provision of covered preventive and remedial public health [care] services to eligible Medicaid recipients by the Department for Public Health [Services]. The [That] agreement shall be consistent with the terms and conditions established [shown] in this administrative regulation.

Section 2. Subcontracted Services. (1) The Department for Public Health [Services] may subcontract with the local health departments under its jurisdiction for the provision of health care services as specified in Section 1 of this administrative regulation.

(2) A [Such] agreement shall not extend to services not specified in Section 3 of this administrative regulation. [determined by the Department for Medicaid Services to be uncovered services within the Medicaid program.]

(3) A copy of the subcontract shall be provided to the Department for Medicaid Services for retention in its files as appropriate.

Section 3. Covered Services. (1) The Department for Public Health [Services] may provide a broad array of preventive, screening, diagnostic, rehabilitative, and remedial services.

(2) These services shall:

(a) [will] Be specifically identified by procedure in the interagency agreement; and

(b) [will] Generally be classified as one (1) of the following types of medical care services:

1. Early and periodic screening, diagnosis, and treatment (EPSDT);

2. Pediatric services;

3. Prenatal and related services;

4. Epidemiology;

5. Family planning; and

6. Unrestricted medical services.

Section 4. Payments. The Department for Public Health shall [Services will] be paid for each service at an amount which the Department for Medicaid Services determines [finds] is reasonably equivalent to cost. [The first year of payments shall be prospective in nature with no cost settlements. After the first year,] The Department for Medicaid Services shall [will] set rates using actual utilization data and shall [will] not settle back to costs unless required to do so to avoid paying the Department for Public Health [Services] an amount substantially in excess of cost. Payment rates shall be set annually to be effective on July 1 of each year.

Section 5. Participation. (1) Local health departments operating primary care centers may elect to have the [such] primary care centers participate separately in the Medicaid program.

(2) All other Medicaid related functions of the local health departments shall be construed as covered or coverable under this provision for interagency agreement (and subsequent subcontracting) unless determined otherwise by the Department for Medicaid Services.

Section 6. Audits. (1) The Department for Public Health or subcontracting local health departments shall provide to the Department for Medicaid Services or a representative of an agency or office listed in subsection (2) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; or

(c) Information documenting the cost of the service;

(2) Access to provider or subcontractor records relating to a service provided shall be required for:

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

(b) The United States Health Care Financing Administration;

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

(d) The state Attorney General's Office;

(e) The state Auditor's office;

(f) The Office of the Inspector General; or

(g) An agent or representative as may be designated by the Secretary of the Cabinet for Health Services. [The Department for Medicaid Services reserves the right to examine and audit appropriate financial and service records of the Department for Health Services and subcontracting local health departments to determine the allowability of costs, provision of services, and appropriateness of services and further reserves such right to the following named organizations or agencies and their lawfully appointed agents and representatives in the performance of their duties: the United States Department of Health and Human Services, the United States Health Care Financing Administration, the United States Attorney's Office, the Kentucky Attorney General's Office, and such other agents or representatives as may be designated by the Secretary, Cabinet for Human Resources.]

Section 7. Incorporation by Reference. (1) "Preventive Public Health Services Manual", September 1998 edition, Department for Medicaid Services, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the 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. [Effective Date: The provisions contained herein shall be effective with regard to services provided on or after July 1, 1998.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 25, 1998

FILED WITH LRC: September 25, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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).

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(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 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. *Expenditures are not expected to be affected directly by this regulation because the Public Health Departments are currently reimbursed based on their allowable costs.

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

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

(b) Kentucky: No public comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation would increase access to Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) services.

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

(c) If detrimental effect would result, explain detrimental effect: New EPSDT requirements could not be accessed through the local health departments 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:

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

(10) Any additional information or comments: None

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

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

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation affects the operation of local health departments which are partially funded and governed by the county.

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

NEW ADMINISTRATIVE REGULATIONS FILED AS OF NOON, OCTOBER 15, 1998

EXECUTIVE BRANCH ETHICS COMMISSION
(New Administrative Regulation)

9 KAR 1:036. Repeal of 9 KAR 1:035, Posthearing procedure.

RELATES TO: KRS 11A.100

STATUTORY AUTHORITY: KRS 11A.110(3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation repeals 9 KAR 1:035. The purpose for this repeal is because KRS Chapter 13B, which was enacted after 9 KAR 1:035 was promulgated, sets forth posthearing procedure for administrative hearings held by the commission and therefore, this administrative regulation is no longer needed.

Section 1. 9 KAR 1:035, Posthearing procedure is hereby repealed.

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 30, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on, Wednesday, November 25, 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 November 18, 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: This administrative regulation repeals 9 KAR 1:035. Thus, there will be no 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 administrative regulation repeals 9 KAR 1:035. Thus, there will be no compliance, reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation repeals 9 KAR 1:035. Thus, no revenue is necessary for enforcement.

(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 will be treated the same.

SECRETARY OF STATE
(New Administrative Regulation)

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

RELATES TO: KRS 14.150, 355.2a-103, 355.9-105, 355.9-401A, 355.9-402, 355.9-403, 355.9-404, 355.9-405, 355.9-406

STATUTORY AUTHORITY: KRS 14.150, 355.9-105, 355.9-401A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.150 establishes the Kentucky Lien Information System. This administrative regulation sets forth the requirements for implementing KRS 14.150, 355.9-401A and 355.9-105.

Section 1. Form of Statements. The form of a financing statement, amendment, assignment, continuation, release, or termination filed pursuant to KRS 355.9-401A shall be a file-stamped copy of the statement that has been filed with the county clerk pursuant to KRS 355.9-401, 355.9-402, 355.9-403, 355.9-404, 355.9-405 or 355.9-406. If the file-stamped copy does not indicate the location of filing, the secured party shall state the county of filing on a transmittal letter accompanying the statement and filing fee. When the proper place to file a statement under KRS 355.9-401, 355.9-402, 355.9-403, 355.9-404, 355.9-405 or 355.9-406 is the Secretary of State, a filing made with the Secretary of State shall serve as a filing pursuant to KRS 355.9-401A and the one (1) dollar filing fee shall not be required. All statements filed pursuant to KRS 355.9-401A shall be sent to the Secretary of State, UCC Filings, P.O. Box 1470, Frankfort, Kentucky 40602-1470.

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

Section 3. Time of Filing. A secured party shall have twenty (20) business days from the date the statement is filed with the county

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

clerk to file a file-stamped copy of the statement with the Secretary of State pursuant to KRS 355.9-401A.

Section 4. Effective Date. The requirement to file statements pursuant to KRS 355.9-401A shall begin on January 4, 1999.

Section 5. Penalty. A secured party shall be fined \$100 for failure to file a statement pursuant to KRS 355.9-401A within twenty (20) business days from the date the statement is filed with the county clerk.

JOHN Y. BROWN III, Secretary of State
MARYELLEN B. ALLEN, General Counsel

APPROVED BY AGENCY: October 7, 1998

FILED WITH LRC: October 12, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 9 a.m., at the Secretary of State's Office, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. 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: Maryellen B. Allen, Division Director/General Counsel, 700 Capital Ave., Suite 152, Frankfort, Kentucky 40601 (502) 564-3490, fax no. (502) 564-5687.

REGULATORY IMPACT ANALYSIS

Contact person: Maryellen B. Allen

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

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There may be an increase in the cost of doing business for secured parties as a result of KRS 14.150, but not as a result of this administrative regulation. There are no direct or indirect costs or savings as a result of this administrative regulation. There will be no impact on the cost of doing business in Kentucky as a result of this administrative regulation.

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

1. First year following implementation: The secured party has an additional filing obligation as a result of KRS 14.150 and 355.9-401A, but not as a result of this administrative regulation. The new administrative regulation requires a copy of the form filed at the county level to be filed with the Secretary of State.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) First year: The Secretary of State will establish and maintain the Kentucky Lien Information System as a result of KRS 14.150, not this administrative regulation.

(b) Direct and indirect costs or savings:

1. First year: As explained above, the cost of implementing KRS 14.150 is not impacted by this administrative regulation.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: None

known.

(c) Reporting and paperwork requirements: The creation of the Kentucky Lien Information System by KRS 14.150 imposes additional filing responsibilities on the Secretary of State, but there are no additional paperwork or reporting requirements caused by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The Secretary of State will receive a fee of \$1 for filings pursuant to KRS 355.9-401A, but no revenue will be generated as a result of this administrative regulation.

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

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

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

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Secretary of State considered requiring original financing statements and related statements to be filed with the Secretary of State for inclusion on the Kentucky Lien Information System, but decided that certain information from local filings was necessary to establish a statewide lien information system. Therefore, the Secretary of State decided that the most efficient and cost effective method was to require a file-stamped copy of the statement filed at the county to be filed with the Secretary of State. Additionally, requiring file-stamped copies ensures that secured parties comply with the local filing requirements.

(8) Assessment of expected benefits: Requiring secured parties to file a file-stamped copy of statements is a cost effective and efficient way to create a statewide lien information database.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no known statute or administrative regulation which conflicts with this administrative regulation.

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

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

(10) Any additional information or comments: None

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

GENERAL GOVERNMENT CABINET State Board of Elections (New Administrative Regulation)

31 KAR 4:120. Additional precinct officers.

RELATES TO: KRS 117.045(6)

STATUTORY AUTHORITY: KRS 117.045(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.045 requires the State Board of Elections to promulgate an administrative regulation establishing conditions under which additional precinct officers may be appointed. This administrative regulation implements that legislative directive.

Section 1. Request to Appoint Additional Precinct Officers. A county board of elections seeking permission to appoint additional precinct officers pursuant to KRS 117.045(6) shall file with the State Board of Elections a written request that contains the following information:

(1) The precinct name and number of each precinct for which additional officers will be appointed;

(2) For each designated precinct, the reasons why additional precinct officers are necessary.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

(3) The election for which approval is sought if other than the next primary, run-off primary, or regular election.

Section 2. Nondiscretionary Grounds for Approving Request. The State Board of Elections shall approve a request for any precinct in which any of the following apply:

- (1) Two (2) or more voting machines will be used in the precinct;
- (2) Two (2) or more precincts use the same voting location; or
- (3) More than 600 voters are registered in the precinct.

Section 3. Discretionary Grounds for Approving Request. The State Board of Elections may in its discretion approve a request that sets forth a reasonable explanation why voting cannot be conducted safely and expediently unless additional precinct officers are appointed.

Section 4. Approval of Request. (1) Approval of a request made under Section 2 of this administrative regulation may, in the board's discretion, be granted for one (1) election only or for a primary, the run-off primary if required, and the following regular election.

(2) Approval of a request made under Section 3 of this administrative regulation shall be granted for one (1) election only.

(3) Approval of a request to appoint additional precinct officers authorizes a county board of elections to appoint, in its discretion, one (1) or two (2) additional precinct officers.

Section 5. Duties of Additional Precinct Officers. The duties of additional precinct officers shall be prescribed by the county board of elections.

JOHN Y. BROWN III, Chairman

ROSS T. CARTER, Assistant Attorney General

APPROVED BY AGENCY: September 17, 1998

FILED WITH LRC: September 22, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed new administrative regulation will be held on November 23, 1998, at 2 p.m., EST, in the conference room of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by November 16, 1998, five business days before 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 the opportunity to comment on the proposed amendment. 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 new administrative regulation to the contact person.

Contact person: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-7100, FAX (502) 573-4369.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell, Executive Director

(1) Type and number of entities affected: 120 county boards of elections.

(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: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Counties may pay the costs associated with having extra precinct workers; however, such cost results from the enabling legislation, not from this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Not applicable.

(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 were not considered because the legislation directs the agency to promulgate this administrative regulation. No other method of implementation is feasible.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is unnecessary and inappropriate.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part, or division of local government this administrative regulation will affect. All county boards of elections.

3. State the aspect or service of local government to which this administrative regulation relates. Appointment of precinct workers by county board of elections.

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. This administrative regulation will have no effect on the expenditures and revenues of local government.

GENERAL GOVERNMENT CABINET State Board of Elections (New Administrative Regulation)

31 KAR 4:130. Submitting absentee ballot application by facsimile.

RELATES TO: KRS 117.085

STATUTORY AUTHORITY: KRS 117.015, 117.085

NECESSITY, FUNCTION, AND CONFORMITY: KRS 117.085 mandates that the county boards of elections accept absentee ballot applications by facsimile. This administrative regulation implements that legislative directive by setting out the provisions for the county clerk and the qualified voter to submit and receive the absentee ballot application by facsimile.

Section 1. Definitions. (1) "Application" shall mean the Federal Postcard Absentee Ballot Application.

(2) "Transmission sheet" shall mean the Official Election Materials - Electronic Transmission Sheet.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 2. Who May Request Absentee Ballot Application by Facsimile. (1) Any resident of Kentucky who is a registered voter may transmit a request for an application to the office of the county clerk of the county where the voter is registered via facsimile if the voter meets one (1) of the following criteria:

(a) Is a resident of Kentucky who is a member of the Armed Forces; or

(b) Is a dependent of a member of the Armed Forces; or

(c) Is a citizen residing overseas.

(2) If the voter desires to have the application faxed to him, the voter shall indicate this and the appropriate facsimile number on his request.

Section 3. Requests for Applications. Upon receiving a request for an application from or on behalf of a registered voter who requests an application by facsimile, a county clerk shall complete transmission sheet which will be supplied by the State Board of Elections. The county clerk shall then complete the county clerk's portion of the application. The county clerk shall then transmit the transmission sheet and the application to the Federal Voting Assistance Program at the number listed on the transmission sheet. The county clerk shall not transmit the application directly to the voter. The Federal Voting Assistance Program will then transmit the application to the voter via facsimile. If the voter does not clearly request that the application be sent via a facsimile machine, then the county clerk may transmit the application by the U.S. mail.

Section 4. Processing a Completed Application by Facsimile. If an application is received by facsimile less than seven (7) days before the applicable election, the county clerk shall not process the application. If a completed application is received by facsimile not less than seven (7) days before the election, then the county clerk shall affix his seal to the application. The county clerk shall then verify the voter's eligibility. If the voter is eligible to vote in the current election, then the county clerk shall prepare a faxable copy of the original absentee ballot. The original absentee ballot is then marked "Faxed to Absentee Voter" and retained. The original absentee ballot shall not be reused. The county clerk shall then complete a transmission sheet, the county clerk's portion of the voter verification sheet and the instructions to voter sheet. The faxable copy of the original absentee ballot shall be sent via facsimile, along with the voter verification sheet, the instructions to voter sheet and the transmission sheet to the Federal Voting Assistance Program facsimile number listed on the transmission sheet. The Federal Voting Assistance Program will then transmit the documents to the voter via facsimile. If the county clerk receives a faxed application which does not clearly indicate whether the ballot is to be returned by mail or by facsimile, the county clerk shall return the absentee ballot by U. S. mail.

Section 5. Voter's Instructions on Completing an Absentee Ballot Received Via Facsimile. When a voter receives an absentee ballot via facsimile, the voter shall mark the absentee ballot and seal it in an inner envelope. The voter shall then complete and sign the voter verification sheet. If the voter required assistance, the person rendering assistance shall complete the voter assistance section on the voter verification sheet. The voter shall print his or her name, voting address and precinct number on the back of the outer envelope as found on the voter verification sheet. The voter shall then seal the voter verification sheet and the inner envelope containing the absentee ballot in an outer envelope. The voter shall then sign across the back flap of the outer envelope. The voter shall print "Absentee Ballot" on the front of the outer envelope, but shall not obstruct the address area. The voter shall mail the envelope to the address for the county clerk located on the voter instruction sheet. The absentee ballot must be received by the county clerk through the mails in order to be counted.

Section 6. Incorporation by Reference. (1) The following are incorporated by reference:

(a) Federal Post-card Absentee Ballot Application, 1995;

(b) Official Elections Material - Electronic Transmission Sheet, 1996;

(c) Voter Verification Sheet, 1998;

(d) Instructions to Voter Sheet, 1998.

(2) These forms may be inspected, copied or obtained at the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky, 40601, Monday through Friday from 8 a.m. through 4 p.m., est.

JOHN Y. BROWN III, Chairman

ROSS T. CARTER, Assistant Attorney General

APPROVED BY AGENCY: September 17, 1998

FILED WITH LRC: September 22, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed new administrative regulation will be held on November 23, 1998, at 2 p.m., EST, in the conference room of the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing by November 16, 1998, five business days before 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 the opportunity to comment on the proposed amendment. 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 new administrative regulation to the contact person.

Contact person: George Russell, Executive Director, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-7100, FAX (502) 573-4369.

REGULATORY IMPACT ANALYSIS

Contact person: George Russell

(1) Type and number of entities affected: This administrative regulation affects all 120 county clerks and the state board of elections. It also has an indirect impact on all Kentucky voters by making a segment of the voting process more efficient.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings. There should be no impact on cost of living or employment. No comments, written or oral, were received regarding the administrative regulation since no Notice of Intent was required. Implementation is statewide.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings. There will be no impact on the cost of doing business in Kentucky. No comments, written or oral, were received regarding the administrative regulation since no Notice of Intent was required. Implementation is statewide.

(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 may be a slight increase in paperwork during the first year of implementation, but after all involved learn the process, this administrative regulation should reduce paperwork overall and streamline the process. Since this regulation only impacts a small segment of voters, the overall impact is very minimal.

2. Second and subsequent years: Overall paperwork should be lessened.

(3) Effects on the promulgating administrative body:

1. First year: The State Board of Elections will only be impacted by learning the new process. Its overall workload will not increase and may decrease in the long run once the process is in place.

(a) Direct and indirect costs or savings:

1. First year: The only direct cost that this emergency administrative regulation has is the cost to the county clerks for faxing certain documents. That cost will be offset by reduced postage and employee time.

2. Continuing costs or savings: The continuing costs or savings are same as those listed above.

3. Additional factors increasing or decreasing costs: None

known.

(b) Reporting and paperwork requirements: Other than as discussed above, there are no additional paperwork or reporting requirements associated with this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect whatsoever upon state or local revenues.

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

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

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

(b) Kentucky: None known.

(7) Assessment of alternative methods: reasons why alternatives were rejected: This is the only alternative permitted by statute.

(8) Assessment of expected benefits: This regulation will allow more absentee voters to have more access to vote by absentee ballot in a more efficient manner.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: None known.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There should be no statute or administrative regulation which conflicts or duplicates this process.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used. This administrative regulation applies equally to all entities involved. Since this administrative regulation deals with absentee voting and access to the poles, the law will not allow there to be unequal treatment or tiering.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State, what unit, part or division of local government this administrative regulation will affect. This new administrative regulation will affect all county boards of elections and all county clerks.

3. State the aspect or service of a local government to which this administrative regulation relates. This new administrative regulation relates to the voting process as administered by the local county clerks and the local county boards of elections.

4. Estimate the effect this new administrative regulation will have 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: This new regulation which only affects a very minimal number of absentee voters in each county, will not have any recognizable impact on revenues.

Expenditures: This new regulation which only affects a very minimal number of absentee voters in each county, will not have any recognizable impact on expenditures. This new regulation will not cost very much to implement and may reduce overall cost in the long run by making the absentee voting process more efficient.

ATTORNEY GENERAL'S OFFICE Department of Law Consumer Protection Division (New Administrative Regulation)

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

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

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983

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

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

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

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

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

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

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

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

(a) Name;

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

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

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

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

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

(a) A written request in any form by the name of a holder of a telephone number has been received by the Attorney General; or

(b) If the name of a holder of a telephone number has been purged from the list because he is no longer the holder of the telephone number identified on the "Commonwealth of Kentucky No Telephone Solicitation Calls List".

Section 3. Publication. (1) Quarterly publication.

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

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

1. The first quarter shall include the months of January, February and March;

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

2. The second quarter shall include the months of April, May and June;

3. The third quarter shall include the months of July, August, and September;

4. The fourth quarter shall include the months of October, November and December.

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

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

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

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

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

(1) Be certified by the Office of the Attorney General; and

(2) Not be duplicated by a telemarketing company in any form, except for copies required to notify employees of a holder of a telephone number to whom no solicitation calls shall be made.

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

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

(a) The month, quarter, or year for which a list is requested;

(b) Whether the request is for a county or statewide list;

(c) The format of the list, either printed document or computer diskette;

(d) The name and title of the person requesting the information; and

(e) The name, telephone number, and complete address of the telemarketer company.

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

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

(a) Name, home and work phone numbers, address, city, county, state, and zip code;

(b) Name of the telemarketing company or person, address, city, county, state and zip code that is the subject of the complaint;

(c) Time and length of each call;

(d) Whether a fee was requested;

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

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

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

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

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

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

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

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

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

ALBERT B. CHANDLER III, Attorney General

TODD LEATHERMAN, Director, Consumer Protection Division

APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1998, at 10 a.m. at the Office of Attorney General located at 1024 Capitol Center Drive. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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: Todd Leatherman, Director, Consumer Protection Division, Office of Attorney General, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, phone (502) 696-5389, fax number (502) 573-8317.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Leatherman

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

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

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

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

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

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

(4) Effects on the promulgating administrative body:

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

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

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

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

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

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

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

- (a) Necessity of proposed regulation if in conflict: Not applicable.
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.
- (10) TIERING: Was tiering applied: No. Not applicable to situation as state statute requires uniformity.

ATTORNEY GENERAL'S OFFICE
Department of Law
Consumer Protection Division
(New Administrative Regulation)

40 KAR 2:076. Procedures and notification of violations of the prohibited telephone solicitation act or practice of 1998 Ky. Acts ch. 581, secs. 3(1)-(14), (16)

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

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983

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

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

- (1) An oral complaint made either by telephone or in person; or
- (2) A written complaint giving a statement of the facts; or
- (3) A written complaint filed on "Telemarketing Complaint Form".
- (4) A person filing a complaint shall provide the following information:
 - (a) Name, home and work phone numbers, address, city, county, state, and zip code;
 - (b) Name of the telemarketing company or person, including, address, city, county, state and zip code, that is the subject of the complaint;
 - (c) Time and length of each call;
 - (d) Whether a fee was requested;
 - (e) Whether the caller used threatening, intimidating, profane or obscene language;
 - (f) Whether the person filing the complaint had advised the caller that he was not interested in the product. If so, how long it took for the caller to end the call; and
 - (g) A statement of the facts relating to the complaint.

Section 2. Incorporation by Reference. (1) "Telemarketing Complaint Form" Form TS-9, 1998" is incorporated by reference.

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

ALBERT B. CHANDLER III, Attorney General
TODD LEATHERMAN, Director, Consumer Protection Division
APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1998, at 10 a.m. at the Office of Attorney General located at 1024 Capitol Center Drive. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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: Todd Leatherman, Director, Consumer Protection Division, Office of Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, phone (502) 696-5389, fax number (502) 573-8317.

REGULATORY IMPACT ANALYSIS

Agency Contact: Todd Leatherman

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

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

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

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

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

(a) Reporting and paperwork requirements: Not applicable.

(4) Effects on the promulgating administrative body:

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

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

(5) Additional factors increasing or decreasing costs: None applicable.

(6) Reporting and paperwork requirements: None applicable.

(7) Assessment of anticipated effect on state and local revenues: Not applicable.

(8) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods exist which meet the requirements of the statute.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) TIERING: Was tiering applied: No. Not applicable to situation as state statute requires uniformity.

DEPARTMENT OF LAW
Office of the Attorney General
(New Administrative Regulation)

40 KAR 6:010. Kentucky Victim and Witness Protection Program.

RELATES TO: 1998 Ky. Acts ch. 606, sec. 50, ch. 616, Part I, Operating Budget, A. Government Operations, 5. Attorney General
STATUTORY AUTHORITY: KRS 15.180, 1998 Ky. Acts ch. 606, sec. 50(1), (2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 606, sec. 50 provides that the Attorney General shall develop and administer a program for the protection of crime victims and witnesses and their immediate families. This administrative regulation establishes the Victim and Witness Protection Program.

Section 1. Definitions. (1) "Council" means the Prosecutors Advisory Council established by KRS 15.705.

(2) "Law enforcement agency" means

(a) The Kentucky State Police;

(b) A sheriff's office;

(c) A county police department; or

(d) A city police department.

(3) "Program" means the Kentucky Victim and Witness Protection Program.

(4) "Prosecutor" means a:

(a) Commonwealth's attorney or his authorized assistant; or

(b) County attorney or his authorized assistant.

(5) "Protective services" is defined by 1998 Ky. Acts ch. 606, sec. 50.

(6) "Victim or witness at risk of harm" means a person who is:

- (a) 1. A crime victim as defined in KRS 421.500(1); or
- 2. A crime witness expected to testify before a grand jury, at a trial, or other judicial proceeding; or
- 3. A member of the immediate family of a crime victim or crime witness; and
- (b) Cooperating with the law enforcement agency providing the protective services and performing the investigation, and the prosecutor of a criminal case; and
- (c) At substantial risk of imminent serious physical injury; and
- (d) Unable to provide protective services to himself.

Section 2. Eligible Costs. (1) Excluding distributions of advances pursuant to Section 5 of this administrative regulation, program funding shall be limited to the reimbursement of the costs of protective services provided to a victim or witness at risk of harm.

(2) Reimbursement shall be limited to the costs of protective services provided by a law enforcement agency to a victim or witness at risk of harm for a maximum of 180 days in each criminal case. Each day during which protective services are provided shall count as one (1) day.

(3) Reimbursement shall be limited to the costs for protective services that:

- (a) Were paid by the law enforcement agency with the funds of:
 - 1. The law enforcement agency; or
 - 2. A fiscal court; or
 - 3. A city government; or
 - 4. Other fund sources available to the law enforcement agency;

and

- (b) Meet the requirements established by the provisions of this administrative regulation; and

- (c) Are not funded by appropriations or other funds allocated to the law enforcement agency that provided the protective services.

(4) Reimbursement shall be limited to the costs of protective services that were necessary and reasonable for the protection of a victim or witness at risk of harm.

(5) The following costs of protective services shall be deemed reasonable:

- (a) The regular hourly wage and benefit rate, or the regular overtime hourly wage and benefit rate when applicable, of the employee of a law enforcement agency that provided protective services to a victim or witness at risk of harm.

- (b) Cost of lodging that:

- 1. Is the most economical lodging, at government rates if available; and

- 2. Has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

- (c) Meals, as follows:

- 1. Areas designated as nonhigh rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of six (6) dollars, per person, for breakfast; seven (7) dollars, per person, for lunch; and fourteen (14) dollars, per person, for supper; and

- 2. Areas designated as high rate areas by the Secretary of the Finance and Administration Cabinet in 200 KAR 2:006: a maximum of seven (7) dollars, per person, for breakfast; eight (8) dollars, per person, for lunch; and eighteen (18) dollars, per person, for supper.

- (d) Cost of the most economical personal hygiene products.

- (e) Cost of emergency long distance phone calls to family members or employers.

- (f) Cost of clothing items that have been determined by the law enforcement agency to be required for the protection of the victim or witness at risk of harm.

- (g) Cost of child care, at the most economical rate, that has been determined by the law enforcement agency to be appropriate for the protection of the victim or witness at risk of harm.

- (h) Cost of the temporary emergency use of a cellular phone.

- (i) Actual mileage at twenty seven (27) cents per mile.

- (j) Cost of a rental vehicle at the most economical rate available.

- (k) Cost of cab, bus, train, or air fare at the most economical rate available that has been determined by the law enforcement agency to be appropriate transportation for the protection of the victim or witness at risk of harm.

- (l) Cost of temporary storage of a vehicle at the most economical rate available that has been determined by the law enforcement

agency to be appropriate for the protection of the victim or witness at risk of harm.

- (m) Cost of the installation, rekeying, repair, or replacement of locks at a locksmith's regular rate for government work.

- (n) Cost of the installation of a temporary alarm at an installer's regular rate for government work.

(6) The Attorney General shall approve the reimbursement of the costs of protective services that are not specified in subsection (5) of this section, if he has determined that under the circumstances the costs were necessary and reasonable for the protection of a victim or witness at risk of harm.

(7) Reimbursement shall be limited to the most economical costs, at government rates if applicable, of protective services that met the needs of the protective services.

(8) Reimbursement of the cost of protective equipment shall be limited to the portion of its value allocated to use in the protective services, if the equipment is retained by the victim or witness at risk of harm.

(9) A law enforcement agency providing protective services shall utilize an available existing government service, if it determines that the service is appropriate for the protection of the victim or witness at risk of harm.

(10) A law enforcement agency shall comply with applicable state or local procurement requirements.

Section 3. Law Enforcement Agency's Application for Reimbursement. (1) A law enforcement agency seeking reimbursement of the costs of protective services provided to a victim or witness at risk of harm shall submit an application for reimbursement to a prosecutor who has jurisdiction over the crime.

(2) An application for reimbursement shall be made on the "Kentucky Victim and Witness Protection Program Application for Reimbursement" form.

(3) An application for reimbursement shall include:

- (a) The name of the law enforcement agency.

- (b) The criminal case name and number or defendant's name, if known.

- (c) The name of the person receiving the protective services.

- (d) A signed statement by a law enforcement officer that the person receiving the protective services is a victim or witness at risk of harm.

- (e) A complete description of the protective services provided, including:

- 1. The type of protective services provided;
- 2. The name of person who received the services;
- 3. The dates the services were provided;
- 4. The cost of the protective services;

- 5. A statement whether the law enforcement agency expects to submit additional applications for reimbursement for the criminal case; and

- 6. A statement whether the costs of protective services were paid with an advance of program funds specified in Section 5 of this administrative regulation.

(f) Excluding the receipts for meals to be reimbursed pursuant to Section 2(5)(c) of this administrative regulation, the receipts for the protective services provided.

(g) A statement signed by the head of the law enforcement agency or his authorized agent that the:

- 1. Law enforcement agency requests reimbursement of the costs of the protective services provided;

- 2. Costs of the protective services meet the requirements established by the provisions of this administrative regulation; and

- 3. Costs of the protective services are not funded by appropriations or other funds allocated to the law enforcement agency.

(4) The completed application for reimbursement shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.

Section 4. Prosecutor's Application for Reimbursement. (1) A prosecutor shall review an application for reimbursement submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(2) If the prosecutor determines to submit the application for reimbursement to the Attorney General, he shall sign a statement

that he recommends reimbursement of all or part of the costs of the protective services.

(3) An application for reimbursement submitted from a prosecutor to the Attorney General shall be transmitted by the Attorney General to the council for review and recommendations.

(4) The council shall review and consider an application for reimbursement at a regular meeting, or at a special meeting called for the purpose of reviewing applications for reimbursement.

(5) The council shall consider applications in the order received.

(6) The council shall recommend that:

(a) All or part of an application for reimbursement be approved; or

(b) An application for reimbursement be denied.

(7) The council shall base its recommendation on the requirements established by the provisions of this administrative regulation.

(8) The council shall submit its recommendation to the Attorney General.

(9) The Attorney General shall review the recommendation of the council and determine whether to:

(a) Approve all or part of an application for reimbursement; or

(b) Deny an application for reimbursement.

(10) If the Attorney General approves all or part of an application for reimbursement, the law enforcement agency that provided the protective services shall be reimbursed from program funds in the amount approved by the Attorney General.

(11) An application for reimbursement of the costs of protective services may be submitted at any time, after the protective services were provided, during the state fiscal year in which the services were provided.

Section 5. Application for Advance of Funds. (1) A law enforcement agency requesting an advance of program funds shall submit an application for an advance of program funds to a prosecutor who has jurisdiction over the crime.

(2) An advance of program funds shall be limited to a maximum of \$500 for each application for an advance of program funds.

(3) An advance of program funds shall be limited to the payment of the costs of protective services that:

(a) Have been provided by the law enforcement agency to a victim or witness at risk of harm; and

(b) Cannot be paid with other funds available to the law enforcement agency.

(4) An application for an advance of Program funds shall be made on a "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds" form.

(5) An application shall include a statement signed by the head of the law enforcement agency or his authorized agent that:

(a) It has incurred or will incur costs of protective services that must be paid before the law enforcement agency can arrange for payment of the costs;

(b) It requests an advance of program funds;

(c) It intends to submit an application for reimbursement of the costs of the protective services pursuant to Section 3 of this administrative regulation;

(d) It will use the advance of program funds for the provision of protective services pursuant to the provisions of this administrative regulation; and

(e) The costs of the protective services for which the advance is requested cannot be paid with other funds available to the law enforcement agency.

(6) The application shall be submitted by the law enforcement agency to a prosecutor who has jurisdiction over the crime.

(7) The prosecutor shall review an application for an advance of program funds submitted by a law enforcement agency and determine whether he will submit the application to the Attorney General.

(8) If the prosecutor determines to submit the application for an advance of program funds to the Attorney General, he shall:

(a) Sign a statement that he recommends all or part of the advance; and

(b) Submit the application for an advance of program funds to the Attorney General.

(9) The Attorney General shall distribute an advance of program funds to a law enforcement agency if he determines that an application complies with the provisions of this section.

(10) The distribution of an advance of program funds shall be made during the Office of the Attorney General's regular business hours, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays.

(11) The advance of program funds shall be limited to the amount recommended by the prosecutor.

(12) The advance of program funds shall be made payable to the:

(a) Law enforcement agency;

(b) Head of the law enforcement agency; or

(c) Authorized agent of the head of the law enforcement agency.

(13) The law enforcement agency shall report an expenditure of an advance of program funds on its application for reimbursement specified in Section 3 of this administrative regulation.

(14) The law enforcement agency shall:

(a) Report an unexpended advance of program funds on its application for reimbursement to the prosecutor; and

(b) Return the unexpended advance of program funds with its application for reimbursement to the prosecutor.

(15) The law enforcement agency shall repay the Attorney General the amount of an advance of program funds that it has expended, if the application for reimbursement of the costs of protective services for which the advance was made is denied.

(16) A law enforcement agency shall not submit an application for an advance of program funds for the costs of protective services for a victim or witness at risk of harm if it has:

(a) Submitted an application for an advance of program funds for the costs of protective services for that victim or witness at risk of harm;

(b) Received an advance of Program funds; and

(c) Not submitted an application for reimbursement of the costs of the protective services provided with the advance of the program funds.

Section 6. Notice of Estimated Costs. (1) If a law enforcement agency begins providing protective services for which it intends to submit an application for reimbursement to a prosecutor, it shall notify the prosecutor and Attorney General, within three (3) business days, on a "Kentucky Victim and Witness Protection Program Notice of Estimated Costs" form, of the estimated costs and time period of the protective services it expects to include on the application.

(2) If a law enforcement agency determines that the cost of the protective services it expects to include on an application for reimbursement will be greater than the estimated costs previously reported, it shall immediately submit an updated notice of estimated costs to the prosecutor and Attorney General.

(3) If the Attorney General determines that the total of the estimated costs received by the Attorney General pursuant to subsection (1) of this section exceeds the available program funding, he shall notify the law enforcement agencies that have submitted a notice of estimated costs, and law enforcement agencies that submit a notice of estimated costs thereafter, that program funding may become obligated before the review of all law enforcement agency applications for reimbursement are completed.

(4) If the Attorney General determines that all program funding has been obligated for the remainder of a fiscal year, he shall notify all prosecutors and law enforcement agencies that:

(a) Funding has been obligated; and

(b) If additional funding for the program becomes available, applicants:

1. Will be notified; and

2. May resubmit applications for funding.

Section 7. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Victim and Witness Protection Program Application for Reimbursement OAG Form VWPP-01 (10/98)";

(b) "Kentucky Victim and Witness Protection Program Notice of Estimated Costs OAG Form VWPP-02 (10/98)"; and

(c) "Kentucky Victim and Witness Protection Program Application for Advance of Program Funds OAG Form VWPP-03 (10/98)".

(2) This material may be inspected, copied, or obtained at the Office of the Attorney General, 1024 Capital Center Drive, Frankfort KY 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

ALBERT B. CHANDLER III, Attorney General

DAVID H. MACKNIGHT, Deputy Attorney General

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 24, 1998, at 9 a.m. at the Department of Law, Office of Attorney General, 1024 Capitol Center Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on 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 the contact person.

CONTACT PERSON: David H. MacKnight, Deputy Attorney General, Office of Attorney General, 700 Capitol Avenue, Suite 118, Frankfort, Kentucky 40601, phone (502) 696-5300, fax number (502) 573-8310.

REGULATORY IMPACT ANALYSIS

Agency Contact: David H. MacKnight

(1) Type and number of entities affected: The Kentucky State Police, all sheriffs offices, county police departments, city police departments, Commonwealth's attorneys and county attorneys.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Minimal administrative cost.

2. Continuing costs or savings: Minimal administrative cost.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal paperwork processing.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 1998 Ky. Acts ch. 616, Part I, Operating Budget, A. Government Operations, 5. Attorney General.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Victim and witness protection programs in other states were assessed. The language of 1998 Ky. Acts ch. 606 sec. 50 requires the procedures specified in this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation establishes a program to provide funding to law enforcement agencies for protective services provided to crime victims and witnesses and their immediate families who are at substantial risk of serious imminent physical injury.

(b) State whether a detrimental effect on environment and public

health would result if not implemented: Most law enforcement agencies in Kentucky do not have funds allocated for protective services.

(c) If detrimental effect would result, explain detrimental effect: Funding would not be available for protective services to be provided to crime victims and witnesses and their immediate families who are at substantial risk of serious imminent physical injury.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Not applicable.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because 1998 Ky. Acts ch. 606, sec. 50 requires the establishment of uniform requirements and procedures which apply equally to all eligible law enforcement agencies and prosecutors.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect: Sheriffs offices, county police departments, and city police departments.

3. State the aspect or service of local government to which this administrative regulation relates. Law enforcement and the provision of protection services by law enforcement agencies to crime victims and witnesses and their immediate families.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This regulation will provide funding to local sheriffs offices and local police departments, on a reimbursement basis, for protective services provided to crime victims and witnesses and their immediate family members who are at substantial risk of imminent serious physical injury. Most law enforcement agencies in Kentucky do not have funds allocated for protective services.

GENERAL GOVERNMENT CABINET

**Kentucky Board of Licensure for Nursing Home Administrators
(New Administrative Regulation)**

201 KAR 6:011. Repeal of 201 KAR 6:010.

RELATES TO: KRS 216A.070(3)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 6:010 is no longer required because 201 KAR 6:020, 201 KAR 6:030, 201 KAR 6:040, 201 KAR 6:050, 201 KAR 6:060, 201 KAR 6:070, 201 KAR 6:080, and 201 KAR 6:090 have been promulgated to replace this administrative regulation.

Section 1. 201 KAR 6:010, Licensure, is hereby repealed.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296, fax # (502) 564-4818.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a nursing home administrator in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments 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: There are no requirements associated with this administrative regulation.

2. Second and subsequent years: There are no requirements associated with this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no requirements associated with this administrative 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: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation repeals an existing administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of nursing home administrators provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict with other administrative regulations.

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these ad-

ministrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Commission on Military Affairs (New Administrative Regulation)

202 KAR 5:010. Criteria for allocation of grant money.

RELATES TO: KRS 154.12-203

STATUTORY AUTHORITY: KRS 154.12-203

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154.12-203(9) authorizes the Kentucky Commission on Military Affairs to promulgate administrative regulations as prescribed by KRS Chapter 13A. This administrative regulation establishes the purpose of the grant program, as well as the criteria which must be met to receive a grant allocation.

Section 1. Definitions. For the purposes of this administrative regulation:

(1) "Advocacy projects" projects which include the scrutiny of, or the proposing of legislation which affects the military missions and commands of the Commonwealth;

(2) "Civilian service projects" projects which promote attracting military retirees and recently separated military personnel to locate in the Commonwealth, tourism, and historic preservation;

(3) "Commission" means the Kentucky Commission on Military Affairs;

(4) "Committee" means the Executive Committee of the Kentucky Commission on Military Affairs;

(5) "Community interface projects" projects which promote or enhance regional or local civic/military relations;

(6) "Economic development projects" projects which invest in the qualified development of former military base properties, and help to attract new, or expand existing military missions and commands;

(7) "Fiscal year" means July 1 to June 30;

(8) "Infrastructure projects" projects which support public infrastructure improvements such as roads, water, sewer, or utilities near military bases, commands, operations, or activities;

(9) "Other projects" those projects which do not fit within economic development, infrastructure, community interface, civilian service, statutory, or advocacy projects, but meet the qualifications of KRS 154.12-203;

(10) "Statutory projects" projects that address zoning actions to facilitate local land use planning and projects to help effect environmental problems.

Section 2. Program Objective. To promote community and or local government participation in preserving and enhancing military commands and missions in the Commonwealth of Kentucky.

Section 3. Eligible Applicants. City, county, and urban county governments, nonprofit economic development organizations, chambers of commerce, citizens groups, and other groups that have demonstrated an interest in enhancing the public awareness of the economic importance of military activities in the Commonwealth.

Section 4. Eligible Projects. Projects which are seeking grant money must fall within one (1) of the following areas:

(1) Economic development project;

(2) Infrastructure projects;

(3) Community interface projects;

(4) Civilian service projects;

(5) Statutory projects;

(6) Advocacy projects;

(7) Other projects.

Section 5. Allocation of Grant Money. (1) On July 1 of each year, staff will mail the amount of grant money available for that fiscal year to all eligible applicants.

(2) Grant amount shall be allocated in an amount no less than \$500 and shall not exceed \$50,000. Exceptional projects requiring

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

greater than \$50,000 will be considered.

Section 6. Committee Meetings. The executive committee shall meet as necessary to allocate grant money. Special meetings may be held on the call of the committee chair.

Section 7. Method of payment. (1) An applicant shall enter into a memorandum of agreement with the commission prior to the transfer of grant money and after the project has received approval from the executive committee.

(2) A grant approved in an amount not to exceed \$5,000 shall be allocated in one payment of 100 percent upon the execution of the memorandum of agreement. A grant approved in an amount exceeding \$5,000 shall be allocated in a payment of seventy-five (75) percent upon execution of a memorandum of agreement, with the remaining twenty-five (25) percent upon submission of a progress report.

Section 8. Applicant Responsibilities. Applicant must provide a progress report after fifty (50) percent of the project is complete. A final report must be filed upon completion of the project, which shall include financial documentation of project costs. Exceptional projects receiving over \$50,000 will be required to submit monthly progress reports.

Section 9. Delegation of Functions. The committee shall review and allocate all requests for grant money. The committee shall not delegate authority to make allocations of grant money to staff except in cases of surplus grant money. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 10. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) Grant application;
- (b) Memorandum of agreement.

(2) Copies of the forms may be inspected, copied or obtained at the Kentucky Commission on Military Affairs, Suite 66 Wilkinson Boulevard, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

ANNA CARYL GUFFEY, Chair
MICHAEL ALEXANDER, General Counsel

APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998 at 10 a.m. at the Kentucky Commission on Military Affairs, Suite 66 Wilkinson Blvd., Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed 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: BG (Ret.) James E. Shane, Executive Director, Kentucky Commission on Military Affairs, Suite 66 Wilkinson Boulevard, Frankfort, Kentucky 40601, (502) 564-0269, Fax (502) 564-0273.

REGULATORY IMPACT ANALYSIS

Contact Person: BG (Ret.) James Shane

(1) Type and number of entities affected: City, county, and urban county governments, nonprofit economic development organizations, chambers of commerce, citizens groups, and other groups that have demonstrated an interest in enhancing the public awareness of the economic importance of military activities in the Com-

monwealth.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any affects upon competition) for the:

1. First year following implementation: Applicants will be required to file a grant application and enter into a Memorandum of Agreement with the commission prior to the award of grant money. Applicants must provide periodic reports as to the progress of the project, as well as a final report, which must include financial documentation of the projects costs.

2. Second and subsequent years. Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the promulgating administrative body.

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be additional paperwork requirements placed on the promulgating administrative body. Grant applications and Memorandums of Agreement will be accepted, reviewed by staff, approved or disapproved by the executive committee and retained on file for future need. Ongoing compliance of the project will be monitored by staff.

(4) Assessment of anticipated effect on state and local revenues. By contributing to the funding of economic development projects, civilian service projects and infrastructure projects, state and local revenue should increase. Increase in revenue can not be predicted at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No source of revenue to be used for implementation and enforcement of this administrative regulation is necessary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative will be implemented: Statewide. No public comments were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered. This administrative regulation is necessary in order to be in compliance with KRS 154.12-203.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. There are no effects on the public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There would not be a detrimental effect on the environment or public health if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No, all applicants will be reviewed and awarded grant money as grant money is available, based on the program objectives.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 2:181. Quota deer hunt procedures.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170, 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to fix seasons and make seasons conditional, to make seasons apply to an limited area and to promulgate any other administrative regulation reasonably necessary to implement the provisions of KRS Chapter 150. KRS 150.620 authorizes the department to impose and enforce special regulations for the lands it has acquired. This administrative regulation is necessary to prescribe the method by which a person applies for a drawing used to limit the number of hunters on certain wildlife management area deer hunts. Its function is to achieve proper deer management on wildlife management areas and to promote safety by preventing overcrowding during deer hunts.

Section 1. A person whose name is not selected pursuant to this administrative regulation shall not hunt during:

- (1) Quota hunts listed in 301 KAR 2:178; or
- (2) Hunts listed in 301 KAR 2:179.

Section 2. A person shall apply for a quota hunt drawing through an automated telephone system by:

- (1) Calling 1-887-968-4868 from a touch-tone telephone between August 1 and August 31;
- (2) Providing his Social Security number;
- (3) Indicating his first and second choice of hunts; and
- (4) Paying a three (3) dollar application fee for each application

by:

- (a) Check;
- (b) Money order;
- (c) Visa; or
- (d) MasterCard.

Section 3. Four (4) or fewer persons may apply as a party by providing a Social Security number and paying the application fee for each person.

Section 4. The department shall select hunters by a random drawing of all applicants.

Section 5. A person checking in for a quota hunt shall show:

- (1) His Social Security number;
- (2) Unless exempted by KRS 150.170, a valid Kentucky hunting or combination license; and
- (3) A valid deer permit with an unused carcass tag; or
- (4) The receipt portion of a valid deer permit and:
 - (a) A bonus quota hunt deer permit;
 - (b) If the quota hunt is in a Zone 1 county as defined by 301 KAR 2:174, a bonus Zone 1 antlerless deer permit; or
 - (c) If the person will hunt with bow or crossbow, a bonus antlerless archery deer permit.

Section 6. (1) A person who was not selected and applies to hunt the following year shall be given one (1) preference point for each year he was not selected.

(2) Beginning in 1999, a random selection of those with preference points will be made for each year's quota hunts before those without preference points are chosen.

Section 7. The commissioner may extend the application deadline if technical difficulties with the automated application system prevent applications from being accepted for one (1) or more days during the application period.

C. THOMAS BENNETT, Commissioner
MIKE BOATWRIGHT, Chairman
ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: October 14, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 17,000 deer hunters are expected to apply for quota hunts on wildlife management areas. Of these, approximately 11,000 will be drawn to hunt.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation decreases paperwork and reporting requirements by replacing a paper application system with an automated telephone application system.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: An estimated \$6,000 will be saved by converting to an automated application system.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork requirements will be virtually eliminated; reporting will be automated.

(4) Assessment of anticipated effect on state and local revenues:

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No significant economic impacts.

(b) Kentucky: No significant economic impacts.

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 6:005. Boat registration fees.

RELATES TO: KRS 235.040, 235.050, 235.070, 235.080

STATUTORY AUTHORITY: 1998 RS HB 717

NECESSITY, FUNCTION, AND CONFORMITY: 1998 RS HB 717 removed boat registration fees from statute and granted the department the authority to set these fees by administrative regulation. This administrative regulation establishes the registration fees for the various classes of motorboats.

Section 1. The annual registration fees shall be for motorboats:

(1) With electric motors as the sole source of propulsion - five (5) dollars.

(2) With outboard motors:

(a) Class A - ten (10) dollars.

(b) Class 1 - fourteen (14) dollars.

(c) Class 2 - twenty (20) dollars.

(d) Class 3 - twenty-four (24) dollars.

(3) Any class, with inboard or inboard-outboard motors - twenty-four (24) dollars.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: October 14, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 158,000 boats are registered in Kentucky annually. This administrative regu-

lation does not raise or lower boating fees. Pursuant to 1998 RS HB 717, it moves boat registration fees from statute (KRS 235.080) to administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change in costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change in costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation imposes no new compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No new costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Since HB 717 mandates that boat registration fees be set by administrative regulation, there is no alternative but to set boat fees by administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PUBLIC PROTECTION AND REGULATION CABINET
Office of the Petroleum Storage Tank
Environmental Assurance Fund
(New Administrative Regulation)

415 KAR 1:116. Certification of contracting companies.

RELATES TO: KRS 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund to establish criteria to be met by persons who

contract to perform corrective action to be eligible for reimbursement by the fund. In 1998, the General Assembly amended this provision to specifically allow the office to set criteria for the certification of partnerships and companies that engage in corrective action. This administrative regulation sets the criteria for the certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 1. Definitions. (1) "Certified company" means a person or partnership involved in the business of performing corrective action services for a release from a petroleum storage tank and employs or contracts with one or more individuals certified pursuant to 415 KAR 1:114.

(2) "Person" is defined by KRS 224.60-115(14).

Section 2. Applicability. (1) Any person who contracts with eligible owners or operators to perform corrective action shall be certified by the office. Failure of the owner or operator to contract with a certified person shall render cost for any corrective action performed by that person unreimbursable.

(2) To be eligible to contract with petroleum storage tank owners and operators seeking reimbursement from the fund, the person shall:

(a) Employ or contract with one (1) or more individuals certified by the office pursuant to 415 KAR 1:114;

(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(c) Demonstrate to the office the technical, administrative and financial capabilities to perform and manage corrective action at underground storage tank facilities; and

(d) Be approved in writing by the office as certified to perform corrective action services in Kentucky.

(3) This requirement shall apply only to applications for assistance submitted to the office on or after March 1, 1999.

(4) An officer or principal of the certified company shall sign all applications or claim payment requests submitted to the fund by, or on behalf of, the eligible owner or operator. The certified company shall certify that all information or payment requests have been reviewed and are true and correct. For claim payments, the certified company shall certify that all costs are reasonable, necessary, and were performed in compliance with 401 KAR Chapter 42 and 415 KAR Chapter 1.

Section 3. Application Requirements. (1) An applicant for company certification shall:

(a) Submit a completed certified company and partnership application form;

(b) Submit verification of the employment or contracting of one (1) or more individuals certified pursuant to 415 KAR 1:114;

(c) Submit, as references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the names and addresses of three (3) previous or current clients of the individual certified pursuant to 415 KAR 1:114; and

(d) Submit a list of officers and principals of the applicant, and addresses, and if applicable, a list of all stockholders.

(2) Office staff may inspect facilities of the applicant to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) The office may require additional information and documentation to determine the applicant's capabilities. The request for additional information and documentation shall be made by certified mail. The applicant shall submit the additional information within thirty (30) days of receipt of the request.

(4) An application for certified company status shall be denied if:

(a) The applicant fails to provide the information required in the application or this administrative regulation;

(b) The applicant does not meet the requirements of subsection (1) of this section;

(c) The applicant does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(d) The applicant fails to allow the office staff to inspect its facilities;

ties;

(e) The applicant fails to provide additional information and documentation requested by the office;

(f) The applicant fails to demonstrate to the office that it possesses the technical, administrative and financial capabilities to perform and manage corrective action at underground storage tank facilities;

(g) The applicant provides false or misleading information in the application;

(h) Any of the applicant's officers, directors, principals, or stockholders has ever had a certification, granted pursuant to 415 KAR 1:114, revoked or suspended; or

(i) The applicant has, as any of its officers, directors, principals, or stockholders, an individual who was an officer, director, principal, or stockholder in a certified company, previously having its certification revoked or suspended.

(5) An applicant whose application for company certification is denied may appeal the determination by requesting a reconsideration or hearing pursuant to 415 KAR 1:120.

(6) An applicant that meets the requirements of this administrative regulation shall be issued a certificate by the office indicating certification under this regulation. Certifications shall be renewed biannually.

Section 4. Revocation or Suspension of Certification. (1) A certification issued pursuant to this administrative regulation may be revoked or suspended if:

(a) The certified company, its employees, or agents submit false information, documentation, or payment requests to owners, operators, or the fund;

(b) The certified company has permitted an employee, agent or subcontractor to violate any provision of 415 KAR Chapter 1, or to perform corrective action in violation of the standards of the State Fire Marshal or the cabinet;

(c) The certified company has failed to comply with the terms set forth in 415 KAR 1:135;

(d) The certified company has negligently, incompetently, recklessly or intentionally violated any provision of this chapter or any required federal, state or local regulation, code or standard relating to corrective action;

(e) The certified company has obtained the certification through fraud or misrepresentation; or

(f) The certified company fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(2) The secretary shall have authority to revoke or suspend a certification. The secretary shall then cause a letter to be issued notifying the certified company of the fund's action.

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 5. Incorporation by Reference. (1) The "Certified Company and Partnership Application Form (October 1998)" is incorporated by reference.

(2) This form may be obtained, inspected and copied at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1999, five working days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 50 contracting companies in the Commonwealth of Kentucky that perform corrective action due to releases from petroleum storage tanks.

(a) Direct and indirect costs or savings to those affected:

1. Effect on cost of living and employment: None

2. Effect on cost of doing business: There will be an indirect cost to the contracting company due to being certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

3. First year: There will be an indirect cost due to the need to be certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply biannually for renewal of the certification. By assuring qualified individuals are performing these tasks, the public saves money over time.

5. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fund will experience direct costs due to the need to prepare and administer the certification program; receive, review and maintain applications for certification; and to identify the proper materials for the certification process.

2. Continuing costs or savings: The fund anticipates continuing costs as described above.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process applications for certification and applications for renewal.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected: The proposed regulation is in response to HB 282 (1998) which give the fund the authority to certify companies. The proposed regulation does not require a test, but failure to become certified or loss of the certification will result in the cessation of fund reimbursement.

Alternative:

1. Less stringent: A less stringent standard would not protect the public.

2. More stringent: A more stringent standard would unduly limit the number of available contracting companies, slowing down the process of removal.

3. Present proposal: The present proposal does not prevent companies from performing corrective action, but gives the fund an avenue to remove problem contractors if necessary.

(6) Economic impact: None

(7) Benefits of the regulation: The proposed regulation will benefit the public by allowing additional oversight of remedial contractors.

(8) 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 report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks and more certified individuals.

(b) Environmental: The effect of this regulation is to provide qualified companies to provide the services for which the fund reimburses. A positive effect on the environment is expected.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation applies to all companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

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 standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified company in the performance of corrective action if reimbursement will be sought from the fund.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified company in the performance of corrective action if reimbursement will be sought from the fund.

PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank
Environmental Assurance Fund
(New Administrative Regulation)

415 KAR 1:135. Financial audits.

RELATES TO: KRS 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1998 General Assembly amended KRS 224.60-130 to allow the Office of the Petroleum Storage Tank Environmental Assurance Fund to conduct financial audits on owners and operators of petroleum storage tanks and on an entity who contracts or subcontracts for corrective action services at a facility eligible for reimbursement by the fund. This will allow proper oversight of public monies distributed by the office. This administrative regulation outlines the scope and subject of the audits and the penalties for noncompliance.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Section 1. Applicability. This administrative regulation shall apply to any person receiving reimbursement from the fund, pursuant to 415 KAR 1:080, including anyone who has an agency relationship with the petroleum storage tank owner or operator, or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement.

Section 2. Audit Procedure. (1) The fund may conduct financial audits on any entity described in Section 1 of this administrative regulation. These audits may be conducted at the office's discretion.

(2)(a) The financial audits shall be limited to those files, records, computer records, receipts, invoices, and other documents related to corrective action performed at a facility where the costs of corrective action, or a portion of those costs, have been reimbursed by the fund.

(b) Records including, but not limited to, payroll, contractual arrangements with suppliers, providers, or subcontractors are also subject to audit if they are related to corrective action performed at a facility where the costs of corrective action, or a portion of those costs, have been reimbursed by the fund.

(3) All records relating to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund shall be retained by the person subject to audit for a minimum of three (3) years after the date of final reimbursement by the fund.

(4)(a) The office shall notify the subject of the audit, in writing, of the date that the audit will begin. The notice shall be sent at least ten (10) working days before the scheduled start of the audit.

(b) The decision to reschedule the audit shall rest solely with the office, but in no event shall it be scheduled more than thirty (30) days after the date of the original audit date.

(5)(a) If the owner or operator fails to maintain records as described in this administrative regulation, the office shall recover any monies reimbursed to the owner or operator for the costs of corrective action at the facility to which the documents relate.

(b) If an entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement fails to maintain records as described in this administrative regulation, the office shall recover any monies paid to the entity pursuant to a contract or agreement to perform corrective action services at that facility. If the entity is certified under 415 KAR 1:116, that certification shall be revoked or suspended in accordance with 415 KAR 1:116(4).

(c) Venue for such actions shall be in Franklin Circuit Court.

Section 3. Improper Use of Fund Resources. (1) If the audit by the office finds improper, irregular, or illegal uses of money received directly or indirectly from the fund, or that the money was obtained by fraud or misrepresentation, the office shall report the results of the audit to the proper authorities for civil and criminal investigation.

(2) If the subject of the audit is certified pursuant to 415 KAR 1:114 or 415 KAR 1:116, and the audit conducted by the office finds improper, irregular, or illegal use of money received directly or indirectly from the fund, or that the money was obtained by fraud or misrepresentation, the office shall immediately revoke the certification in accordance with 415 KAR 1:114(7) or 415 KAR 1:116(4).

(3)(a) Failure by an owner or operator to allow an audit shall prohibit the owner or operator from participating in the fund. Any monies paid to the owner or operator shall be subject to recovery by the office.

(b) Failure by a person certified pursuant to 415 KAR 1:116, or any entity acting as a supplier, provider, contract employee, or subcontractor to that person, to allow an audit shall result in the revocation of that certification. Any monies paid to that person, by virtue of a contract for corrective action services that have been reimbursed by the fund, shall be subject to recovery by the office.

(c) Venue for an action to recover monies paid by the fund, directly or indirectly, shall lie in Franklin Circuit Court.

Section 4. Disclosure. Results from the audits conducted under this administrative regulation shall be protected from disclosure as allowed by KRS 61.878(1)(c).

LAURA M. DOUGLAS, Secretary
ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 24, 1998 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by November 17, 1998, five working days prior to the hearing. 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 the opportunity to comment on the proposed amendment of this 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 amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: There will be some cost to those entities who are audited, primarily in staff time and review time. It is expected that these audits will save money for applicants and for the public.

2. Continuing costs or savings: The above cost and savings will continue.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: All affected entities will have to maintain all records relating to the fund reimbursement for three years after the end of the fund's reimbursement.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to contract to perform financial audits.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process documentation relating to the audits. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: HB 282 (1998) required the creation of this proposed regulation in its current form.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The proposed regulation complies with the statutory requirements.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks.

(b) Environmental: None

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The proposed regulation will benefit the public by assuring that fund monies are properly spent.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation applies in the same manner to all entities that may be audited.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. KRS 224.60-130.

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 standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? 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 a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that involves the storing of motor fuels in petroleum storage tanks will be affected by this regulation.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government audits in the same manner as non-governmental entities.

JUSTICE CABINET Department of State Police (New Administrative Regulation)

502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.500

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.500, 17.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 17.080 provide that the Secretary of the Justice Cabinet may promulgate such administrative regulations as are necessary to properly administer the cabinet. KRS 17.510 requires the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing witness" means an official identified in KRS 17.510(3), (4), and (5).

(2) "Cabinet" means the Justice Cabinet.

(3) "Department" means the Department of State Police.

(4) "SORS" means the Sex Offender Registration System.

(5) "Sex offender information" means the specific information set

forth in KRS 17.500(3) and shall include:

(a) The date of release from custody;

(b) Maximum date of sentence or supervision, whichever is longer;

(c) Date of registry expiration;

(d) Name of person completing the form, if registrant is assisted;

(e) Office phone number of the releasing entity;

(f) Signature of the registrant;

(g) Signature of the authorizing witness; and

(h) The date the form is signed.

Section 2. Sex Offender Duty to Register Notification Form. (1) A person as described in KRS 17.510 shall provide the information required by KRS 17.500(4), 17.510 and this administrative regulation on the Sex Offender Duty to Register Notification Form #JC-4.

(2) Completion of Sex Offender Duty to Register Notification Form #JC-4.

(a) Probation and parole shall complete the Notification Form #JC-4 for the sentencing court.

(b) A person defined in KRS 17.510 shall, in the presence of the sentencing judge, sign the Notification Form #JC-4 in the "defendant's signature" block, in ink.

(c) A copy of the completed form shall be provided to the offender.

Section 3. SORS Registration Forms. A person described in KRS 17.510 shall provide the information required by KRS 17.500(3), 17.510 and this administrative regulation on one (1) of the following sex offender registry entry forms:

(1) Three (3) Sex Offender Registry Entry Forms have been established:

(a) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(2) or (3).

(b) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(6).

(c) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.501(7).

(2) Completion of Sex Offender Registry Entry Registration Form.

(a) The Entry Form shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Entry Form.

(c) The offender shall sign the Entry Form in the "signature of offender" block of the form in ink.

(d) The authorizing witness shall sign the Entry Form in the "authorizing witness" block of the Entry Form.

(e) The authorizing witness shall mail one (1) copy of the completed Entry Form to the department on the day the form is completed.

(3) An Entry Form shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the Entry Form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign the appropriate block.

(4) If the department determines that an Entry Form is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness, without entry into the SORS, of:

(a) The reason the Entry Form was determined to be incomplete; and

(b) The action required to complete the Entry Form prior to inclusion to the SORS.

(5) Upon notification of the corrected deficiencies as described above, the department shall enter the record into the SORS.

Section 4. Sex Offender Registry Modification Form. A person as described in KRS 17.510 shall provide any change in the information required by KRS 17.500(3), KRS 17.510 and this administrative regulation on the Sex Offender Registry Modification Form.

(1) Completion of Sex Offender Registry Modification Form.

(a) The Modification Form shall be completed either in the pres-

ence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Modification Form.

(c) The offender shall sign the Modification Form in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the Modification Form in the "authorizing witness" block of the Modification Form.

(e) The authorizing witness shall mail one (1) copy of the completed Modification Form to the department on the day the form is completed.

(2) A Modification Form shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(7) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign in the appropriate block.

(3) If the department determines that a Modification Form is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness of:

(a) The reason the Modification Form was determined to be incomplete; and

(b) The action required to properly complete the Modification Form before that information may be included in the SORS.

(4) Upon notification of the corrected deficiencies, as described above, the department shall enter the corrected information into that offender's SORS record.

Section 5. Sex Offender Registry Information Verification Form. A person sentenced as described in KRS 17.510 shall verify the accuracy of the information contained in the SORS on the Sex Offender Registry Information Verification Form #SOR 1.

(1) Annually, the department shall mail, no later than fourteen (14) days prior to the anniversary date of each registrant, a Verification Form #SOR 1 to the last known address of the registrant.

(2) Completion of Sex Offender Registry Information Verification Form #SOR 1. A person defined in KRS 17.510 shall:

(a) Complete the Verification Form #SOR 1, and sign the Verification Form #SOR 1 in the "registrant signature" block, in ink; and

(b) Shall mail the completed Verification Form #SOR 1 to the department on the day the form is completed.

(3) A Verification Form #SOR 1 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The registrant fails to sign in the appropriate block.

(4) If the department determines that a Verification Form #SOR 1 is incomplete pursuant to the provisions of this administrative regulation, the department shall return the form to the submitting registrant notifying the submitting registrant of:

(a) The reason the Verification Form #SOR 1 was returned; and

(b) The action required by the registrant to properly complete the Verification Form #SOR 1 prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) The Sex Offender Duty to Register Form #JC-4;

(b) The Sex Offender Registry Entry Forms #P:225; #P:227; and #228;

(c) The Sex Offender Registry Modification Form #P:226; and

(d) The Sex Offender Registry Information Verification Form #SOR 1.

(2) This material may be inspected, copied, or obtained at the Department of State Police, Data Processing Section, 1250 Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

E. DANIEL CHERRY, Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation (502 KAR 31:020) shall be held on November 23, at 10 a.m., at Central Laboratory Facility, 100 Sower Boulevard, Suite 202, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 1998, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Barbara W. Jones, Justice Cabinet, 403 Wapping Street, 2nd Floor Bush Building, Frankfort, Kentucky 40601, phone: (502) 564-3279, Fax (502) 564-5244.

REGULATORY IMPACT ANALYSIS

Contact Person: Lieutenant Daniel L. Ball

(1) Type and number of entities affected: 235 probation and parole officers, 5 data processing staff of the Kentucky State Police and Department of Information Systems, the Administrative Office of the Courts, all circuit clerks, the Judiciary and the existing 630 registrants that reside in the Sex Offender Registry as well as the undetermined number of sex offenders that will be registered in the future.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$75,000

2. Continuing costs or savings: \$35,000

3. Additional factors increasing or decreasing costs: Analysis, program development, and other technical tasks required by federal or state legislative mandates.

(b) Reporting and paperwork requirements: Design of the data capture form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Justice Cabinet.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994 - 1996 biennium. Agency General Fund moneys for startup and continuation costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict: None
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
- (10) Any additional information or comments: None
- (11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals that will be listed in the Sex Offender Registry.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for the filing of this amendment is found at 42 USC Section 14071 and by the Federal Register, 62 FR 39009, July 21, 1997. The United States Justice Department monitors compliance with this statute and the guidelines promulgated to implement Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. States were mandated to be in compliance with the federal statute no later than September 1997 unless granted a waiver as a result of having demonstrated a good faith effort to comply with the statute. A two year waiver was granted the Commonwealth by the Justice Department in September of 1997. The 1998 General Assembly modified Kentucky's Sex Offender Registration Statute which brings the Commonwealth in Compliance with the federal mandates.
2. State compliance standards. The state compliance standards are found in KRS 17.500 through 17.540.
3. Minimum or uniform standards contained in the federal mandate. The proposed amendment contains no minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no stricter requirements, or additional or different responsibilities or requirement, than those required by the federal mandate.
5. Justification for the imposition of the stricter requirements, or additional or different responsibilities or requirements. This amendment does not impose standards, responsibilities or requirements.

JUSTICE CABINET

Kentucky Department of Criminal Justice Training (New Administrative Regulation)

503 KAR 3:005. Definitions.

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070 authorizes the Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation provides definitions of certain terms used in 503 KAR Chapter 3, which pertain to such training.

Section 1. Definitions. As used in this administrative regulation:

- (1) "Branch manager" means the manager of a branch in the training division of the Department of Criminal Justice Training or his designee.
- (2) "Class coordinator" means the department staff member responsible for the day-to-day supervision of a class of basic trainees or his designee.
- (3) "Commissioner" means the Commissioner of the Department of Criminal Justice Training or his designee.
- (4) "Department" means the Department of Criminal Justice Training.
- (5) "Director" means the director of the training division of the department or his designee.
- (6) "Instructor" means the department staff member or other person in charge of a particular training activity for a class of trainees or basic recruits.
- (7) "Legal officer" means the general counsel of the department

or his designee.

(8) "Recruit" means a person attending the basic training course conducted by the basic training section of the department.

(9) "Section supervisor" means the supervisor of the basic training section of the department or his designee.

(10) "Trainee" means a person attending a training course (other than the law enforcement basic training course) conducted by a training section of the department.

JOHN W. BIZZACK, Ph.D., Commissioner

STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 9 a.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, Attorney, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Phone (606) 622-5897, Fax (606) 622-2740.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: all law enforcement or other officers participating in basic training and their agencies.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 1999 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:
N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of District Support Services

(New Administrative Regulation)

701 KAR 5:021, Repeal of 701 KAR 5:020, Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY, FUNCTION, AND CONFORMITY: 701 KAR 5:020, Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education, is no longer required because KRS 156.070, has been amended by removing the allowance of appeals to the Kentucky Board of Education.

Section 1. 701 KAR 5:020, Kentucky High School Athletic Association; procedures for appeal of decisions to the Kentucky Board of Education, is hereby repealed.

WILMER S. CODY, Commissioner

HELEN W. MOUNTJOY, Chair

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected:

(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: Minimal reduction.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal reduction.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS AND HUMANITIES CABINET

Kentucky Board of Education

Kentucky Department of Education

Office of Education Technology

(New Administrative Regulation)

701 KAR 5:120. Prevention of sexually explicit materials transmitted to schools via computer.

RELATES TO: KRS 156.160, 1998 Ky. Acts ch. 330

STATUTORY AUTHORITY: KRS 156.070, 156.160, 1998 Ky. Acts ch. 330

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 330 authorizes the Kentucky Board of Education to promulgate administrative regulations necessary to prevent sexually explicit material from being transmitted from or received by any computing or telecommunications system used in local schools and school districts. This administrative regulation requires school districts to implement acceptable use policies and to use filtering technologies in every school. The administrative regulation also specifies the Kentucky Department of Education's responsibilities to provide filtering technology to local districts, to provide technical assistance to support implementation of the regulation, and to ascertain compliance.

Section 1. Acceptable Use Policies. (1) A local school district shall adopt an acceptable use policy which has the following characteristics:

(a) Conforms to the guidelines for acceptable use policies as provided in the Master Plan for Education Technology, 701 KAR 5:110, for the Kentucky Education Technology System, including

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

parental consent, teacher supervision of computer use, and auditing procedures;

(b) Contains procedures, guidelines, and prohibitions which will prevent access to sexually explicit materials;

(c) Contains appropriate disciplinary measures for policy violations; and

(d) Is for use by students, faculty, staff, and any others to whom the school or district provides computing and telecommunications access on a permanent or temporary basis.

(2) A school district shall include in its policy provisions which eliminate or appropriately restrict the use of computing and telecommunications technologies for any faculty, student, staff or other person who will not sign or who violates the provisions of the acceptable use policy statement.

Section 2. Standards for Filtering Technology. (1) The Kentucky Department of Education shall assist a local school district with the selection and use of filtering technologies.

(2) Filtering technologies adopted by a local school district shall address:

(a) Expectations of reliability;

(b) The ability to improve the dependability and speed of the appropriate data being available;

(c) The ability to effectively manage incoming information;

(d) The ability to effectively manage outgoing information; and

(e) The ability to identify and maintain appropriate information about the origin, date, time and destination of network transactions.

Section 3. District Responsibilities for Implementing Filtering Technology. (1) A local school district shall implement filtering technology in every school which has a dedicated network connection.

(2) A local school district shall implement filtering technology in a school no later than thirty (30) days after the telecommunications circuit is activated.

(3) Every school district shall:

(a) Adopt one (1) or more filtering technologies for use in its schools which conform to the guidelines for filtering technologies as provided in the Master Plan for Education Technology, 701 KAR 5:110, for the Kentucky Education Technology System;

(b) Provide the technical assistance necessary to implement and maintain filtering technology in every school; and

(c) Ensure that the filtering technology is operational seven (7) days a week, twenty-four (24) hours a day with reasonable provision for scheduled outages and maintenance.

Section 4. Preventing Student Access to Sexually Explicit Materials Through Electronic Mail. (1) To prevent student access to sexually explicit materials which may be sent or received via electronic mail, a local school district shall limit electronic mail use to those systems approved by the Kentucky Department of Education as meeting standards for electronic mail systems as provided in the Master Plan for Education Technology, 701 KAR 5:110, for the Kentucky Education Technology System;

(2) A school district using electronic mail systems which do not meet these standards shall migrate to a system approved by the Department of Education no later than June 30, 1999.

(3) A school district shall include in its acceptable use policies provisions which prohibit students, faculty, staff and others with network access from using district resources to establish Internet email accounts through third party providers or any other nonstandard electronic mail system.

Section 5. Compliance Monitored Through Planning Process. The Department of Education shall ascertain compliance with these provisions as a condition of school district participation in the offers of assistance process for education technology funds.

WILMER S. CODY, Commissioner

HELEN W. MOUNTJOY, Chair

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the

State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Minimal

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$820,000 direct costs.

2. Continuing costs or savings: \$45,000 direct costs annually.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

**EDUCATION, ARTS AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of District Support Services
(New Administrative Regulation)**

702 KAR 4:151. Repeal of 702 KAR 4:150, Procedures for approving energy conservation projects.

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 58.615

NECESSITY, FUNCTION, AND CONFORMITY: 702 KAR 4:151, Repeal of 702 KAR 4:150, Procedures for approving energy conservation projects, is no longer required because KRS 58.610 has been repealed.

Section 1. 702 KAR 4:150, Procedures for approving energy conservation projects, is hereby repealed.

WILMER S. CODY, Commissioner
HELEN W. MOUNTJOY, Chair
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Minimal reduction.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Minimal reduction.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be

implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Learning Results Services
(New Administrative Regulation)**

703 KAR 5:010. Strategies for reducing time required for writing portfolio preparation.

RELATES TO: 1998 Ky. Acts ch. 598

STATUTORY AUTHORITY: KRS 156.070, 1998 Ky. Acts ch. 598

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts, ch. 598 requires the Kentucky Board of Education to promulgate an administrative regulation which reduces the teacher and student time involved in preparing a writing portfolio. This administrative regulation establishes procedures to accomplish that goal.

Section 1. (1) To ensure that a reasonable amount of time is devoted to writing portfolios, a five (5) piece portfolio shall be produced in 12th grade, a five (5) piece portfolio shall be produced in 7th grade, and a four (4) piece portfolio shall be produced in 4th grade.

(2) To ensure that a reasonable amount of time is devoted to the production of writing portfolio pieces, schools and districts shall develop a procedure to collect writing pieces at nonaccountability levels that are appropriate types of writing for portfolio categories. These pieces may serve as rough drafts that can be revised and edited for inclusion in the accountability portfolio or they may be used as finished products and included in the accountability portfolio.

(3) To ensure that the teacher and student time spent on generating pieces for the writing portfolio is productive, each public school and district shall provide support for teachers across the curriculum and across grade levels to attend professional development focused on the types of writing assessed in the portfolio.

(4) To ensure that a reasonable amount of individual teacher time is spent on scoring writing portfolios, each public school and district shall develop procedures for scoring of student portfolios that include an adequate number of teacher scorers on the school scoring team to limit the number of portfolios scored by any one (1) teacher to thirty (30), unless teachers agree to score a larger number of portfolios.

(5) To ensure that a reasonable amount of time is used in conferencing on writing portfolio pieces, teachers and other responders shall limit a conference's focus to one (1) or two (2) areas of need, addressing patterns of errors or problems that occur frequently.

(6) To ensure that a reasonable amount of time is used in word processing final pieces, teachers shall allow students to use word processing during the development of writing pieces (for example, during revision, or editing) or allow students to submit pieces in their

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

own handwriting.

(7) To ensure that a reasonable amount of time is used in the generation of student writing for the writing portfolio, teacher-assigned writing tasks shall relate to the content being studied in the class.

(8) To ensure that a reasonable amount of time is used in the generation of student writing for the writing portfolio, teachers shall choose content-area readings that represent the kind of writings the students are asked to include in the portfolio, allowing the covering of content and the discussion of writing form to occur at the same time.

WILMER S. CODY, Commissioner
HELEN W. MOUNTJOY, Chair
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts

(2) Direct and indirect costs or saving to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: HB 53 requires the State Board of Education to promulgate an administrative regulation which reduces the teacher and student time involved in preparing a writing portfolio.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: none

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of District Support Services (New Administrative Regulation)

704 KAR 10:051. Repeal of 704 KAR 10:050, Authority to approve courses not in the Program of Studies.

RELATES TO: KRS 156.160

STATUTORY AUTHORITY: KRS 156.070, 156.160

NECESSITY, FUNCTION, AND CONFORMITY: 704 KAR 10:050 specifies the procedures to follow to gain approval from the Commissioner of Education for offering a course not listed in the Program of Studies. The Program of Studies, 704 KAR 3:303, as amended, specifies only the content for the fifteen (15) required credits for high school graduation and the primary, intermediate, and middle level programs leading to these requirements. State level approval to offer courses not in the Program of Studies is no longer required.

Sections 1. 704 KAR 10:050, Authority and procedures to follow to approve courses not in the Program of Studies, is hereby repealed.

WILMER S. CODY, Commissioner
HELEN W. MOUNTJOY, Chair
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 9, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Betty Edwards

(1) Type and number of entities affected: 176 school districts

(2) Direct and indirect costs or saving to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the ex-

tent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(New Administrative Regulation)

704 KAR 20:720. Professional certificate for exceptional work experience, limited to secondary education.

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for and renewal of a professional certificate for secondary education. This administrative regulation is not required by federal law.

Section 1. Definitions. (1) Exceptional experience means a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

(2) Secondary education means the area in which certification is sought in any subject taught in grades 9 - 12 in a Kentucky school.

Section 2. Verification of exceptional qualifications of an applicant for certification, in a field of endeavor taught or service practiced in the public schools of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local

school district and the Education Professional Standards Board that an applicant is one who has exceptional work experience as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the new teacher standards, established in 704 KAR 20:670, Section 6;

(2) Documentation of achievement that may include advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field of endeavor; and

(3) Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional work in the field.

Section 3. Certification Requirements. An eligible candidate who meets the requirements of KRS 161.048(1) and character and fitness review established in KRS 161.040 shall be issued the provisional certificate, limited to secondary education and valid for one (1) year. Upon successful completion of the Kentucky Teacher Internship Program as established in KRS 161.030(5) to 161.030(8), the professional certificate, limited to secondary education shall be issued and shall be valid for an additional four (4) years.

Section 4. Renewal Requirements. Each five (5) year renewal of the professional certificate identified in Section 3 of this administrative regulation shall meet the renewal requirements established in 704 KAR 20:060.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: September 24, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 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 November 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 hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, Phone: (502) 573-4606, Fax: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

(1) Type and number of entities affected: All candidates for this certificate.

(2) Direct and indirect costs or savings on the: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State General Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: By statute, the Education Professional Standards Board can establish teacher certification requirements only by regulation.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky:

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are applied uniformly to all applicants.

EDUCATION, ARTS, AND HUMANITIES
Kentucky Board of Education
Department of Education
Office of Special Instructional Services
(New Administrative Regulation)

705 KAR 4:240. School to careers.

RELATES TO: KRS 156.160, 1998 Ky. Acts ch. 444

STATUTORY AUTHORITY: KRS 156.070, 1998 Ky. Acts ch. 444

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 444, relating to a school to careers system, requires the Kentucky Board of Education to promulgate administrative regulations to establish the request for proposal process, the criteria for grant awards, the responsibilities of local school districts and consortia seeking matching funds, the level of funding available, and criteria for evaluating the success of the programs. This administrative regulation addresses these areas to enable distribution of School to Careers grants.

Section 1. A local board of education or consortia of school districts may operate a school to careers system, which may include school-to-work, tech prep, and high schools that work, as an opportunity offered to all students attending the public schools.

Section 2. (1) Funds shall be made available to an eligible local board of education or consortia of school districts through a request for proposal (RFP) process in which a local board of education or consortia of school districts agrees to develop, implement, and evaluate a schools to careers system.

(2) Eligibility for grant awards shall be based on the proposals that include a plan to address the following:

(a) Improvement in student achievement of math, science, communication, social studies, and technical skills (results from multiple student assessments, certification and accreditation may be considered);

(b) Improvement in successful transition rates (KIRIS or CATS successful transition results may be utilized);

(c) Reduction in student drop-out rates (KIRIS or CATS drop-out results may be utilized);

(d) Reduction in percent of students requiring remediation at the postsecondary level;

(e) Percent of students utilizing an individual graduation plan;

(f) Percent of students participating in programs which are utilizing occupational skill standards;

(g) Percent of students receiving skill standards certification;

(h) Percent of students receiving a career major certificate;

(i) Percent of students participating in work-based learning at the elementary, middle, and high school level (utilizing the School-to-Work Data Collection System);

(j) Percent of students participating in articulation agreements with postsecondary institutions;

(k) Percent of faculty and staff participating in business and industry externships;

(l) Number of business, industry, and labor participants actively involved in the school to careers initiative; and

(m) Planned instructional programs to meet the needs of students with disabilities and other special needs.

(3) Grant funds may be used to enhance on-going efforts such as tech prep, school-to-work, and high schools that work initiatives.

(4) Each grantee shall be responsible for a criterion that has not been implemented or that needs to be enhanced as listed in subsection (2) of this section.

(5) Criteria listed in subsection (2) of this section shall be used for annual program evaluation to determine progress and success.

Section 3. (1) The level of funding available shall be based on the total funding appropriated by the General Assembly during each year of the biennium.

(2) In determining the level of grant funding, consideration shall be given to the following:

(a) The need and previous activities;

(b) The amount of other grant funds which a school district or consortia of school districts may be receiving from other school to careers programs including school-to-work, tech prep, and high schools that work;

(c) The number of students being served; and

(d) The level of proposed implementation activities.

WILMER S. CODY, Commissioner

HELEN W. MOUNTJOY, Chair

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 30, 1998, at 10 a.m., in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 19, 1998, five work days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is not received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone number (502) 564-4474, fax number (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected: Local school districts receiving state grant funds are responsible for providing matching funds equal to the amount of the grant award.

(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: Only those school districts receiving school to careers grants will be required to submit reports. These reports are necessary in determining accomplishments achieved through the school to careers grants.

2. Second and subsequent years: School districts receiving school to careers grants will be asked to submit reports of accomplishments each year of grant approval.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be no additional cost to the Department of Education. Existing staff will provide coordination and technical assistance necessary to implement the requirements identified in the regulation.

2. Continuing costs or savings: The same level of Kentucky Department of Education support will be needed during the second year.

3. Additional factors increasing or decreasing costs: If additional school districts are provided School to Careers grants in future years, additional staff time will be necessary.

(b) Reporting and paperwork requirements: Staff in the Department of Education will be responsible for handling requests for proposals, notification of grant awards, processing of funding documents, requesting accomplishment reports and developing state-wide summary of accomplishments for accountability purposes.

(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 appropriated by the general assembly and local matching funds are used to implement this regulation.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Through the activities outlined in this regulation students will be more prepared to enter the workforce which will have a direct economic impact through a higher skilled more productive workforce.

(b) Kentucky: Kentucky's economy will be improved through school to careers implementation as a result of a higher skilled more productive workforce.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None

(a) Necessity of proposed regulation, if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

RELATES TO: KRS 304.12-230, 342.267

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to

KRS 342.260(1), the Commissioner of the Department of Workers' Claims is authorized to promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, administrative law judges and arbitrators. The commissioner is required to fine carriers for engaging in unfair claims settlement practices. This administrative regulation provides standards for the commissioner and carriers with regard to unfair claims settlement practices.

Section 1. Definitions. (1) "Carrier" is defined in KRS 342.0011(6).

(2) "Agent" is a person or entity performing claims adjusting, case management, or utilization review services.

Section 2. File and Record Documentation. (1) Each carrier's claim files and files held by an agent of the carrier shall be subject to examination by the commissioner or the commissioner's designees.

(2) Each carrier and agent of the carrier shall maintain claim data that is readily accessible and retrievable for examination.

(3) Documentation shall be contained in each claim file:

(a) Detailing the activities of each carrier and any agent of the carrier; and

(b) Detailing the foundations for the decision of the carrier or agent of the carrier upon material matters of the claim.

(4) Each document within a claim file shall be noted as to date received, date processed, or date mailed.

(5) For those carriers which do not maintain hard copy files, claim files shall be capable of duplication to legible hard copy.

(6) Claim files shall be maintained for a period not less than five (5) years following the creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

Section 3. Notice of Policy Provisions and Information. (1) A carrier shall provide adequate notice with regard to policy provisions and information with regard to coverage and benefits.

(2) Failure of a carrier to provide the notice required by KRS 342.610(6) in the form prescribed by 803 KAR 25:200 shall constitute an unfair claims settlement practice.

Section 4. Duty to Investigate. Upon notice of a work-related injury, a carrier shall diligently investigate a claim for facts warranting the extension or denial of benefits.

Section 5. Standards for Prompt and Timely Actions. (1) After receipt of notice of a work-related injury necessitating medical care or causing lost work days, a carrier shall as soon as practicable advise an injured employee of acceptance or denial of the claim.

(2) A carrier shall provide to the employee in writing the specific reasons for denial of any claim.

(3) A carrier shall inform an employee of additional information needed for the claim to be accepted.

(4) A carrier shall meet the time constraints for accepting and paying workers' compensation claims found in KRS Chapter 342 and applicable administrative regulations.

Section 6. Standards for Fair and Equitable Settlement. (1) A carrier shall attempt in good faith to promptly pay a claim in which liability is clear;

(2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;

(3) A carrier shall not compel an employee to institute formal proceedings with the Department of Workers' Claims to recover benefits where liability is clear;

(4) A carrier shall not offer a settlement which is substantially less than the reasonable value of a claim;

(5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose of compelling a settlement for less than a workers' compensation award or benefit review determination; and

(6) A carrier shall not require an employee to obtain information which is accessible to the carrier.

Section 7. Acknowledgment of Communications. (1) Upon receipt of an inquiry from the Department of Workers' Claims, each carrier shall furnish the Department of Workers' Claims a full re-

sponse within fifteen (15) days.

(2) Upon receipt of a communication from an injured employee which reasonably suggests a response is expected, a carrier shall make a prompt and appropriate reply to the employee.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on November 23, 1998, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 16, 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 a.m. (ET), on November 23, 1998, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 550 carriers as defined in KRS 342.0011(6).

(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 as to the cost of living or employment. The department anticipates no effect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. However, the department does not anticipate an effect on the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Carriers will be required to maintain files and documentation. However, most carriers already have this requirement with the Department of Insurance. There is more specific unfair claims settlement practice requirements.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There should be no effect on costs or savings for Department of Workers' Claims. The department is already pursuing violations of the unfair claims settlement practices act.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Workers' Claims will be used 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: No public comments were received. The department does not anticipate an effect on economic activities.

(b) Kentucky: No public comments were received. The department does not anticipate an effect on economic activities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Commissioner of the Department of Workers' Claims is required to fine carriers for unfair claims settlement practices pursuant to KRS 342.267. This regulation sets forth specific standards for workers' compensation carriers to follow to avoid these practices. The department cannot ignore this statutory requirement. There are no alternatives to satisfy our duties pursuant to KRS 342.267.

(8) Assessment of expected benefits: The Department of Workers' Claims and carriers will have a clearer understanding of actions that constitute unfair claims settlement practices and can attempt to eliminate these problems.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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 because this regulation applies equally to all carriers defined in KRS 342.0011(6).

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(New Administrative Regulation)

806 KAR 17:190. Guaranteed Acceptance Program requirements.

RELATES TO: 1998 Ky. Acts ch. 496, secs. 3, 17, 18

STATUTORY AUTHORITY: KRS 304.2-110, 1998 Ky. Acts ch. 496, secs. 3(5)(b), 18

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 496, sec. 3(5)(b) requires the Commissioner of Insurance to establish equitable enrollment limits for new market insurers for the first twelve (12) months, and any remaining portion of the calendar year after the expiration of a twelve (12) month period. 1998 Ky. Acts ch. 496, sec. 18 permits a GAP participating insurer to use the alternative underwriting mechanism; and requires the commissioner to approve or disapprove the alternative underwriting mechanism criteria submitted by the insurer. KRS 304.2-110 authorizes the commissioner to make administrative regulations to effect any provision of the code.

Section 1. Definitions. (1) "AUM" means alternative underwriting mechanism.

(2) The definition of "alternative underwriting mechanism" shall be governed by 1998 Ky. Acts ch. 496, sec. 18(3).

(3) The definition of "commissioner" shall be governed by KRS 304.1-050.

(4) "GAP" means the Guaranteed Acceptance Program.

(5) The definition of "Guaranteed Acceptance Program" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(14).

(6) "GAP health benefit plan" means a health benefit plan issued to an individual with a high-cost condition or to an individual meeting the AUM criteria.

(7) "GAP participant" means a GAP qualified individual defined in 1998 Ky. Acts ch. 496, sec. 1(15) who has been issued a GAP health benefit plan.

(8) The definition of "GAP participating insurer" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(12).

(9) The definition of "GAP qualified individual" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(15).

(10) The definition of "high-cost condition" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(19).

(11) "Mandatory GAP participating insurer" means a health insurer in Kentucky that has twenty-five (25) percent or more of the market share and is required to be a GAP participating insurer.

(12) "Voluntary GAP participating insurer" means a health insurer that has less than twenty-five (25) percent of the market share and elects to be a GAP participating insurer.

(13) "New market insurer" means an insurer that enters the individual health market as a voluntary GAP participating insurer in Kentucky on or after July 1, 1998.

(14) "New market period" means a period extending twelve (12) months from the date a new market insurer enters the individual health insurance market in Kentucky, and includes the remainder of the calendar year after the twelve (12) month period expires.

Section 2. GAP Participating Insurer Requirements. A GAP insurer shall notify the commissioner of the effective date for GAP participation in writing with the following information:

- (1) Name of the GAP health benefit plan;
- (2) Product type of the health benefit plan;
- (3) Geographic service area of the GAP health benefit plan;
- (4) Cost containment features required in 1998 Ky. Acts ch. 496, sec. 20; and
- (5) Any modification made to an existing health benefit plan to qualify it as a GAP health benefit plan.

Section 3. Enrollment Limits for a GAP Participating Insurer. (1) For the first three (3) months that a new market insurer enters the individual market, the insurer may not enroll any individuals in GAP.

(2) At the end of the first three (3) months that a new market insurer enters the individual market, the new market insurer shall have a GAP enrollment limit of one-half (1/2) of one (1) percent of its quarterly enrollment of the individual market projected until the end of the new market period.

(3) If, in the second three (3) month period after the new market insurer enters the individual market, the new market insurer meets the enrollment limit required in subsection (2) of this section, the new market insurer shall be deemed to have met its GAP enrollment limit requirement until the end of the new market period.

(4) If the insurer does not meet the GAP enrollment limit required in subsection (2) of this section in the subsequent quarter, the insurer shall use its quarterly enrollment at the time to project a new GAP enrollment limit in accordance with subsection (2) of this section.

(5) When the new market period has elapsed, the insurer shall be subject to the GAP enrollment limit of one-half (1/2) of one (1) percent of its total enrollment in the individual market as of the preceding December 31.

(6) A mandatory GAP participating insurer shall have no limit on the number of individual GAP health benefit plans.

Section 4. Issuance of a GAP Health Benefit Plan. A GAP participating insurer shall, within two (2) months from the effective date of the insurer's GAP participation implementation date, identify an individual for GAP health benefit plan coverage in accordance with 1998 Ky. Acts ch. 496, sec. 18(1)(b).

Section 5. AUM Criteria. (1) A GAP participating insurer electing to use AUM shall submit to the commissioner for review and approval written documentation of its underwriting guideline criteria for AUM.

(2) If underwriting documentation does not exist, other documentation which supports underwriting AUM may be submitted to the commissioner for review and approval.

(3) After approval of an insurer's underwriting guideline criteria for AUM, the insurer shall resubmit its underwriting guideline criteria for AUM by December 1 of each year for approval for the subsequent year.

(4) Any change to the underwriting guideline criteria for AUM submitted for a subsequent calendar year shall require:

- (a) Justification for the change; and
 - (b) Documentation of the insurer's underwriting criteria.
- (5) Upon receipt of approval by the commissioner, a GAP par-

ticipating insurer shall implement its underwriting guideline criteria for AUM.

(6) A GAP participating insurer shall use the same standards for AUM as for other high-cost conditions as established in 1998 Ky. Acts ch. 496, sec. 18(2).

Section 6. GAP Participation Termination Requirements. (1) A mandatory GAP participating insurer shall not terminate its participation in GAP.

(2) A voluntary GAP participating insurer may elect to terminate its status as a GAP participating insurer.

(3) A voluntary GAP participating insurer that elects to terminate its status as a GAP participating insurer shall do so by submitting a termination letter to the commissioner by September 1 of each year that shall include:

- (a) The effective date of termination for issuing a GAP health benefit plan; and
 - (b) The reason for the termination from GAP.
- (4) Upon notification of termination to the commissioner, the voluntary GAP participating insurer shall:
- (a) Be prohibited from issuing a new GAP health benefit plan;
 - (b) Provide a ninety (90) day notice to GAP participants advising the participants of the insurer's GAP participation termination status; and

(c) Provide coverage to currently enrolled GAP participants until renewal of the GAP health benefit plan.

(5) A voluntary GAP participating insurer failing to notify the commissioner by September 1 of each year of its GAP termination status as established in subsection (2) of this section shall issue and renew GAP health benefit plans for the subsequent calendar year.

(6) A voluntary GAP participating insurer terminating its GAP participation may subsequently reapply to become a GAP participating insurer subject to approval by the commissioner.

(7) The commissioner may elect to terminate the status of a GAP participating insurer that is in hazardous financial condition pursuant to 806 KAR 3:150.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
GALE PEARCE, General Counsel

APPROVED BY AGENCY: September 30, 1998

FILED WITH LRC: October 2, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 10 a.m. at the offices of 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 November 16, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 regulation affects approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This regulation also affects individuals with a high-cost condition or those that meet the Alternative Underwriting Mechanism (AUM) criteria. The number of those individuals cannot be determined at this time.

(2) Direct and indirect costs or savings on the:

- (a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation compels insurers to comply with notice requirements and enrollment limits for the Guaranteed Acceptance Program. Use of the Alternative Underwriting Mechanism also includes notice, reporting, and documentation requirements.

2. Second and subsequent years: This administrative regulation compels insurers to comply with notice requirements and enrollment limits for the Guaranteed Acceptance Program. Use of the Alternative Underwriting Mechanism also includes notice, reporting, and documentation requirements.

(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 will also be responsible for reviewing and approving an insurer's underwriting guideline criteria for AUM. The department anticipates that the cost of review and enforcement will be minimal.

2. Continuing costs or savings: The department will be required to review the underwriting guideline criteria for AUM and enforce the provisions of this administrative regulation on a continuing basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will collect data to evaluate the participation and effectiveness of GAP.

(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, secs. 3 and 15 through 23, require the Department of Insurance to implement the Kentucky Guaranteed Acceptance Program (GAP). The enrollment limits and guidelines for GAP participation are a critical component of GAP. For this reason, no other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable health insurers to identify the requirements for a GAP participating insurer and a GAP supporting insurer.

(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 would result.

(c) If detrimental effect would result, explain the detrimental effect: If this administrative regulation were not implemented there would be no means to set new market enrollment entries for GAP, understand the criteria for participation in GAP, permit insurers to withdraw from GAP, or evaluate the criteria for AUM.

(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 does not apply since this administrative regulation applies to all health insurers and stop-loss carriers operating in Kentucky. Neither does tiering applied in relation to individuals with a high-cost condition or those that meet the Alternative Underwriting Mechanism (AUM) criteria.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance (New Administrative Regulation)

806 KAR 17:210. Reporting requirements for the Kentucky Guaranteed Acceptance Program.

RELATES TO: 1998 Ky. Acts ch. 496, sec. 21

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 496, sec. 21(1)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 496, sec. 21(1) mandates that the department define, by administrative regulation, reporting requirements for the Guaranteed Acceptance Program. This administrative regulation prescribes the form and the time schedule for submitting reports to the department for each calendar year.

Section 1. Definitions. (1) "Earned premium" means that portion of a premium paid by an insured that has been allocated to the insurer's loss experience, expenses, and profit year-to-date.

(2) "Electronic report format" or "ERF" means data submitted on a three and five-tenths (3.5) inch diskette or a ZIP disk in a Microsoft Excel spreadsheet format.

(3) "GAP" means the Guaranteed Acceptance Program.

(4) The definition of "Guaranteed Acceptance Program" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(14).

(5) The definition of "GAP participating insurer" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(12).

Section 2. GAP Participating Insurer Monthly Report. A GAP participating insurer shall submit ERF-1 to the Department of Insurance thirty (30) days after the end of each calendar month for data collected during that calendar month. A GAP participating insurer shall complete ERF-1 in accordance with the procedural instructions for ERF-1 as incorporated by reference into this administrative regulation.

Section 3. GAP Supporting Insurer Quarterly Reports. A GAP supporting insurer and a stop-loss insurer shall submit ERF-2 to the Department of Insurance within thirty (30) days after the end of each calendar quarter for the data collected during that calendar quarter. A GAP supporting insurer and a stop-loss insurer shall complete ERF-2 in accordance with the procedural instructions for ERF-2 as incorporated by reference into this administrative regulation.

Section 4. GAP Participating Insurer Annual Reports. A GAP participating insurer shall submit ERF-3 to the Department of Insurance within sixty (60) days after the end of each calendar year for the data collected during that calendar year. A GAP participating insurer shall complete ERF-3 in accordance with the procedural instructions for ERF-3 as incorporated by reference into this administrative regulation.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) ERF-1, "Electronic Report Format for Guaranteed Acceptance Program Participating Insurer - Monthly Report (9/1998 edition);"

(b) ERF-2, "Electronic Report Format for Guaranteed Acceptance Program Supporting and Stop-loss Insurers - Quarterly Report (9/1998 edition);"

(c) ERF-3, "Electronic Report Format for Guaranteed Acceptance Program Participating Insurer - Annual Report (9/1998 edition);"

(2) This material may be inspected, copied, or obtained at the

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

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 30, 1998

FILED WITH LRC: October 2, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998, at 10 a.m. at the offices of 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 November 16, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation requires Guaranteed Acceptance Program (GAP) participating and supporting insurers to report specific information regarding its GAP participating insureds, information about GAP participating insurers, and information about GAP supporting insurers.

2. Second and subsequent years: This administrative regulation requires Guaranteed Acceptance Program (GAP) participating and supporting insurers to report specific information regarding its GAP participating insureds, information about GAP participating insurers, and information about GAP supporting insurers.

(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 may incur additional expenses for the development of information systems that will maintain the data collected pursuant to this administrative regulation.

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 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:

(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, sec. 21 requires the commissioner to establish, by administrative regulation, the form and frequency every insurer shall report information to the Department of Insurance. For this reason, no other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Department of Insurance to administer and evaluate the GAP program.

(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 affect on public health would result.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented the GAP program could not be administered nor its effectiveness evaluated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers issuing health benefit plans in Kentucky.

PUBLIC PROTECTION & REGULATION CABINET Department of Financial Institutions (New Administrative Regulation)

808 KAR 1:031. Repeal of 808 KAR 1:030 and 808 KAR 1:070.

RELATES TO: KRS 287.050, 287.061, 288.450, 289.031, 290.015, 291.440

STATUTORY AUTHORITY: KRS 287.011, 287.020, 288.610, 289.702, 290.070, 291.530

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulations are no longer required because their provisions are addressed in the related statutes or conflict with a statute.

Section 1. 808 KAR 1:030 and 808 KAR 1:070 are repealed.

ARTHUR FREEMAN, Commissioner
COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 15, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation is scheduled for November 30, 1998, at 10 a.m., EST, at the Department of Financial Institutions. Individuals who wish to be heard at this hearing must notify the contact person noted below in writing by November 19, 1998, of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed regulation. The department will not make a transcript of the hearing unless a person makes a request for a transcript prior to November 19, 1998. If a person does not wish to be heard at the hearing, the person may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787.

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Banks, consumer loan companies, savings and loan associations, credit unions, and industrial loan corporations who file applications with this department and who become licensed by this department. The number is indeterminable.

(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: Indeterminable, 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: Indeterminable, 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: None

2. Continuing costs or savings: 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: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation, if in conflict:

(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 regulated entities only have one class each.

PUBLIC PROTECTION & REGULATION CABINET

Department of Financial Institutions
(New Administrative Regulation)

808 KAR 6:006. Repeal of 808 KAR 6:005.

RELATES TO: KRS 288.470, 288.600, 291.520(5)

STATUTORY AUTHORITY: KRS 288.610, 291.530

NECESSITY, FUNCTION, AND CONFORMITY: The administrative regulation is no longer required because its provisions are addressed in the related statutes.

Section 1. 808 KAR 6:005 is repealed.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 15, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the proposed adminis-

trative regulation is scheduled for November 30, 1998, at 10 a.m., EST, at the Department of Financial Institutions. Individuals who wish to be heard at this hearing must notify the contact person noted below in writing by November 19, 1998, of their intent to attend the hearing. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed regulation. The department will not make a transcript of the hearing unless a person makes a request for a transcript prior to November 19, 1998. If a person does not wish to be heard at the hearing, the person may submit written comments on the proposed regulation to the contact person noted below.

CONTACT PERSON: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Telephone (502) 573-3390, Fax (502) 573-8787.

REGULATORY IMPACT ANALYSIS

Contact Person: Colleen Keefe

(1) Type and number of entities affected: Consumer loan companies and industrial loan corporations who are licensed by this department. The number is indeterminable.

(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: Indeterminable, 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: Indeterminable, 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: None

2. Continuing costs or savings: 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: Revenue neutral.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which the administrative regulation will be implemented: Indeterminable, no comments received.

(b) Kentucky: Indeterminable, no comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation, if in conflict:

(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 regulated entities only have one class each.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(New Administrative Regulation)

902 KAR 4:110. Abortion information.

RELATES TO: KRS 194A.030, 211.090, 211.180, 311.720
STATUTORY AUTHORITY: KRS 194A.050, 311.725

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the cabinet to adopt such administrative regulations necessary to protect and maintain the health, welfare and personal dignity, of the citizens of the Commonwealth. KRS 311.725 requires the secretary of the cabinet to publish printed materials to inform the pregnant woman who is seeking an abortion concerning the probable anatomical and physiological characteristics of the embryo or fetus at appropriate gestational increments. Materials to inform the pregnant woman concerning public and private agencies and services to assist her through pregnancy, childbirth and while the child is a dependent and the support obligations of the father of the child who is born alive.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Department" means Department for Public Health.

Section 2. Informational Materials. (1) The cabinet shall develop and publish materials to be offered to pregnant women seeking an abortion at least twenty-four (24) hours in advance of the abortion. The materials are:

(a) The "Information About Fetal Development" pamphlet shall provide the following information:

1. Probable anatomical and physiological characteristics of the embryo or fetus;
2. Photographs depicting the embryo or fetus; and
3. A scale or explanation to aid in determining the actual size of the fetus.

(b) The "Available Resources for Pregnant Women" provides the following information:

1. A list of available public and private agencies with toll free numbers to assist women both during and after pregnancy;
2. A description of the services offered by the agencies; and
3. A description and toll free number of the Division of Child Support which shall provide information on the support obligations of a father of a child who is born alive.

(3) The cabinet shall make available the requested number of materials.

(4) The hospital, physician, medical facility, or entity requesting the materials shall be charged a fee of four (4) dollars.

(a) The fee shall be paid by check made payable to the Kentucky State Treasurer.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Information About Development" dated 12/1998; and
- (b) "Available Resources for Pregnant Women" dated 12/1998.

(2) This material may be inspected, copied or obtained at the Department for Public Health, 275 East 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: October 13, 1998

FILED WITH LRC: October 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held November 23, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by November 16, 1998. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public

hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Patty Patrick, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trisha Mullins

(1) Type and number of entities affected: All pregnant women seeking abortions, physicians, medical facilities and hospitals are affected by this administrative regulation.

(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 were received on this issue. Cost of living and employment in Kentucky will not be impacted by 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 comment received: No public comments were received on this issue. Physicians, medical facilities, hospitals and individuals will pay the required fee to cover the costs of producing this publication to obtain the printed informational materials to be provided to a pregnant woman who is seeking an abortion, if she chooses to view the materials. Minimal fiscal impact on 9 billion dollar health care delivery system.

(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 Department for Public Health will incur the cost of obtaining copyrights, developing, publishing, collecting the fees, storing and distributing the materials. The cost will include staff time spent in these activities. Individuals, medical facilities, hospitals and physicians will realize a fee for obtaining the informational materials to be provided to a pregnant woman who is seeking an abortion, if she chooses to view these materials.

2. Second and subsequent years: With the exception of the cost of obtaining the copyrights, the cost to the department individuals, hospitals and medical facilities will remain the same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department for Public Health will incur the cost of obtaining copyrights, developing, publishing collecting the fees, storing and distributing the materials, as well as staff time for these activities.

2. Continuing costs or savings: The Department for Public Health will incur the cost of revising, publishing, collecting the fees, storing and distributing the materials, as well as staff time for these activities.

3. Additional factors increasing or decreasing costs: The Department for Public Health will experience an increased cost at anytime a copyright release is sought for the informational booklet, or anytime the cost for printing the materials, storing or distribution increase.

(b) Reporting and paperwork requirements: The department will experience increased staff time and paperwork associated with the collection and tracking of fees and the distribution of the material.

(4) Assessment of anticipated effect on state and local revenues: No effect on local revenues. State revenue generated will be used to recover the costs associated with the production and distribution of the informational materials.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration will be financed by the collection of the fees for the informational materials.

(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. Individuals, hospitals, physicians and medical facilities will pay a fee to obtain the informational materials.

(b) Kentucky: Individuals, hospitals, physicians and medical facilities will pay a fee to obtain the informational materials.

(7) Assessment of alternative methods; reasons why alternatives were rejected: HB 85 of the General Assembly is specific as to the requirements of the materials to be provided to the pregnant women who seek an abortion.

(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 comply with the provisions of HB 85 of the 1998 General Assembly.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, the Cabinet for Health Services would be out of compliance with the mandates of HB 85 of the 1998 General Assembly.

(c) If detrimental effect would result, explain detrimental effect: The cabinet must comply with the provisions of HB 85 of the 1998 General Assembly.

(9) Identify any statute, administrative regulation or governmental 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: 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 was not applied because HB 85 of the General Assembly applies to all pregnant women seeking an abortion.

CABINET FOR HEALTH SERVICES

Office of Certificate of Need

(New Administrative Regulation)

902 KAR 20:134. Repeal of 902 KAR 20:135.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 13A.350, 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: 902 20:135 provides a fee schedule for certificate of need applications but is no longer required because 900 KAR 6:020 was established to provide a fee schedule for certificate of need applications and provides the most current fee schedule.

Section 1. 902 KAR 20:135, Certificate of need application fee schedule is hereby repealed.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held November 23, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by November 16, 1998. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation maintains the compliance, reporting and paperwork requirements contained in 900 KAR 6:050.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First Year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues. The certificate of need program is an established program that has been in existence for 25 years. This administrative regulation does not alter the fees already associated with the certificate of need process.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process. The agency also collects fees for the filing of applications.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received on this issue.

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The Cabinet for Health Services is mandated by statute (KRS Chapter 216B) to promulgate administrative regulations setting forth certificate of need procedures.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The certificate of need process was established by the Kentucky General Assembly to help contain health care costs in order that the citizens of the Commonwealth might enjoy cost-effective health care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would result if this administrative regulation is not implemented

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented there will be no control over the proliferation of health facilities and health services in the Commonwealth.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all health services and health facilities in the Commonwealth.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only those local govern-

ments that hold or apply for certificates of need.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services and health facilities provided by local governments.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation affects health services provided by local government by setting forth the requirements for obtaining and maintaining certificates of need.

**CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(New Administrative Regulation)**

902 KAR 20:360. Abortion facilities.

RELATES TO: KRS 213.101, 216B.010 to 216B.130, 216B.990, 311.710 to 311.830, 314.011(8), 314.042(8), 1998 Ky. Acts ch. 614, sec. 2

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 582, sec. 4

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 582, sec. 4 requires that the Cabinet for Health Services regulate abortion facilities. This administrative regulation establishes the licensure requirements for abortion facilities.

Section 1. Definitions. (1) "Abortion" is defined in KRS 311.720(1).

(2) "Abortion facility" is defined in 1998 Ky. Acts ch. 582, sec. 1.

(3) "Cabinet" means the Cabinet for Health Services.

Section 2. Licenses. (1) A license to operate an abortion facility shall not be required for a health facility licensed to perform the services regulated by 902 KAR 20:016 or 902 KAR 20:106. That health facility shall:

(a) Comply with the requirements of its respective licensure category and provide written notice of its intent to perform abortions to the Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621;

(b) Comply with the reporting requirements of 1998 Ky. Acts ch. 582, sec. 4; and

(c) Be exempt from any other licensure requirements of this administrative regulation.

(2) The license required by 1998 Ky. Acts ch. 582, sec. 4 shall be conspicuously posted in a public area of the facility.

(3) An applicant for licensure shall file with the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, an application for license to operate an abortion facility.

(4) An applicant for a license shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable administrative regulations relating to an abortion facility:

(a) Compliance with licensure administrative regulations shall be ascertained through an on-site inspection of the facility. A licensure inspection may be unannounced.

(b) A representative of the inspecting agency shall have access to the facility during the hours that the facility operates.

(c) A regulatory violation identified during an inspection shall be transmitted in writing to the facility by the inspecting agency.

(d) The facility shall submit a written plan for the elimination or correction of the regulatory violation to the inspecting agency within ten (10) days.

1. The plan shall specify the date by which each violation shall be corrected.

2. Following a review of the plan, the inspecting agency shall notify the facility in writing of the acceptability of the plan.

3. If a portion or all of the plan is unacceptable:

a. The inspecting agency shall specify the reasons for the unacceptability; and

b. The facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(5) A licensee shall, as a condition of licensure or relicensure, be in compliance with the reporting requirements of KRS 213.101.

(6) An unannounced inspection shall be conducted:

(a) On a complaint allegation; and

(b) Utilizing the procedures established in subsection (3) of this section.

(7) A license shall remain in effect for one (1) year from the date of issuance unless otherwise expressly provided in the license certificate.

(8) A license shall be renewed upon payment of the prescribed fee and compliance with the licensure administrative regulations.

(9) Each license to operate shall be issued for the person or persons and premises named in the application.

(10) A new application shall be filed in the event of change of ownership.

(a) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period.

(b) An additional fee shall not be charged for the remainder of the licensure period.

Section 3. Fee Schedule. (1) Annual fees. The annual licensure fee (including a renewal) for abortion facilities shall be \$155 for each licensed facility.

(2) Fees shall be paid by check made payable to Kentucky State Treasurer and sent to Cabinet for Health Services, Division of Licensing and Regulation, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

Section 4. Appeals. (1) If the cabinet denies, suspends or revokes licensure, it shall issue and serve by certified mail or by personal service on the licensee of the facility, or its agent for service of process, a written notice of denial, suspension or revocation of licensure. Said notice shall set forth the specific findings of the cabinet alleged to have resulted in the action taken and shall advise the licensee of the facility of his right to appeal such denial, suspension or revocation at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Health Services. Upon receipt of the written request for hearing, the secretary shall designate a hearing officer in accordance with KRS 13B.030 and 13B.040.

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing. Notice of the hearing shall be served by certified mail, return receipt requested, to the last known address of the parties, or by personal service, not less than twenty (20) days in advance of the hearing date. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, regulations and administrative action by the cabinet involved, and shall comply with KRS 13B.050(3).

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order. Prehearing conferences are to be open to the public. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(6) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding. The record shall consist of those items listed in KRS 13B.130, including:

(a) The notice of denial, suspension or revocation of licensure which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer containing the findings of fact, conclusions of law and final decision.

(7) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 13B.130.

Section 5. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the abortion facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the abortion facility.

(b) The licensee shall establish written policies for the administration and operation of the abortion facility.

(c) The licensee shall establish lines of authority and designate the person who shall be principally responsible for the daily operation of the abortion facility.

(2) Policies.

(a) Administrative policies. The abortion facility shall have written administrative policies covering all aspects of the operation, including:

1. A description of organizational structure, staffing and allocation of responsibility and accountability;
2. A description of referral linkages with inpatient facilities and other providers;
3. Policies and procedures for the guidance and control of personnel performances;
4. A description of services included in the program;
5. A description of the administrative and patient care records and reports;
6. Procedures to be followed in the storage, handling and administration of drugs and biologicals; and
7. A policy to specify the provision of emergency medical services.
8. Procedures to be followed in obtaining the voluntary and informed written consent of the pregnant woman, as required by 1998 Ky. Acts ch. 614, sec. 2.

(b) Patient rights policies. The abortion facility shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of a procedure for handling patient grievances.
2. Is informed of services available at the abortion facility and of related charges including any charges not covered under third-party payor arrangements.
3. Is informed of her medical condition, unless medically contraindicated (as documented in her medical record), and is afforded the opportunity to participate in the planning of her medical treatment and to refuse to participate in experimental research.
4. Is encouraged and assisted to understand and exercise her patient rights; to this end she may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.
5. Is assured confidential treatment of her records and is afforded the opportunity to approve or refuse their release to any individual not involved in her care except as required by Kentucky law or third-party payment contract.
6. Is treated with consideration, respect, and full recognition of her dignity and individuality, including privacy in treatment and in the care of her personal health needs.

(3) Personnel.

(a) A facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to the patients.

1. The licensee shall obtain written applications for employment from all employees. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate licensure, if applicable, and health and personal background of each employee.

2. Prior to performing job duties, all employees and volunteers who have direct patient contact within the abortion facility, shall have tuberculin skin testing conducted unless a previously positive reaction is documented in millimeters. The intradermal (Mantoux)

method, using five tuberculin units of stabilized purified protein derivative (PPD) is to be used. For employees or volunteers who have no documentation of a negative PPD result during the preceding twelve (12) months, then the two (2) step procedure (one (1) PPD test with negative result followed one (1) to three (3) weeks later by another PPD test) is required to establish a reliable baseline. If employees or volunteers have complete documentation of a negative PPD during the preceding twelve (12) months (may be a single PPD or a two-(2) step PPD), then a single PPD is acceptable to establish the baseline for current employment.

a. A person with negative tuberculin skin tests who has direct contact with patients shall have an annual tuberculin skin test.

b. An initial or routine chest x-ray shall not be required for an employee or volunteer with negative tuberculin test results who is asymptomatic.

c. Personnel with a positive reaction to the skin test shall have no patient contact until certified noncontagious by a physician.

d. A chest x-ray shall be required to determine whether TB disease is present for an employee or volunteer:

- (i) With reactions of 10mm and over to the preemployment tuberculin test;
- (ii) Who has previously documented positive reactions;
- (iii) With newly converted skin tests; and
- (iv) With symptoms suggestive of TB (e.g., cough, weight loss, night sweats, fever, etc.)

e. If TB disease is diagnosed, appropriate treatment shall be given and patient contacts examined.

f. Personnel who are known or suspected to have TB shall be required to be evaluated by a physician and shall not be allowed to return to work until they have been certified noncontagious by the physician.

g. Preventive treatment of personnel with new positive reactions is essential, and shall be considered for all infected employees or volunteers who have patient contact, unless specifically contraindicated.

(i) An employee or volunteer who completes treatment, either for disease or infection, may be exempt from further routine chest radiographic screening unless he has symptoms of TB.

(ii) Positive reactors who are unable or unwilling to take preventive treatment shall not receive an annual chest x-ray. These individuals shall be informed of their lifelong risk of developing and transmitting TB to individuals in the institution and in the community. They shall be informed of symptoms which suggest the onset of TB, and the procedure to follow should such symptoms develop.

h. Postexposure skin tests shall be provided for tuberculin negative employees or volunteers within twelve (12) weeks after termination of contact for any suspected exposure to a documented case of pulmonary TB.

i. A person shall be designated in writing at each facility to coordinate TB screening of personnel and any other TB control activities.

3. All professional and allied health professional staff members shall be currently certified with American Red Cross or American Heart Association to perform cardiopulmonary resuscitation and capable of recognizing symptoms of distress. A clinical staff member who is legally qualified to perform advanced cardiac life support shall be present while patients are undergoing abortion procedures and recovery in the facility.

4. No employee or volunteer of the facility while afflicted with any infected wounds, boils, sores, or an acute respiratory infection, or any other contagious disease or illness, shall work in any capacity in which there is a likelihood of such person transmitting disease to other individuals.

5. Each facility shall have and execute a written orientation program to familiarize each new staff member with the facility and its policies and procedures, to include fire safety and other safety measures, medical emergencies, and infection control.

6. In-service training programs shall be planned and provided for all employees and volunteers to ensure and maintain their understanding of their duties and responsibilities. Records shall be maintained to reflect program content and individual attendance. The following training shall be provided at least annually:

a. Infection control, to include as a minimum, universal precautions against blood-borne diseases, general sanitation, personal hygiene such as hand washing, use of masks and gloves, and in-

struction to staff if there is a likelihood of transmitting a disease to patients or other staff members;

b. Fire protection, to include evacuating patients, proper use of fire extinguishers, and procedures for reporting fires;

c. Confidentiality of patient information and records, and protecting patient rights; and

d. Licensing regulations.

7. Job descriptions.

a. Written job descriptions that adequately describe the duties of every position shall be maintained.

b. Each job description shall include: position title, authority, specific responsibilities and minimum qualifications.

c. Job descriptions shall be reviewed at least annually, kept current and given to each employee and volunteer when assigned to the position and when revised.

8. A personnel file shall be maintained for each employee and for each volunteer. The records shall be completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information. The file shall contain a current job description that reflects the individual's responsibilities and work assignments, and documentation of the person's orientation, in-service education, appropriate licensure, if applicable, and TB skin testing.

(b) Clinical staff.

1. Physicians, nurses, and allied health professionals shall constitute the clinical staff.

2. The clinical staff shall meet at least quarterly to review and analyze their clinical experiences; minutes shall be maintained of such meetings.

3. Physicians.

a. Abortions shall be performed only by a physician who is licensed to practice medicine in Kentucky and who is properly qualified by training and experience to perform pregnancy termination procedures.

b. A physician shall remain on the premises until all patients are stable, and are ready for discharge.

(c) Nursing.

a. Nursing care shall be under the supervision of a registered nurse currently licensed in Kentucky.

b. A registered nurse shall be on duty to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period and until discharge by the attending physician.

c. Licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff.

(d) Allied health professionals, working under appropriate direction and supervision, may be employed to work only within areas where their competency has been established.

(e) If ultrasonography is conducted, the procedure shall be conducted by a physician or by an ultrasound technician who shall have documented evidence of completion of a training course in ultrasonography.

Section 6. Dissemination of Information. Abortion facilities shall comply with the requirements of 1998 Ky. Acts ch. 614, sec. 2 and maintain an adequate supply of current printed material from the Division of Adult and Child Health, Department for Public Health, Cabinet for Health Services, which has not been altered in content.

Section 7. Patient Care. Abortion facilities shall not serve patients whose needs exceed the resources or capabilities of the facility. The facility shall formulate and adhere to written patient care policies and procedures designed to ensure professional and safe care for patients, to include:

(1) Admission criteria;

(2) Physician and nurse responsibilities for the services offered;

(3) Specific details regarding the preoperative procedures performed, to include history and physical examination, including verification of pregnancy, estimation of gestational age, identification of any preexisting conditions or complications;

(4) The actual abortion procedure, to include the use of:

(a) IVs;

(b) Fluids;

(c) Analgesia/anesthesia. General anesthesia shall be administered only by personnel acting within the limits of their statutory scope of practice; and

(d) Tissue examination and disposal.

(5) Postprocedure care and recovery room procedures to include emergency care;

(6) Provisions for the education of patient, family and others, as appropriate in pre- and postprocedure care;

(7) Plans for follow-up patient care after discharge from the facility;

(8) Management and appropriate referral of high-risk conditions;

(9) Transfer of patients who, during the course of pregnancy termination are determined to need care beyond that of the facility; and

(10) Infection control and sanitation procedures to include duties and responsibilities of the infection control committee that shall include the development and implementation of specific patient care and administrative policies aimed at investigating, controlling and preventing infections in the facility.

Section 8. Pharmaceutical Services. Pharmaceutical services shall be provided in accordance with accepted professional practice and federal, state and local laws.

(1) Emergency drugs:

(a) Emergency kit or emergency drugs: Each facility shall maintain an emergency kit or stock supply of drugs and medicines for use in treating the emergency needs of patients. This kit or medicine shall be stored in such a manner as to prohibit its access by unauthorized personnel. A listing of contents by drawer or shelf shall be placed on the cabinet or emergency cart to allow quick retrieval. Contents shall correspond with the inventory list. Drugs and equipment shall be available within the facility to treat, as a minimum, the following conditions:

1. Cardiac arrest;

2. Seizure;

3. Asthmatic attack;

4. Allergic reaction;

5. Narcotic toxicity;

6. Hypovolemic shock;

7. Vasovagal shock.

(b) Drug Reference Sources. Each facility shall maintain reference sources for identifying and describing drugs and medicines.

(2) Administering drugs and medicines. Drugs and medicines shall not be administered to individual patients or to anyone within or outside the facility except by those authorized by law under orders of a physician or other ordering personnel acting within the limits of their statutory scope of practice. Such orders shall be in writing and signed personally by the physician or other personnel who prescribes the drug or medicine.

(3) Medicine storage. Medicines and drugs maintained in the facility for daily administration shall not be expired and shall be properly stored and safeguarded in enclosures of sufficient size that are not accessible to unauthorized persons. Refrigerators used for storage of medications shall maintain an appropriate temperature as determined by the requirements established on the label of medications. A thermometer accurate to \pm three (3) degrees Fahrenheit shall be maintained in these refrigerators. Only authorized personnel shall have access to storage enclosures. Controlled substances and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable state and federal laws.

(4) Medicine preparation area. Medicines and drugs shall be prepared for administration in an area that contains a counter and a sink. This area shall be located in such a manner as to prevent contamination of medicines being prepared for administration.

(5) Records. Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered.

(6) Poisonous substances. All poisonous substances shall be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration.

Section 9. Laboratory Services. (1) Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under 42 CFR 493.

(a) Facilities for collecting specimens shall be available on site.

(b) If laboratory services are provided on site they shall be directed by a person who qualifies as a director under KRS Chapter 333 and 42 CFR part 493 and shall be performed in compliance with KRS Chapter 333 and 42 CFR 493 standards.

(2) Prior to the procedure, laboratory tests shall include a recognized urine pregnancy test unless the physician identifies fetal heart beats or fetal movements on physical examination. If positive, the following additional tests are required:

(a) Urinalysis including albumin and glucose examination;

(b) Hematocrit or hemoglobin; and

(c) Determination of Rh factor (including the Du variant when the patient is Rh negative); Rh (D) immune globulin (human) shall be administered, prior to discharge, to patients who are determined to be Rh negative.

(3) Aspirated tissues shall be examined to verify that villi or fetal parts are present; if villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy.

(4) A written report of each laboratory test and examination shall be a part of the patient's record.

(5) If a patient is bleeding profusely and a transfusion of red blood cells is necessary, she shall be administered fluids and transported immediately to an acute care hospital.

(6) All laboratory supplies shall be monitored for expiration dates, if applicable.

Section 10. Medical Waste Disposal. (1) Sharp wastes.

(a) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(b) Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

(c) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous.

(2) Disposable waste.

(a) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(b) The abortion facility shall establish specific written policies regarding handling and disposal of all wastes.

(c) Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

(d) The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(e) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations.

(f) Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:023 or 401 KAR 61:013.

Section 11. Emergency Care. (1) An abortion facility shall enter into written agreements with a licensed acute-care hospital and a local ambulance service for the transport and treatment of patients when hospitalization becomes necessary, as required by 1998 Ky. Acts ch. 582, sec. 5.

(2) These written agreements shall be filed with the cabinet.

Section 12. Equipment and Supplies. There shall be appropriate equipment and supplies maintained for the patients to include:

(1) A bed or recliner suitable for recovery;

(2) Oxygen with flow meters and masks or equivalent;

(3) Mechanical suction;

(4) Resuscitation equipment to include resuscitation bags and oral airways;

(5) Emergency medications, intravenous fluids, and related supplies and equipment;

(6) A clock with a sweep second hand;

(7) Sterile suturing equipment and supplies;

(8) Adjustable examination light;

(9) Containers for soiled linen and waste materials with covers;

(10) Refrigerator; and

(11) Appropriate equipment for the administering of general anesthesia, if applicable.

Section 13. Consultation. Arrangements shall be made for consultation or referral services to be available as needed.

Section 14. Quality Improvement. (1) The facility shall establish and implement a written plan for a quality improvement program for patient care. The plan shall specify the individual responsible for coordinating the quality improvement program and shall provide for ongoing monitoring of staff and patient care services.

(2) There shall be an ongoing process for monitoring and evaluating patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services.

(3) Evaluation of patient care throughout the facility shall be criteria-based, so that certain actions are taken or triggered when specific quantified, predetermined levels of outcomes or potential problems are identified.

(4) The quality improvement process shall incorporate quarterly review of a minimum of five (5) percent of medical records of patients undergoing procedures during a given quarter, but not less than five (5) records shall be reviewed.

(5) The quality improvement process shall include evaluation by patients of care and services provided by the facility. If the families of patients are involved in the care and services provided by the facility, the quality improvement process shall include a means for obtaining input from families of patients.

(6) The administrator shall review the findings of the quality improvement program to ensure that effective corrective actions have been taken, including as a minimum, policy revisions, procedural changes, educational activities, and follow-up on recommendations, or that additional actions are no longer indicated or needed.

(7) The quality improvement program shall identify and establish indicators of quality care, specific to the facility, that shall be monitored and evaluated.

(8) The results of the quality improvement program shall be submitted to the licensee for review at least annually and shall include at least the deficiencies found and recommendations for corrections or improvements. Deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee.

Section 15. Medical Records. (1) Medical records shall be maintained for all patients examined or treated in the abortion facility. The records shall be completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information. All information shall be centralized in the patient's medical record. All entries shall be legibly written or typed, dated and signed.

(a) The record shall include the following information:

1. A face sheet with patient identification data, to include: name, address, telephone number, Social Security number, date of birth, and name, address and telephone number of person to be notified in the event of an emergency;

2. Signed consent for the procedure;

3. Date of initial examination;

4. Date of abortion;

5. Referring and attending physicians' names and phone numbers, if applicable;

6. Complete medical history to include medications currently being taken;

7. Physical examination, to the extent necessary to determine the health status of the patient, within fifteen (15) days of the procedure, including detail of findings of pelvic examination and estimated gestational age, according to the first day of the last menstrual period;

8. Results of diagnostic tests and examinations, e.g., x-ray, electrocardiography, clinical laboratory, pathology, consultations, ultrasound;

9. Preoperative diagnosis;
 10. Counselor's notes if applicable;
 11. Physician's orders;
 12. Complete record of abortion procedure to include:
 - a. Vital signs, i.e., temperature, pulse, respiration, and blood pressure, prior to and following the procedure;
 - b. Name of procedure performed;
 - c. Anesthetic agent utilized;
 - d. Name of attending physician performing the procedure;
 - e. Names of clinical assistants in attendance, to include other physicians, physician's assistants, anesthesiologists, nurses, or specially-trained technicians;
 - f. Signature of physician performing the procedure.
 13. Nurses' notes;
 14. Progress notes to include a postanesthesia note if general anesthesia is utilized;
 15. Attending physician's description of gross appearance of tissue removed;
 16. Final diagnosis;
 17. Condition on discharge;
 18. Post-op orders and follow-up care; and
 19. Documented verification that the woman has received information and was offered printed materials as required by 1998 Ky. Acts ch. 614, sec. 2.
- (b) The attending physician shall complete and sign the medical record within seventy-two (72) hours following discharge.
- (2) Confidentiality of all patient records shall be maintained at all times.
- (3) Transfer of records. The abortion facility shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and shall, upon proper release, transfer medical records or an abstract thereof when requested.
- (4) Retention of records. After patient's death or discharge the complete medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 16. Infection Control. (1) There shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among patients and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

(8) Adequate space shall be provided for storage, maintenance and distribution of sterile supplies and equipment.

(9) Sterile supplies and equipment shall not be mixed with unsterile supplies, and shall be stored in dust-proof and moisture-free units. They shall be properly labeled.

(10) Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and materials. The sterilizing equipment shall have approved control and safety features.

Section 17. Linen and Laundry. (1) An adequate supply of clean linen or disposable materials shall be maintained in order to ensure change of linen on procedure tables between patients.

(2) Provisions for proper laundering of linen and washable goods shall be made. Soiled and clean linen shall be handled and

stored separately. Storage shall be in covered containers.

(3) A sufficient supply of cloth or disposable towels shall be available so that a fresh towel can be used after each hand washing. Towels shall not be shared.

Section 18. Housekeeping. (1) General.

(a) A facility shall be kept neat, clean and free from odors;

(b) Accumulated waste material shall be removed daily or more often if necessary;

(c) There shall be frequent cleaning of floors, walls, ceilings, woodwork and windows;

(d) The premises shall be kept free from rodent and insect infestation; and

(e) Bath and toilet facilities shall be maintained in a clean and sanitary condition at all times.

(2) Cleaning materials and supplies shall be stored in a safe manner. All harmful agents shall be locked in a closet or cabinet used for this purpose only.

Section 19. Refuse and Waste Disposal. (1) All garbage and waste shall be collected, stored and disposed of in a manner designed to prevent the transmission of disease.

(a) Containers shall be washed and sanitized before being returned to work areas; and

(b) Disposable type containers shall not be reused.

(2) Containers for garbage and refuse shall be covered and stored outside and placed on an approved platform to prevent overturning by animals, the entrance of flies or the creation of a nuisance. All solid waste shall be disposed of at sufficient frequencies in a manner so as not to create a rodent, insect or other vermin problem.

(3) Immediately after emptying, containers for garbage shall be cleaned.

(4) All medical waste shall be managed in accordance with Section 12 of this administrative regulation.

Section 20. Outside Areas. All outside areas, grounds and adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard or as a haven for insects, rodents and other pests. Outside stairs, walkways, ramps and porches shall be maintained free from accumulations of water, ice, snow and other impediments.

Section 21. Disaster Preparedness. (1) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building. Fire drills shall be practiced in accordance with state fire administrative regulations.

(2) All fire protection and alarm systems and other fire fighting equipment shall be inspected and tested at least once each year, and more often if necessary to maintain them in serviceable condition.

Section 22. Facility Specifications. (1) An abortion facility shall provide a functionally safe and sanitary environment for patients, personnel, and the public.

(2) An abortion facility shall include space for the following functions:

(a) Reception and waiting;

(b) Administrative activities such as patient admission, record storage, and business affairs;

(c) Patient dressing and storage of personal items;

(d) Preoperative evaluation, including physical examination, laboratory testing, and preparation for anesthesia;

(e) Performance of surgical procedures;

(f) Preparation and sterilization of instruments;

(g) Storage of equipment, drugs, and fluids;

(h) Postanesthetic recovery; and

(i) Janitorial and utility support.

Section 23. Injunctive Relief. The Office of Inspector General shall refer instances where administrative penalties and legal sanc-

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

tions have failed to prevent or cause a discontinuance of a violation of KRS Chapter 216B to the secretary of the cabinet for action in accordance with 1998 Ky. Acts ch. 582, sec. 7.

Section 24. Incorporation by Reference. (1) The Application for License to Operate an Abortion Facility, L&R 240 (7/98), is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TIMOTHY L. VENNO, Inspector General

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: October 8, 1998

FILED WITH LRC: October 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this regulation will be held November 23, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by November 16, 1998. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Unknown. Less than 10 applications for licensure are projected during the first year.

(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: The licensure fee for each licensed facility shall be \$155. The facility is required to document in the medical record that the patient received the abortion information required by HB85, and to comply with reporting requirements of KRS 213.101. The facility is also required to file with the cabinet written agreements with hospitals and ambulance services regarding emergency care arrangements.

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: Additional forms for surveyors.

(4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: General funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication. No conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(New Administrative Regulation)**

907 KAR 1:383. Repeal of 907 KAR 1:382.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 Ky. Acts ch. 426, sec 4(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. This administrative regulation repeals 907 KAR 1:382 which is obsolete. A new manual, titled Preventive Public Health Services Manual is incorporated in 907 KAR 1:360.

Section 1. 907 KAR 1:382, Incorporation by Reference of the Preventive Public Health Services Manual, is hereby repealed.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 25, 1998

FILED WITH LRC: September 25, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 23, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 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,

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: potentially 270,661 Medicaid eligible children under age 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 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: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Promulgation of this administrative regulation would ensure that obsolete material is no longer utilized, and will allow the promulgation of 907 KAR 1:360 which would provide the public health departments with new early and periodic, screening, diagnosis, and treatment (EPSDT) requirements. This will ensure that Medicaid eligible children have access to these new services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: New EPSDT requirements would not be available to Medicaid eligible children who access their services through the local public health departments.

(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 indi-

gent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. County government

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation affects the operation of local health departments which are partially funded and governed by the county.

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 (+/-): 0

Expenditures (+/-): 0

Other Explanation: 0

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (New Administrative Regulation)

907 KAR 3:065. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 195.025, 194A.025, 281.014, 42 CFR 431.53, 440.710, 42 USC 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050, 205.520, 1998 Ky. Acts chs. 607, 615, 426 Sec.4(3)

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 and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to a waiver of Section 1915(b) of the Social Security Act, approved by the Health Care Financing Administration to waive Medicaid requirements related to nonemergency medical transportation.

Section 1. Definitions. (1) "Capitated rate" means one (1) amount paid each month for each Medicaid recipient covered by the agreement reached with the provider under authority of the waiver. The capitated rate shall not be a statewide rate but shall be set individually for each Human Service Transportation delivery region as established in 603 KAR 7:080.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Human service transportation" is defined as the provision of mass transportation, taxi services and volunteer providers to transport an individual who is eligible to receive Medicaid services.

(4) "Nonemergency medical transportation" means transportation service provided by a provider who is a:

(a) Specialty carrier who transports, through specially equipped vehicles, an individual who needs a wheelchair. The equipment required shall be a van or van-type vehicle with a ramp or lift for wheelchairs as defined in KRS 281.014;

(b) Specialty carrier who transports an individual who due to physical or mental impairment needs to be accompanied from his door to the door of the medical provider;

(c) Transportation provider who provides door to door transportation in areas where fixed routes are not available; or

(d) Fixed route mass transit system that provides transportation to the general public and Medicaid recipients.

(5) "Risk" means the difference between the capitated payment and the expense incurred by the human service transportation delivery broker or provider to provide the nonemergency medical transportation services.

(6) "Transportation broker or provider" is defined as the entity awarded a contract to provide human service transportation in a specified region.

(7) "Waiver authority" means the provisions contained in 42 USC 1396n(b).

Section 2. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient in the human service transportation regions established in 603 KAR 7:080.

Section 3. Reimbursement. (1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient residing in a county covered by the contract.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

(3) The transportation broker or provider is responsible for all risk associated with the provision of the nonemergency medical transportation.

Section 4. Subcontracted Services. (1) The Transportation Cabinet may subcontract with a transportation broker in accordance with 603 KAR 7:080, Section 4.

(2) The transportation broker or provider and a subcontracted provider, except for a volunteer provider, shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A to operate in the region covered by the contract.

(3) The certification for a provider under contract shall be publicly displayed at the office of the provider.

(4) A provider under contract shall notify within five (5) working days the broker and the department of any change in operating authority requested by the Transportation Cabinet.

Section 5. General Medicaid Coverage Provisions. (1) Non-emergency medical transportation to and from Medicaid-covered services (except pharmacy services), including the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, shall be provided to a Medicaid-eligible individual:

(a) Who is unable to provide his own transportation; and

(b) When free transportation is unavailable.

(2) The recipient shall contact the transportation broker or provider for the area for approval and scheduling of transportation.

Section 6. Appeals. A Medicaid recipient shall be provided the right to an administrative hearing if dissatisfied with any action or inaction on the part of a transportation broker or provider or a subcontracted provider in accordance with 907 KAR 1:563.

Section 7. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided pursuant to a contract in accordance with KRS Chapter 45A and Section 2 of this administrative regulation.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

PUBLIC HEARING: A public hearing on this regulation will be held November 23, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by November 16, 1998. If no notice of intent to attend the hearing is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Hiren Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All Medicaid recipients and all nonemergency medical transportation providers participating in the Medicaid Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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 sole source provider will be required to collect encounter data and provide it to the department for all services provided.

2. Second and subsequent years: The department is responsible for obtaining an independent assessment of the cost effectiveness of the waiver and its impact on recipient access.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$1,346,135.00 (savings) in geographic areas implemented.

2. Continuing costs or savings: \$2,692,270.00 (savings)

3. Additional factors increasing or decreasing costs: Costs to the providers will be decreased because the sole source provider will manage the provision of the transportation services. For example, transportation will be supplied by the provider nearest the geographic location of the recipient and more than one recipient will be transported at the same time. Cost to the department will decrease because the payment is capitated at less than the prior fee-for-service expenditures.

(b) Reporting and paperwork requirements: An independent study to demonstrate that the provision of non-emergency transportation services are not negatively affected by the waiver is required by the Health Care Financing Administration.

(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: Savings realized from implementation of this administrative regulation are federal and state matching funds. Federal matching funds of 50% equaling \$230,950 and state matching funds of 50% equaling \$230,950 will be saved in administration. Federal matching funds of 70.49% equaling \$1,203,455 and state matching funds of 29.51% equaling \$503,815 will be saved in Medicaid benefits.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be

implemented: No public comments received.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Provisions were approved in the HCFA waiver.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will provide improved access to and safety of nonemergency medical transportation by allowing management of the service provision by a sole source provider who is familiar with the needs of the local population.

(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: Not implementing this program will deprive Medicaid recipients of increased access to nonemergency medical transportation and assurance of safe transportation vehicles with trained 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:

(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.

should not have a dramatic effect on revenues.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government: Only part of local government.

3. State the aspect or service of local government to which this administrative regulation relates: any nonemergency nonstretcher public transportation provider would have to contract with the human service transportation delivery broker for that region instead of the DMS.

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. Providers will be reimbursed a capitated payment per trip as negotiated in the contract with the sole source broker/provider instead of current mileage reimbursement per trip. This payment will be based on historical cost data and

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 13, 1998

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 13, 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 September 8, 1998 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Nick Kafoglis; Dick Roeding Representatives James Bruce, Jimmy Lee, and Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Edna Lowery, Ellen Benzing, Jonathan Lowe, Dana Mayton, Biff Baker.

Guests: Jim Shackelford, Attorney General's Office; Debbie Dunn, Bruce McCutchen, Douglas M. Dowell, Eddie Mattingly, Revenue Cabinet; Pam Johnson, William P. Hanes, Retirement Systems; Don Mullis, Angela Robinson, Finance and Administration Cabinet; Gary Munsie, Mark Brengelman, Board of Dentistry; Emma Lou Hartledge, Jim Grawe, Board of Embalmers and Funeral Directors; Dan O'Brien, M.D., Board of Medical Licensure; Joe Helm, Real Estate Commission; Bernadette M. Sutherland, Joyce A. Bonick, Carol McGuire, Board of Nursing; Tom Young, John Wilson, Bob Bates, Department of Fish and Wildlife Resources; Tamela Biggs, Hazel M. Combs, Brenda Priestley, Department of Corrections; Charlie Harman, J.W. Bryan, Maria Bohanan, Transportation Cabinet; Kevin Noland, Board of Education; Janet Banta, Education Professional Standards Board; Jim Nelson, Department of Libraries and Archives; Rebecca Goodman, Gordon Goad, Harold Robinson, Stephen G. Horner, Alcoholic Beverage Control; Sharron S. Burton, Julie M. McPeak, Mark E. McGuire, Jan Stucker, Department of Insurance; Cookie Whitehouse, Ann Gordon, Patricia V. Peery, Trish Howard, Karen Doyle, Eric Friedlander, Thelma Cornett, John Walker, Cabinet for Health Services and Families Children; John Cooper, Jay Huber, KMA/KBA; Barbara Winspur, Malcolm Winspur, David Newman, KMA; Charles M. Williams, Carroll County EMS; William Brian Linder, Central Kentucky EMS Administrators Association; Ted Bradshaw, IIAK; Linda Potter, Fayette County Clerk; Dave Logsdon, County Clerk's Office; Robert Barnett, Kentucky Pharmacists Association; Jerry Deaton; Jim Carlloss, Jr.; John Brazel, Kentucky Chamber of Commerce; Jan Gould, Kentucky Retail Federation; Marie Alagia Cull.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Board of Dentistry

201 KAR 8:140. Continuing education compliance. Gary Munsie, Executive Director of the Board of Dentistry; Mike Porter, Executive Director of the Kentucky Dental Association; and Mark Brengelman, Assistant Attorney General, represented the Board.

In response to a question by Representative Bruce, Mr. Munsie stated that the Board conducted an audit on Continuing Education records once a year.

In response to questions by Senator Roeding, Mr. Munsie stated that: (1) continuing education taught in a classroom presentation setting was included in the business section; (2) a dentist had to have a total of 15 clock hours of continuing education per year, of which: (a) 10 hours would be in a classroom presentation format; and (b) 5 hours could be earned from: 1. magazine articles; 2. journal articles; 3. study course; or 4. computer Internet courses; (3) dentists had an opportunity to acquire continuing education in both formats; and (4) continuing education could be provided in a program presented to a local dental association.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 2(3) was amended to provide that CPR courses had to be approved by the American Heart Association or American Red Cross; (3) Section 3 was amended to permit the Secretary-Treasurer to approve a continuing education course not listed in this administrative regulation; (4) Section 4(2)

was amended to provide that continuing education be taught in a classroom presentation format; (5) Sections 1, 2, and 5 were amended to comply with the formatting requirements of KRS 13A.220(4); and (6) Sections 1, 2, 4, 5, 6, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

Board of Embalmers and Funeral Directors

201 KAR 15:030. Fees. Emma Lou Hartledge, Executive Director, and Jim Grawe, Assistant Attorney General, represented the Board. Marie Cull, Attorney, spoke in support of this administrative regulation on behalf of the Kentucky Funeral Directors Association and their lobbyists.

In response to a question by Chairman Arnold, Ms. Hartledge stated that this administrative regulation established the fee for a courtesy card, that was: (1) authorized by legislation enacted during the 1998 Regular Session of the General Assembly; and (2) a reciprocal card offered to individuals in other states to permit them to enter into Kentucky to pick up bodies.

In response to questions by Representative Allen, Ms. Hartledge stated that: (1) the annual fee for the courtesy card was: (a) \$75; (b) a new fee; and (c) paid by out-of-state individuals who came into Kentucky to perform funeral directing and embalming business; and (2) the fees established in this administrative regulation were used to meet the operating expenses of the Board, including to: (a) pay salaries; (b) buy materials; and (c) conduct administrative hearings.

In response to questions by Senator Kafoglis, Ms. Hartledge stated that: (1) Kentucky funeral directors and embalmers: (a) granted courtesy in other states; and (b) paid: 1. \$50 in West Virginia; and 2. \$100 in Virginia; (2) while she did not think other states currently offered courtesy cards, she believed that the approval of this administrative regulation would lead to additional surrounding states offering courtesy to Kentucky funeral directors and embalmers; (3) if a person in West Virginia paid \$75 for the courtesy card, he could come into Kentucky anytime during the year; (4) if a person did not have a courtesy card, he would have to pay a licensed Kentucky funeral director or embalmer a fee set by that director or embalmer each time he came to Kentucky; and (5) the courtesy card authorized an out-of-state individual to come into Kentucky anytime during the year for a one-time charge of \$75.

In response to questions by Senator Roeding, Ms. Hartledge stated that: (1) the courtesy card: (a) would mean that out-of-state individuals would pay less money over the course of the year; and (b) was similar to a temporary license; (2) the amount of money charged by a funeral director varied, depending on the person, time of conduct, and other factors; (3) the availability of the courtesy card might lead to lower income for Kentucky funeral directors and embalmers; and (4) the Board did not have a surplus.

Mr. Grawe stated that: (1) because the General Assembly enacted legislation that authorized the issuance of a courtesy card during its 1998 Regular Session, this administrative regulation merely established a fee for the processing of the courtesy card; and (2) while there might be some revenue loss because of the availability of a courtesy card, the General Assembly had authorized its use.

In response to questions by Representative Lee, Ms. Hartledge stated that: (1) this administrative regulation: (a) established a new fee for the courtesy card; and (b) did not change the other fees that had been previously established by this administrative regulation; (2) funeral directors across Kentucky had been informed about the courtesy card; and (3) the Board had: (a) worked with the Kentucky Funeral Directors Association; and (b) presented this information to all funeral directors and establishments.

Mr. Grawe stated that the funeral directors and embalmers in Kentucky: (1) had been very involved in the legislative process to gain approval for the courtesy card; and (2) supported the legislation because it would enable them to go to West Virginia reciprocally to conduct services.

In response to a question by Senator Kafoglis, Ms. Hartledge stated that the Kentucky Funeral Directors Association had endorsed this change.

In response to questions by Chairman Arnold, Ms. Hartledge stated that: (1) a Kentucky-licensed person would be required if someone from another state: (a) did not choose to apply for a courtesy card; and (b) wished to come into Kentucky to perform funeral services; (2) a Kentucky funeral director who embalmed a body would be paid for his services, regardless of where the body was from; (3) the courtesy card: (a) allowed the out-of-state individual to come into Kentucky to pick up the body and perform a funeral; (b) did not replace the embalming fee; and (c) served as a temporary license for out-of-state individuals.

Ms. Cull stated that: (1) she was an attorney who represented the Kentucky Funeral Directors Association and their lobbyists; and (2) the Association: (a) had worked very closely with the Board to get this legislation enacted by the General Assembly in order to facilitate the relationship with the West Virginia funeral directors; (b) was aware of the fee that would be required; and (c) believed the fee was necessary to implement the legislation.

In response to a question by Chairman Arnold, Ms. Cull stated that the Kentucky courtesy card would help: (1) Kentucky funeral directors enter into: (a) West Virginia; and (b) other states that were currently considering whether to issue courtesy cards; and (2) move bodies across state lines.

In response to questions by Representative Allen, Ms. Hartledge stated that: (1) while she did not know exactly how much money this fee would raise across the state, she estimated that it would not be much money because the Board had received only four (4) applications to date; (2) while there were almost 2,000 licensed funeral directors in Kentucky, the fee: (a) applied to funeral directors outside of Kentucky; and (b) would not be paid by Kentucky licensed funeral directors; (3) approximately 20 Kentuckians had applied for and received courtesy cards from West Virginia; and (4) the money would be used to fund the daily operations of the Board, including the: (a) salaries of Board staff; (b) per diem of the Board members; and (c) other expenses.

In response to questions by Representative Lee, Ms. Hartledge stated that: (1) a courtesy card: (a) permitted an out-of-state funeral director to: 1. come into Kentucky; 2. sign for the release of a body; 3. take the body back to his state; and 4. once the body was prepared and the funeral held, return to Kentucky to bury the body; (b) did not: 1. prohibit a Kentucky funeral director from: a. embalming a body; or b. charging for that embalming; and 2. authorize an out-of-state funeral director to: a. embalm a body in Kentucky; and b. after embalming, take the body back to his state; and (c) permitted a body to be: 1. taken from Kentucky to West Virginia for a viewing; and 2. returned to Kentucky for funeral services; (2) the person who embalmed the body was authorized to charge for his embalming services prior to the release of the body; and (3) an out-of-state individual: (a) was not required to apply each time he came into Kentucky if he had a courtesy card; and (b) was prohibited from establishing a business in Kentucky under a courtesy card.

Representative Lee stated that he was concerned about the: (1) family members who were burying the deceased person; and (b) number of fees imposed on Kentucky citizens.

Representative Bruce stated that he supported this administrative regulation because the fee would assist the Board in not increasing fees paid by Kentuckians.

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) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee did not approve a motion by Representative Allen, seconded by Senator Roeding, to find this administrative regulation deficient. The motion failed one vote to five votes.

This administrative regulation was approved as amended with Representative Allen objecting.

Board of Nursing

201 KAR 20:070. Licensure by examination. Bernadette Sutherland, Deputy Director; Joyce Bonick, Credentials Branch Manager; and Carol McGuire, Manager, Examination Branch, and Education Consultant, represented the Board.

In response to questions by Chairman Arnold, Ms. Sutherland

stated that: (1) the administrative regulations in 201 KAR Chapter 20 were amended to: (a) establish additional, or clarify existing, requirements for applicants for licensure by examination or by endorsement; (b) clarify the length of time of time applications remain valid; (c) repeal the temporary work permit issued to applicants for examination; (d) establish a fee of \$1 for verification of licensure status; and (e) incorporate required forms by reference; and (2) the temporary work permit for licensure by examination was being repealed.

In response to questions by Senator Kafoglis, Ms. McGuire stated that: (1) while a graduate of an out-of-state program was required to submit an official transcript, a graduate of an in-state program was not required to submit a transcript; and (2) the in-state programs of nursing were required to submit a certified list of graduates, that the Board used to certify individuals as eligible for the examination.

Subcommittee staff stated that: (1) while the initial staff review stated that this administrative regulation was amended to delete the requirement that a graduate from a program of nursing outside of Kentucky submit an official transcript of the nursing program, an out-of-state graduate was required to complete an application for licensure as required by 201 KAR 20:370; and (2) 201 KAR 20:370 required, as part of an application for licensure, that an out-of-state individual submit an official transcript and educational and employment history.

In response to questions by Chairman Arnold, Ms. McGuire stated that an in-state graduate was not required to submit an official transcript, because the institution's registrar sent a certified list of the graduates from that institution to the Board.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Section 1 was 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 of the material incorporated by reference.

201 KAR 20:091. Repeal of 201 KAR 20:090. In response to questions by Chairman Arnold, Ms. McGuire stated that: (1) a temporary work permit: (a) was currently issued by the Board to a graduate of an approved program of nursing, because the graduate was considered competent to practice nursing; and (b) allowed the individual to be employed: 1. under the direct, on-site supervision of a: a. registered nurse; b. physician; or c. dentist; and 2. while waiting to take the examination required for licensure; (2) this administrative regulation repealed the administrative regulation that authorized the temporary work permit because: (a) from a public protection perspective, the Board preferred that all individuals have passed the examination prior to employment in a facility; and (b) the average testing time was within 90 days of graduation from school; and (3) the employer determined the salary paid a recent graduate employed with a temporary work permit.

Ms. Sutherland stated that: (1) the examination had changed: (a) from a paper and pencil examination administered twice a year; and (b) to a computerized examination, that: 1. was available very quickly after graduation; and 2. afforded licensure fairly quickly after graduation; (2) the current trend with employers was to: (a) require licensure before hiring an individual; and (b) avoid the risks associated with hiring an individual with a temporary work permit who subsequently failed the examination; and (3) the Board now required individuals to become fully licensed as soon as possible.

In response to questions by Senator Kafoglis, Ms. McGuire stated that: (1) a new graduate: (a) would be hired as a registered nurse applicant or licensed practical nurse applicant; and (b) functioned in a licensed role: 1. based upon the individual's education and clinical experience; and 2. under the direct, on-site supervision of a physician, dentist, or registered nurse; (2) an employer could hire new graduates as nursing aides; (3) under the new testing system, the average new graduate was licensed within eight and a half weeks of graduation; and (4) the examination was failed by approximately: (a) ten percent of the RN graduates; and (b) nine percent of the LPN graduates.

Ms. Sutherland stated that because of the repeal of 201 KAR 20:090, which authorized the temporary work permit, there would be a period of time during which a new graduate would work as an unlicensed individual.

In response to a question by Chairman Arnold, Ms. McGuire stated that a graduate who did not pass the examination could be employed as an unlicensed person for an indefinite period of time.

In response to questions by Senator Roeding, Ms. McGuire stated that: (1) while safety problems were hard to document in a new graduate population, the most vulnerable periods of practice for being high-risk for committing errors that had a negative impact occurred: (a) with new graduate populations; and (b) when an individual who had worked in one area for a number of years switched to another area of nursing; (2) the Board had been informed by employers that they preferred to invest in individuals who had passed the licensure examination, rather than spend time and money to train and orient an individual for a position the individual might not be qualified to fill; (3) while an individual who recently graduated from a program of nursing was considered a competent beginner, an employer was required to expend a lot of time and money to train and orient the new employee; (4) twelve years ago, she estimated that employers spent between \$12,000 and \$18,000 to orient and train a new nurse; (5) a new graduate was potentially able to take the licensure examination the day after graduation; (6) the results were available within two weeks of the examination date; (7) the licensure examinations were offered: (a) on a daily basis Monday through Saturday; and (b) at Sullivan Technology Centers, with: 1. two testing sites in Kentucky; and 2. two testing sites in the Cincinnati-area; and (8) according to the Board statistics, ninety-five percent of the graduates took the examination within ninety (90) days of graduation.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Section 1 was amended to: (a) specify that the administrative regulation shall be effective January 1, 1999; and (b) comply with the drafting requirements of KRS 13A.222(4).

201 KAR 20:110. Licensure by endorsement. 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(4)(f); and (3) Sections 1, 2, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 20:240. Fees for applications and for services. In response to questions by Senator Roeding, Ms. McGuire stated that: (1) an examination application was valid: (a) currently, from the date an applicant was declared eligible to test; and (b) under this administrative regulation, for: 1. one year from the date of receipt of an application in the Board office; or 2. until an applicant failed the examination; (2) because licensure required passage of the examination, if an individual failed the examination, he would be required to submit a new application for licensure; (3) the Board: (a) had deleted the fee previously charged to re-take the examination; (b) required an individual to pay \$40 to file a new application; and (c) believed this change would save some money for some applicants, because an applicant controlled when a new application would be submitted; (4) if an applicant re-took the examination during the one-year period the application was valid, the applicant would pay \$40 to re-take the examination; (5) if an applicant re-took the examination when an application was not valid, the applicant would pay \$80 for the examination and new application; (6) an applicant could apply for re-testing every ninety-one (91) days; and (7) most applicants: (a) passed the examination the second time it was taken; and (b) were allowing more time between re-takes of an examination.

Subcommittee staff stated that the initial staff review: (1) summarized Section 3(4)(a) of this administrative regulation, which stated that an applicant who re-took the licensure examination shall submit the fee for re-take; (2) ignored paragraph (b), which also required submission of the new application and current fees, which would make the amount more than the \$30 referenced by the initial staff review; and (3) did not take into account all of the fees that an applicant was currently required to pay to re-take the examination.

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(4)(f); (3) Sections 1 and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 4 was amended to clarify the time period during which an application shall be valid, to conform to the time period established in 201 KAR 20:110.

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing. 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(4)(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).

201 KAR 20:370. Applications for licensure and registration. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 3 was amended to clarify the time period during which an application shall be valid, to conform to the time period established in 201 KAR 20:110; and (3) Section 4 was amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Licensing

301 KAR 5:020. License agent requirements and responsibilities. Tom Young, Deputy Commissioner, and Bob Bates, Director of Administrative Services, represented the Department.

In response to a question by Chairman Arnold, Mr. Young stated that there were no fee increases in this administrative regulation.

Sections 5, 7, and 8 of this administrative regulation were amended to comply with drafting requirements of KRS 13A.222(4).

301 KAR 5:030. Purchasing licenses and obtaining replacement licenses. Tom Young, Deputy Commissioner, and Bob Bates, Director of Administrative Services, represented the Department.

In response to a question by Chairman Arnold, Mr. Young stated that there were no fee increases in this administrative regulation.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 3 was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Section 2(2) was amended to comply with the drafting requirements of KRS 13A.222(4).

Justice Cabinet: Department of Corrections: Kentucky Parole Board

501 KAR 1:050 & E. Granting final discharge from parole. Tamela Biggs, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 2 was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Amend Sections 1 and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

Psychiatric or Forensic Psychiatric Facility Victim Notification System

501 KAR 14:010 & E. Psychiatric or forensic psychiatric facility victim notification system. Tamela Biggs, Staff Attorney, represented the Department.

In response to questions by Senator Roeding, Ms. Biggs stated that: (1) the Victim Information and Notification Everyday ("VINE") system had been in place for a few months; (2) this administrative regulation would permit a victim of a crime, committed by someone who was involuntarily committed to a psychiatric or forensic psychiatric facility, to be notified if that person: (a) escaped; or (b) was released; (3) if a person called the VINE system and gave the required information, the system would continuously attempt to ring the victim's telephone number, until contact was made; (4) it was the responsibility of the victim, rather than law enforcement, to contact the VINE system; (5) the Department had a contract with the VINE company; (6) several thousand of the VINE brochures had been to

sent to the State Police and other law enforcement agencies; (7) when a crime occurred, law enforcement personnel would distribute these pamphlets to the victim at the time of investigation to make him aware of: (a) the service; (b) what the service provides; and (c) how he could register; and (8) while some law enforcement agencies already had the brochures, the brochures were being transmitted to others.

Senator Roeding requested that the Department send a copy of the pamphlet to the Administrative Regulations Review Subcommittee and its staff.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Section 3 was amended, pursuant to KRS 13A.222(4), to provide the method by which a victim can register with the Victim Information and Notification Everyday system.

Transportation Cabinet: Nonpublic School Transportation

600 KAR 5:010. Transportation of nonpublic school students. Charlie Harman, Staff Assistant, and Maria Bohanon, represented the Cabinet.

In response to a question by Chairman Arnold, Mr. Harman stated that House Bill 431, enacted by the General Assembly during its 1998 Regular Session, appropriated money for the transportation of nonpublic school students using public transportation.

In response to a question by Senator Kafoglis, Mr. Harman stated that: (1) the General Assembly budgeted \$2,500,000 for transportation of nonpublic school students; (2) there were more applicants for these funds than there was money; (3) the Cabinet distributed the appropriated amount based on the number of applicants; and (4) every applicant would get a share of the money.

In response to a question by Senator Kafoglis, Ms. Bohanon stated that: (1) every county received a percentage of the amount that it requested if it: (a) applied; and (b) met the qualifications; and (2) the appropriated amount was prorated among the applicants.

This administrative regulation was amended as follows: (1) the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 2 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:140. U-drive-it permit application procedures. Charlie Harman, Staff Assistant, represented the Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f).

601 KAR 1:145. Reporting and paying of usage tax pursuant to a U-drive-it permit. Charlie Harman, Staff Assistant, and J. W. Bryan, Director of the Division of Audit Review, represented the Cabinet.

In response to a question by Senator Roeding, Mr. Bryan stated that pursuant to KRS 138.463, each commercial vehicle was assessed a: (1) seat tax; and (2) U-drive-it tax.

In response to a question by Senator Roeding, Mr. Harman stated that: (1) the seat tax was not a new fee; and (2) the fee amount had: (a) not been increased; and (b) been relocated in this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 5 was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Fiscal Management: Division of Audit Review: Motor Vehicle Tax

601 KAR 9:135. Apportioned registration. In response to ques-

tions by Senator Roeding, Mr. Harman stated that: (1) the amendment of the clerk's fee in Section 10 from \$2.00 to \$3.00 was a fee increase; (2) this fee increase would affect all owners of vehicles over 26,000 pounds; (3) this fee: (a) did not raise revenue for the State; (b) went to the county clerks for the administration of the registration process; and (4) the registration process was: (a) no longer conducted between January and March; (b) changed to a year round process; and (c) more convenient to the public.

Senator Roeding stated that: (1) while raising the fee by \$1.00 did not sound like much, it was an increase of 33 1/2 percent, which was a rather large increase; (2) if the change in registration was year-round, rather than just a few months during the year, this would be a convenience for the clerks; (3) he did not want to make things: (a) more convenient; and (b) more expensive; and (4) it did not seem like the convenience and expense should go hand-in-hand.

In response to a question by Senator Roeding, Mr. Harman stated that: (1) if a person was paying for several vehicles, the increase could be a substantial amount; (2) the fee increase was needed to cover the cost of increasing the program; and (3) the Cabinet did not predict that any additional people would register vehicles.

In response to a question by Senator Kafoglis, Mr. Harman stated that he: (1) had been employed by the Transportation Cabinet for 10 years; and (2) was not aware that the fee had been increased during his 10 year tenure.

In response to a question by Chairman Arnold, Mr. Harman stated that the fee increase was addressed in Senate Bill 141.

In response to a question by Senator Roeding, Mr. Harman stated that: (1) the fee could be changed pursuant to Senate Bill 141; (2) there were several fees in the bill; (3) he did not know if: (a) this fee was specifically addressed by Senate Bill 141; and (b) the clerks had asked for the fee increase; (4) he did not think year round registration would increase the clerks' workload; and (5) the fee increase was a result of the increased cost of doing business.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 14 and 15 were amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Sections 1, 4, 11, 12, 14, and 16 were amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee did not approve a motion by Senator Roeding to find this administrative regulation deficient because Section 10(1)(b) increased the clerk's fee from \$2.00 to \$3.00.

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. Kevin Noland, General Counsel, represented the Cabinet.

Mr. Noland stated that: (1) this administrative regulation: (a) did not establish fees; and (b) was amended to conform to House Bill 97, enacted during the 1998 Regular Session of the General Assembly; and (2) because local school boards were authorized by statute to implement a policy to spread out over twelve months the paychecks for teachers who were on a 185 day contract, this administrative regulation required a local school board that implemented this policy to ensure that, for the teachers' salaries paid in July and August, either the: (a) checks were cut in June; or (b) money was placed in an escrow account to carry over to the new fiscal year, which began July 1.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 2 and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

702 KAR 3:110. Document filing dates. **(Compiler's Note:** The amendments made to this administrative regulation at the October 13, 1998, ARRS meeting, only needed to be made to the original administrative regulation as filed with LRC. The administrative regulation as published in the September 1, 1998 Administrative Register was the correct version and did not need to be amended. Therefore, this administrative regulation will not be republished "As

Amended".) In response to a question by Senator Roeding, Mr. Noland stated that this administrative regulation did not increase costs, because the required forms were completed electronically without additional paper requirements.

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).

School Terms, Attendance and Operation

702 KAR 7:065. Designation of agent to manage high school interscholastic athletics. Subcommittee staff stated that the: (1) material incorporated by reference: (a) established the administrative hearing procedure; and (b) had been amended to comply with the provisions of KRS Chapter 13A by deleting material that: 1. repeated or summarized the provisions of KRS Chapter 13B; or 2. was in conflict with the provisions of KRS Chapter 13B; and (2) agency may request from the Attorney General a partial exemption under KRS Chapter 13B, because of particular nature of administrative hearings relating to high school interscholastic athletics.

In response to questions by Senator Roeding, Mr. Noland stated that: (1) the State Board of Education had amended this administrative regulation to require: (a) the Kentucky High School Athletic Association to conduct its meetings in compliance with the Open Meetings Act; and (b) the member schools of the KHSAA to certify compliance with Title IX on gender equity in sports in their local schools; (2) the certification was submitted annually to the KHSAA; and (3) the gender equity requirements: (a) were the federal requirements; and (b) did not establish gender equity requirements at the state level that exceeded federal requirements.

Education Professional Standards Board

704 KAR 20:710. Professional certificate for instructional leadership – school principal, all grades. Janet Banta, Director, Division of Certification, represented the Board.

In response to questions by Senator Roeding, Ms. Banta stated that: (1) the national standards for administrators were: (a) incorporated by reference in this administrative regulation; and (b) used by higher education institutions that had aligned their curriculum to these standards; and (2) the Board: (a) deleted the state standards; and (b) required compliance with the national standards, because the national standards were: 1. more comprehensive; 2. covered more areas of leadership and management; and 3. would help Kentucky's students.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 6, and 7 were amended to comply with the: (1) format requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Department of Alcoholic Beverage Control: Licensing

804 KAR 4:350. Out-of-state brewers' licenses. In response to a question by Chairman Arnold, Mr. Goad stated that: (1) House Bill 550, enacted by the General Assembly during its 1998 Regular Session, established a \$1,500 license fee for a large out-of-state brewer; (2) after the fee was established, the Department had been informed that \$1500 was a prohibitive licensing fee by: (a) smaller, out-of-state brewers; and (b) in-state distributors; (3) many of the small out-of-state brewers: (a) brewed what was called "novelty beers"; and (b) sent only 10 to 50 cases of this beer into Kentucky; and (4) at a fee of \$1,500, they could not import these beers; (5) in this administrative regulation: (a) the Department had tiered the license fee requirements; (b) a larger out-of-state brewery would pay the \$1500 license fee; and (c) a brewer that produced less than 25,000 barrels, would pay a \$250 license fee.

In response to a question by Representative Bruce, Mr. Goad stated that this administrative regulation: (1) would have no effect on the statute prohibiting out-of-state vendors from mailing alcoholic beverages to Kentucky citizens; and (2) applied to out-of-state breweries that wished to bring their beer into Kentucky for sale.

In response to a question by Senator Roeding, Mr. Goad stated that this tiered license fee made the smaller microbrewers happy, because it permitted them to bring their product into Kentucky.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were

amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 3 was amended to comply with the format for incorporation by reference of forms; (4) Sections 1 and 3 were amended to comply with the formatting requirements of KRS 13A.220(4); and (5) Section 2 was amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Insurance: Agents, Consultants, Solicitors and Adjusters

806 KAR 9:241. Repeal of 806 KAR 9:240. Sharron Burton, Counsel, and Julia McPeak, Counsel, represented the Department of Insurance.

In response to questions by Chairman Arnold, Ms. McPeak stated that: (1) this administrative regulation repealed 806 KAR 9:240, which was codified by House Bill 429, enacted by the General Assembly during its 1998 Regular Session; and (2) House Bill 429 established: (a) the licensure of state and national banks as insurance agencies; (b) consumer protection requirements for disclosure; (c) the products that could be offered; and (c) the system by which banks could become insurance agencies.

In response to a question by Chairman Arnold, Representative Bruce, Chairman of the Banking and Insurance Committee, stated that: (1) Kentucky had no laws preventing out-of-state banks from: (a) buying Kentucky banks; and (b) firing or moving employees out-of-state; (2) the interstate banking laws in Kentucky could be changed to prevent this; and (3) he did not know if the Banking industry would support a change in the law.

In response to a question by Representative Bruce, Ms. McPeak stated that: (1) national banks were governed by 12 U.S.C. Section 92, which granted authority for national banks to sell insurance in an area populated by less than 5,000 people; (2) the bank's authority to sell insurance was clarified by: (a) the Barnett Bank decision; and (b) other case law; (3) the Department needed to promulgate an administrative regulation establishing licensure of both state and national banks; and (4) it was the opinion of the Department that, under House Bill 429: (a) state banks could be licensed anywhere in the state; and (b) national banks were limited to licensure in places with a population of less than 5,000 people.

In response to questions by Representative Arnold, Ms. McPeak stated that: (1) banks were becoming insurance agencies in Kentucky; (2) even if a bank was licensed as an insurance agency, it would need licensed agents to act under the agency license; and (3) she believed that the insurance agents were in favor of: (a) this administrative regulation; and (b) House Bill 429.

Representative Bruce stated that: (1) permitting banks to sell insurance originated in a decision handed down by the Supreme Court, and not with the Kentucky General Assembly; (2) after the Supreme Court decision, the General Assembly acted to: (a) protect the agents and banks; and (b) make sure that everyone operated in a legal manner; (3) if Kentucky did not have this law, everyone would be selling insurance; and (4) he believed that this legislation: (a) was agreeable to independent insurance agents and the banking industry; and (b) benefited both groups.

Ms. Burton stated that this administration regulation repealed a regulation, because its provisions had been enacted by the General Assembly.

The RELATES TO paragraph of this administrative regulation was amended to correct statutory citations.

Health Insurance Contracts

806 KAR 17:150 & E. Health benefit plan rate filing requirements. Sharron Burton, Counsel, and Mark McGuire, Actuary for the Life and Health Division, represented the Department.

In response to a question by Chairman Arnold, Ms. Burton stated that this administrative regulation repealed the Department's old rate filing administrative regulation.

In response to questions by Chairman Arnold, Ms. Burton stated that this administrative regulation established the new rate filing requirements pursuant to House Bill 315, enacted by the General Assembly during its 1998 Regular Session.

In response to questions by Chairman Arnold, Mr. McGuire stated that: (1) this administrative regulation: (a) established the methods by which a rate filing would comply with House Bill 315;

and (b) did not change anything other than the filing requirements of House Bill 315; and (2) the Department reviewed the filings in great detail to prevent rate increases.

In response to a question by Representative Bruce, Mr. McGuire stated that the Department occasionally had the assistance of independent actuaries.

In response to questions by Senator Roeding, Mr. McGuire stated that: (1) there were two individual market health insurers in Kentucky; (2)(a) while did not have the numbers with him, he thought that there were about 25 small group market health insurers in Kentucky; and (b) he would provide a list of the health insurers to the Subcommittee; (3) House Bill 315 contained a provision that allowed insurance companies to risk rate; (4) this administrative regulation deleted many of the cumbersome procedures of the previous rate filing administrative regulation; and (5) he hoped that this administrative regulation would ease the burden of submitting information in a rate filing for insurance companies.

In response to a question by Senator Roeding, Ms. Burton stated that: (1) the Department: (a) made a great effort to get its administrative regulations to the insurance companies; and (b) had not received comments relating to this administrative regulation; (2) the Department had received a lot of comments on some of the other administrative regulations; and (3) the amendment to this administrative regulation was not a big change for the insurance companies.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Section 1 was amended to delete definitions defined by statute, as required by KRS 13A.120(2)(e) and (f); (2) Section 3(4) was amended to provide that a copy of the rate filing submission be returned to the applicant after the commissioner's decision; (3) Sections 1, 2, 3, and 5 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 5 and 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

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. Karen Doyle, Commissioner's Office; Trish Howard and Patricia Peary represented the Department.

In response to a question by Chairman Arnold, Ms. Doyle stated that the three administrative regulations in 907 KAR Chapter 1 were amended to: (1) comply with House Bill 406, that was intended to address the issue of nursing home patients who had been asked to leave their nursing home facilities; and (2) clean-up various other provisions.

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 10 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 1:560 & E. Medicaid hearings and appeals. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Sections 2, 3, and 12 were amended to clarify that a dispute resolution regarding a utilization review denial shall be processed in accordance with 906 KAR 1:080; (3) Sections 3, 4, 5, 9, 12, and 16 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 18 was amended to clarify that a dispute resolution between a recipient and a partnership or managed behavioral health care organization shall be in accordance with KRS 211.461 through 211.466 and 906 KAR 1:080 and that other hearings and appeals shall be in accordance with 907 KAR 1:563.

907 KAR 1:563 & E. Medicaid covered services hearings and appeals. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) Sections 2, 3, 4, 5, 6, 10, 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).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

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. Bruce McCutchen, Tax Consultant, Division of Tax Policy, and Douglas Dowell, Attorney, Division of Legal Services, represented the Cabinet.

In response to questions by Senator Roeding, Mr. McCutchen stated that: (1) this repeal administrative regulation related to the completion of the phase-out of the inheritance tax; (2) during the 1995 Second Extraordinary Session of the General Assembly, legislation was enacted to phase out the inheritance tax for all Class A beneficiaries over a 4 year period; (3) Class A beneficiaries consists of a taxpayer's: (a) parents; (b) children; (c) spouse; (d) grandchildren; and (d) brothers and sisters; (4) the 4 year period: (a) began July, 1995; and (b) in 25 per cent increments; (5) as of July 1, 1998, the inheritance tax was completely phased out for Class A beneficiaries; and (6) the inheritance tax will not apply to Class A beneficiaries for state income tax filings for 1998, for dates of death on or after July 1, 1998.

Finance and Administration Cabinet: Kentucky Retirement Systems: General Rules

105 KAR 1:170 & E. Membership form requirements. Pam Johnson, General Manager, and Bill Hanes, Deputy Commissioner, represented the Systems.

In response to a question by Chairman Arnold, Mr. Hanes stated that: (1) current state statutory provisions conflicted with the federal 401A Code provisions that authorized a participant to take refunds in certain events, including while an employee was: (a) on lay-off status; or (b) remained employed but did not contribute to the retirement system; and (2) because revenue rulings indicated the state statutory provisions conflicted with federal law, this administrative regulation was amended to comply with federal laws.

In response to questions by Senator Roeding, Ms. Johnson stated that: (1) while agencies have been notified that new forms were incorporated by reference, the Retirement System would: (a) accept the old form; and (b) change the form number once it was filed; and (2) the forms were available at the retirement office.

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. Don Mullis, Executive Director, Office of Financial Management and Economic Analysis appeared before the Subcommittee. Mr. Mullis stated that the Office of Financial Management and Economic Analysis administered the Private Activity Bond Allocation Program. In response to a question by Chairman Arnold, Mr. Mullis stated that under the Federal tax code, certain types of bonds: (1) are required to receive a cap allocation, based on \$50 per capita; and (2) used for counties and cities that are trying to attract corporations, or sell bonds to build a building, such as Kentucky Housing Corporation and the Kentucky Student Loan Corporation for their programs.

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 regulation) Angela Robinson, Attorney, Finance and Administration Cabinet appeared before the Subcommittee. This administrative regulation was required to repeal 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, because the statute establishing the Personnel Pilot Programs had been repealed.

Education, Arts, and Humanities Cabinet: Department of Libraries and Archives: Division of Public Records: Archive

725 KAR 1:070. Standards for documents presented for recording. Jim Nelson, State Librarian and Commissioner, and Darrell Gabhart, Director, Local Records Branch, represented the Department.

In response to a question by Chairman Arnold, Mr. Nelson stated that this administrative regulation: (1) standardized the paper

VOLUME 25, NUMBER 5 – NOVEMBER 1, 1998

filings in the clerk's office to ease the use of records and their costs; and (b) did not involve fees.

In response to a question by Senator Roeding, Mr. Nelson stated that: (1) the only time a fee would increase was if a document, that could have been filed on one sheet in the past, was now filed on two sheets; and (2) this administrative regulation did not increase fees.

Department of Alcoholic Beverage Control: Licensing

804 KAR 4:195. Repeal of 804 KAR 4:190. Gordon Goad, Staff Attorney, represented the Department.

In response to a question by Chairman Arnold, Mr. Goad stated that this administrative regulation repealed an administrative regulation that required an out-of-state brewer to file a bond.

Department of Insurance: Health Insurance Contracts

806 KAR 17:141E. Repeal of 806 KAR 17:140. (Will Not Be Replaced by Ordinary)

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the November, 1998 meeting of 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.

31 KAR 4:130E. Submitting Absentee Ballot Application by facsimile.

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: 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 1:230E. Reemployment after retirement.

Office of the Secretary: Purchasing

200 KAR 5:021E. Manual of policies and procedures.

Property

200 KAR 6:060E. Lease of new construction.

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 Medical Licensure

201 KAR 9:320. Procedures for physician training and/or supervision of noncertified individuals in the use of automatic external defibrillators (AEDs). Subcommittee staff stated that, pursuant to Subcommittee instructions: (1) Subcommittee staff and Norman Lawson, Assistant Statute Revisor, had met with Board of Medical

Licensure staff to discuss issues raised by this administrative regulation and House Bill 285, enacted by the General Assembly at its 1998 Regular Session; (2) recommended that clear standards, rather than standards developed by individual physicians, be established for the training in the use of automatic external defibrillators; (3) agreed to meet with the Board of Nursing in the coordination of the development of standards; and (4) would report to the Subcommittee.

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.

Water Patrol

301 KAR 6:005E. Boat registration fees.

Justice Cabinet: Department of Corrections: Kentucky Parole Board

501 KAR 1:030 & E. Determining parole eligibility.

Class D Felons

501 KAR 2:070 & E. Work release.

Office of the Secretary

501 KAR 6:020 & E. Corrections policies and procedures.

Department of State Police: Sex Offender Registration System

502 KAR 31:020E. Sex offender registration system.

Department of Criminal Justice Training

Kentucky Law Enforcement Council

503 KAR 1:060. Definitions.

503 KAR 1:080. Certification of schools.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles.

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 7:125E. Pupil attendance.

Education Professional Standards Board

704 KAR 20:720E. Professional certificate for exceptional work experience, limited to secondary education.

Office of Special Instructional Services: Instructional Programs

705 KAR 4:240E. School to careers.

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.

Public Protection and Regulation Cabinet: Kentucky Board of Tax Appeals: Tax Appeals

802 KAR 1:010. Rules of practice and procedure.

Labor Cabinet: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

803 KAR 2:306E. Occupational health and environmental control.

803 KAR 2:307E. Hazardous materials.

803 KAR 2:308E. Personal protective equipment.

803 KAR 2:311E. Fire protection.

803 KAR 2:316E. Welding, cutting, and brazing.

803 KAR 2:317E. Special industries.

803 KAR 2:320E. Air contaminants.

803 KAR 2:403E. Occupational health and environmental controls.

803 KAR 2:404E. Personal protective and life saving equipment.

803 KAR 2:418E. Underground construction, caissons, cofferdams, and compressed air.

803 KAR 2:425E. Toxic and hazardous substances.

Office of Labor Management Relations and Mediation: Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program. (Expires October 18, 1998)

Department of Insurance: Life Insurance and Annuity Contracts

806 KAR 15:040E. Licensing, reporting, and general requirements for viatical settlement providers and brokers.

Health Insurance Contracts

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.

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.

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 55:115. 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.

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.

Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development: Medicaid Services

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:026 & E. Dental services.

907 KAR 1:626 & E. 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.

OTHER BUSINESS:

(1) House Bill 564: Exemption from Continuing Education Requirements promulgated by the Real Estate Commission.

Joe Helm, Executive Director, Kentucky Real Estate Commission, appeared before the Subcommittee.

At the request of Chairman Arnold, Subcommittee staff stated that: (1) at its September 8, 1998, meeting, the Subcommittee approved a motion to request the Real Estate Commission to appear before the Subcommittee to discuss issues relating to the implementation of House Bill 564, including: (a) whether, without incorporating it by reference, or setting it out in the body of an administrative regulation, the Commission had implemented a policy pursuant to Section 5(5), House Bill 564, relating to exemptions from continuing education requirements for licensees: 1. who had not had a continuous license since 1976; and 2. whose qualifications merit exemption; (b) whether the policy was in effect; (c) why the policy had not been promulgated by administrative regulation; and (d) the manner in which the Commission intended to comply with the requirements of KRS Chapter 13A; and (2) whether appeals relating to determinations on licensure requirements were permitted.

Representative Lee: (1) stated that House Bill 564, Section 5, permitted an exemption from continuing education requirements; and (2) asked Commission representatives why conditions, understandable to the licensees, under which the exemption provided by House Bill 564 were not established by administrative regulation.

Mr. Helm stated that: (1) the continuing education exemption originally established by KRS 324.046 had provided that licensees licensed prior to 1976 were exempt from continuing education requirements; (2) at its 1998 Regular Session, the General Assembly had amended KRS 324.046 to provide that active licensees who had not continuously maintained active licensee status would lose the exemption; (3) the reason for this was that if a licensee became unlicensed for any reason, including going into escrow, and was not practicing real estate, he was required to meet continuing education requirement if he determined to re-enter the practice; (4) House Bill 564 was amended in the Senate to stipulate that exceptions to this requirement could be made by the Commission based upon a licensee's qualifications; (5) it was made clear to the Commission by sponsors of the amendment that: (a) the exception was intended to be at the discretion of the Commission and based on a licensee's qualifications; and (b) an administrative regulation was not required; (6) the Commission erred when it adopted an internal policy of eligibility requirements that was intended to help its more consistent internal application of granting an exemption; and (7) the Commission's General Counsel was informed by Subcommittee staff that the policy violated KRS Chapter 13A; (8) the Commission revoked the policy; (9) KRS 324.046 established that the exemption was subject to the discretion of the Commission based on qualifications.

Representative Lee stated that: (1) the problem with this interpretation was that a standard for qualifications did not exist; (2) without a standard, the Commission would have unfettered discretion; (3) exemptions could be: (a) inconsistently granted; (b) granted without clear standards applicable to all applicants; or (c) depend upon the whim of the Commission; (4) as an example, if, in June 1977 a licensee placed his license in escrow for a year or 18 months because of health reasons; in 1979 the license was taken out of escrow; and the licensee had been continuously active and com-

pleted continuing education since 1979, the licensee should know that there is a process in place permitting the licensee to appear before the Commission to present his case for not having to meet the continuing education requirements during the escrow period; (5) only by the promulgation of an administrative regulation would the standards for exemption and resolution of issues before the Commission be established; (6) neither an administrative regulation nor the standards or appeals are established by administrative regulation; (7) House Bill 564 authorized the Commission to establish the standards for exemption; and (8) an administrative regulation is required to establish the standards and notify licensees of the procedure.

Mr. Helm stated that: (1) the standards and procedures had not been established by administrative regulation; (2) the Commission would defer to the request of the Subcommittee with regard to the promulgation of administrative regulations; (3) House Bill 564 was originally sponsored by Representative Miller, and handled by Senator Robinson in the Senate; (4) he had discussed the intent of the amendment to House Bill 564 with Senator Robinson; (5) Senator Robinson told him to inform the Subcommittee that he did not believe the intent was to require the promulgation of an administrative regulation; and (6) the policy had been intended to accomplish the establishment of standards that Representative Lee stated were required.

Representative Lee stated that: (1) an administrative body was prohibited from the adoption of a policy except by the promulgation of an administrative regulation; (2) a consistent policy established by administrative regulation was required by KRS Chapter 13A; (3) adoption of a policy that is not in an administrative regulation could be revoked by the Commission in favor of another, inconsistent policy; (4) regulated entities would not be informed or aware of the applicable standard; (5) as a member of the General Assembly, his intent in the enactment of legislation was that: (a) regulated entities had the right to a hearing on a Commission determination; and (b) the Commission be granted authority to grant exemptions from continuing education requirements; and (c) the conditions for exemptions and appeals be established by administrative regulation; (6) if the Commission failed to establish these matters by administrative regulation, existing administrative regulations governing these subject matters would be found deficient; (7) Commission representative should convey this message to the Commission; and (8) if the Commission failed to promulgate administrative regulations, he would move to find Commission administrative regulations deficient.

Mr. Helm stated that the Commission wanted to carry out the will of the General Assembly. Representative Lee stated that: (1) the Commission was before the Administrative Regulation Review Subcommittee; and (2) if the Commission believed it was the intent of the General Assembly that it was not required to promulgate administrative regulations, the Commission should request the General Assembly at its 2000 Regular Session to exempt it from the requirement to promulgate administrative regulations relating to House Bill 564.

Representative Bruce stated that the effect of legislation was determined by its provisions. In response to a request by Representative Bruce, Subcommittee staff stated that: (1) the Commission was bound by the provisions of KRS Chapter 13A; (2) KRS Chapter 13A provides that a statute that is not complete on its face shall be implemented through the promulgation of administrative regulations; (3) the previous Board policy relating to exemptions violated the provisions of KRS Chapter 13A; (4) there appeared to be a confusion over the requirements of House Bill 564; (5) House Bill 564 allows an exemption if a licensee has been determined to be qualified for an exemption; (6) "may" in the statute: (a) does not mean that the Commission may choose, or not choose, to exempt a licensee, if the licensee is entitled to exemption; (b) means the Commission shall: 1. establish the standard for exemption; and 2. exempt licensees who meet the standard; (7) since the standard for exemption is not specified by statute, it must be established by administrative regulation; (8) withdrawal of the policy does not bring the Commission into compliance with statutes or permit it not to establish standards by administrative regulation.

In response to a question by Mr. Helm, Subcommittee staff stated that: (1) the Commission did not have the authority to refuse to grant any exemptions; (2) House Bill 564: (a) does not grant the

Commission authority to refuse to grant exemptions; (b) requires granting exemptions if a licensee meets conditions established by the Commission; and (3) the only method by which it can be determined that a licensee merits exemption is by establishing a standard for exemption.

Representative Bruce stated that: (1) the requirements of KRS Chapter 13A and House Bill 564 had been explained; (2) if the Commission failed to promulgate the required administrative regulations, it was clear that existing administrative regulations would be found deficient by the Subcommittee; and (3) Commission personnel could meet with Subcommittee staff for assistance in the drafting of required administrative regulations.

In response to a question by Representative Lee relating to the right to appeal a determination relating to exemption from continuing education requirements: (1) Mr. Helm stated that he believed applicable statutes granted the right to appeal to Circuit Court; and (2) Subcommittee staff stated that an existing Commission administrative regulation: (a) related to appeals; and (b) at the request of Representative Lee, would be reviewed by Subcommittee staff to determine whether it included appeals from decisions relating to continuing education exemptions.

Mr. Helm stated that: (1) the Commission would comply with the Subcommittee request; and (2) appreciated the Subcommittee being straightforward with the Commission. Representative Bruce commended Mr. Helm on his attitude.

(2) House Bill 106 and Amendment of 601 KAR 14:010, Headgear and eye-protective devices.

Jay Huber, President, David Newman, Barbara Winspur, Malcolm Winspur, Kentucky Motorcycle Association, and Charlie Harman, Staff Assistant, Transportation Cabinet appeared before the Subcommittee.

At its September 8, 1998, meeting, the Subcommittee approved a motion to request the Transportation Cabinet to appear before the Subcommittee to discuss its implementation of House Bill 106 by emergency amendment of 601 KAR 14:010, including whether the statutory exemptions, relating to passengers and out-of-state drivers, would appear in the amendment to 601 KAR 14:010.

Mr. Harman stated that Cabinet personnel: (1) had met with health organizations, and Subcommittee staff; (2) were drafting an administrative regulation; and (3) did not plan to file an emergency administrative regulation.

In response to questions by Chairman Arnold, Mr. Harman stated that the Cabinet: (1) planned to file a Notice Of Intent To Promulgate this month; and (2) did not believe that an emergency existed.

Chairman Arnold stated that: (1) the issues raised by House Bill 106 should be resolved; and (2) what was intended to be a simple bill had been complicated and allowed to consume too much time.

Mr. Huber stated that: (1) many riders, especially out-of-state riders and those with passengers, had been stopped; and (2) the majority received warning tickets from the State Police, Covington, Louisville and Jefferson County police.

Chairman Arnold stated that riders in the Paducah area also had been stopped.

Mr. Winspur stated that: (1) numerous passengers and out-of-state riders had been cited by the State Police; and (2) action was not being taken until the administrative regulation is promulgated.

Chairman Arnold stated that: (1) the Subcommittee and riders wanted matters cleared up by involved agencies to make it clear that a passenger over the age of 21 and out-of-state riders were exempt from the provisions of House Bill 106; (2) this matter had gone on too long; and (3) while the Cabinet could confer with whomever it wanted, it should resolve this matter.

Representative Bruce asked if the State Police had sent a representative.

Mr. Harman stated that: (1) Commissioner Rose had twice testified before the Interim Joint Committee on Transportation; (2) perhaps the Subcommittee should obtain the State Police's opinion on this matter; and (3) the Cabinet had met with the State Police on House Bill 106.

In response to a request by Chairman Arnold, Subcommittee staff stated that: (1) it appeared that the position of the State Police is that state police are required to enforce the law; (2) until an ad-

ministrative regulation is promulgated clarifying the law, the State Police might feel compelled to act with regard to safety; (3) the Transportation Cabinet, rather than the State Police, is the administrative body with authority to implement House Bill 106; (4) an emergency administrative regulation was requested by the Subcommittee, because the: (a) authorizing legislation is in effect, requiring an immediate administrative regulation; and (b) subject matter relates to health and safety.

Mr. Winspur stated that: (1) representatives of the Kentucky Motorcycle Association had met with Commissioner Rose; (2) on numerous occasions, the Commissioner had requested the promulgation of administrative regulations implementing House Bill 106; and (3) the absence of a clear directive from the Cabinet has created confusion.

Mr. Huber stated that, because of the confusion, many judges are: (1) unclear as to the law; and (2) throwing cases out or basing their decisions on the previous law.

Chairman Arnold stated that: (1) the intent behind House Bill 106 was to permit: (a) operators to ride without headgear, if they met the conditions established by the Bill; and (b) passengers and out-of-state riders to ride without headgear; (2) while the sticker on the license plate was stupid, the Bill and intent were simple; (3) an administrative regulation should be promulgated.

Chairman Arnold stated that he disagreed with Mr. Harmon's statements that: (1) an emergency did not exist; and (2) an emergency administrative regulation was not mandated.

Senator Roeding stated that, while he insisted on strict compliance with the conditions established by KRS Chapter 13A for the promulgation of emergency administrative regulations, the reasoning behind the decision not to promulgate an emergency administrative regulation was invalid because: (1) House Bill 106 had been in effect since July; (2) the subject matter related to health and safety; and (3) adverse consequences on the citizens because of the failure to promulgate an emergency administrative regulation had occurred. Senator Roeding requested that the Transportation Cabinet: (1) file an emergency administrative regulation; (2) provide the Subcommittee with a complete explanation for its reasons, if it determines not to file an emergency administrative regulation. Senator Roeding stated that compliance with the law was: (1) required; and (2) not being done, if an emergency administrative regulation was not filed.

Chairman Arnold stated that the: (1) Subcommittee requested the Cabinet's cooperation in complying with applicable statutes; (2) riders were citizens no less than other citizens, and should be provided with the establishment of requirements mandated by the law and not subject to the uncertainties and adverse consequences of the failure to promulgate administrative regulations. Chairman Arnold stated that the Cabinet should just get on with it.

(3) Request from Representative Coleman relating to House Bill 285, determination of death by paramedics.

Dr. Dan O'Brian, Medical Licensure Board advisor, Brian Lendell, Central Kentucky EMS Administrators Association, Bernadette Sutherland, Deputy Director, and Carol McGuire, Manager, Examination Branch, and Education Consultant, Nursing Board, appeared before the Subcommittee.

Pursuant to a request by Representative Coleman, at its September 8, 1998, meeting, the Subcommittee approved a motion to request the Boards of Medical Licensure and Nursing to appear before the Subcommittee to discuss their actions with regard to the promulgation of administrative regulations implementing House Bill 285, relating to the determination of death and preservation of evidence by paramedics and nurses.

Dr. O'Brian stated that: (1) at its September 17, 1998, meeting, the Medical Licensure Board approved a protocol that it referred to its attorney for inclusion in an administrative regulation; (2) an emergency administrative regulation will be filed by the Board; and (3) while he was unsure when an administrative regulation would be filed, he knew that the protocol that would be contained in an administrative regulation.

Ms. Sutherland stated that the Board of Nursing legal counsel had: (1) been working with the Medical Licensure Board to: (a) review the Board Of Medical Licensure protocol; and (b) develop a standard protocol; (2) filed a Notice Of Intent for the promulgation of a Board of Nursing administrative regulation governing determina-

tion of death by nurses; and (3) discussed Board activity with Representative Coleman.

Ms. Sutherland and Dr. O'Brian stated that neither Board had issued a policy or otherwise implemented House Bill 285 contrary to KRS Chapter 13A.

Mr. Lendell stated that the providers: (1) wanted House Bill 285 implemented by administrative regulation as required; and (2) believed sufficient time had elapsed since the July effective date of House Bill 285 during which an administrative regulation should have been promulgated.

In response to a question by Representative Bruce, Mr. Lendell stated that while the procedure to develop administrative regulations had begun, progress was slow.

New Staff

Chairman Arnold introduced two new Subcommittee staff attorneys, Ellen Benzing and Edna Lowery.

Material Filed By Agencies At Subcommittee Meeting

Chairman Arnold stated that: (1) agencies were to bring amendments or other matters by 9:30; and (2) if these items were not brought by 9:30, the Subcommittee would not consider them.

The Subcommittee adjourned at 12:15 p.m. until November 10, 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 September 16, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of September 16, 1998, having been referred to the Committee on September 11, 1998, pursuant to KRS 13A.290(6):

201 KAR 8:440
201 KAR 26:121
201 KAR 26:125
201 KAR 26:180
201 KAR 26:215
201 KAR 36:020
201 KAR 36:030
201 KAR 36:040
201 KAR 36:050
907 KAR 1:006 & E
907 KAR 1:011 & E
907 KAR 1:595
907 KAR 1:605 & E
907 KAR 1:640 & E
907 KAR 1:645 & E
907 KAR 3:030 & E

There being no discussion or questions, a motion to approve the referred administrative regulations was made by Senator Herron, seconded by Senator Roeding, and approved by voice vote.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 16, 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 October 1, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of October 1, 1998, having been referred to the Committee on September 11, 1998, pursuant to KRS 13A.290(6):

704 KAR 20:305
11 KAR 3:100
11 KAR 4:050
11 KAR 4:070
11 KAR 5:001
11 KAR 12:010
11 KAR 12:040
11 KAR 12:060
11 KAR 12:070
11 KAR 14:010
11 KAR 14:020
11 KAR 14:030
11 KAR 14:040
11 KAR 14:050
11 KAR 14:060
11 KAR 14:070
11 KAR 14:080
11 KAR 15:010
11 KAR 15:020
11 KAR 15:030
11 KAR 15:040
11 KAR 15:050
11 KAR 15:060
11 KAR 15:070
781 KAR 1:030

781 KAR 1:050
782 KAR 1:030
789 KAR 1:010

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 1, 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 October 6, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of October 6, 1998, having been referred to the Committee on September 11, 1998, pursuant to KRS 13A.290(6):

600 KAR 6:050
600 KAR 6:060
600 KAR 6:080

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 6, 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 E2

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 E8

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 E15

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
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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:

12 KAR 4:170E	2326	4-7-98
Expires		10-18-98
31 KAR 4:120E	2575	4-22-98
200 KAR 15:010E	2327	4-7-98
302 KAR 20:040E	2330	4-3-98
Replaced		10-16-98
401 KAR 5:002E	2576	4-17-98
401 KAR 5:009E	2588	4-17-98
601 KAR 2:020E	1863	2-13-98
Replaced		9-1-98
803 KAR 6:010E	2333	3-20-98
806 KAR 17:141E	2601	4-15-98
806 KAR 17:150E	2602	4-15-98
905 KAR 2:160E	2605	4-20-98
907 KAR 1:006E	2337	4-6-98
Replaced		9-16-98
907 KAR 1:011E	2339	4-6-98
Replaced		9-16-98
907 KAR 1:022E	2080	2-18-98
907 KAR 1:026E	2612	4-24-98
907 KAR 1:560E	2093	2-18-98
907 KAR 1:563E	2097	2-18-98
907 KAR 1:605E	2344	4-6-98
Replaced		9-16-98
907 KAR 1:626E	2614	4-24-98
907 KAR 1:640E	2346	4-6-98
Replaced		9-16-98
907 KAR 1:645E	2350	4-6-98
Replaced		9-16-98
907 KAR 1:755E	2100	2-18-98
907 KAR 3:030E	1639	12-19-97
Expired		7-21-98
908 KAR 2:210E	2352	4-6-98

ORDINARY ADMINISTRATIVE REGULATIONS:

202 KAR 3:010	2782	(See Volume 25)
202 KAR 3:030	2783	(See Volume 25)
600 KAR 6:050		
Amended	2760	(See Volume 25)
600 KAR 6:060		
Amended	2762	(See Volume 25)
600 KAR 6:080		
Amended	2765	(See Volume 25)
601 KAR 2:020	2784	(See Volume 25)
810 KAR 1:001		
Amended	2445	(See Volume 25)
810 KAR 1:009		
Amended	2447	10-12-98
810 KAR 1:015		
Amended	2450	(See Volume 25)
810 KAR 1:016		
Amended	2452	(See Volume 25)
811 KAR 1:090		
Amended	2454	(See Volume 25)
811 KAR 1:215		
Amended	2456	10-12-98
902 KAR 50:031		
Amended	1573	
902 KAR 50:032		
Amended	1575	
902 KAR 55:033		
Amended	1578	
907 KAR 1:595	2788	(See Volume 25)
907 KAR 3:030	2790	(See Volume 25)
908 KAR 1:311	2484	
908 KAR 1:370	2485	(See Volume 25)

*Statement of Consideration Not Filed by Deadline

VOLUME 25

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
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EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)

20 KAR 1:040E	1015	10-15-98
20 KAR 1:070E	1017	10-15-98
20 KAR 1:080E	1018	10-15-98
30 KAR 4:010E	539	7-15-98
31 KAR 4:130E	36	5-20-98
40 KAR 2:070E	540	7-15-98
40 KAR 2:075E	541	7-15-98
40 KAR 2:076E	543	7-15-98
40 KAR 6:010E	543	7-15-98
105 KAR 1:170E	222	7-14-98
105 KAR 1:230E	223	7-14-98

200 KAR 5:021E	548	7-17-98
200 KAR 6:060E	225	7-15-98
200 KAR 22:005E	549	7-17-98
301 KAR 2:181E	551	7-16-98
301 KAR 2:225E	552	8-10-98
301 KAR 2:226E	1019	9-23-98
301 KAR 6:005E	554	7-16-98
501 KAR 1:030E	226	7-14-98
501 KAR 1:050E	229	7-14-98
501 KAR 2:070E	230	7-14-98
501 KAR 6:020E	231	7-14-98
501 KAR 14:010E	233	7-14-98
502 KAR 31:020E	234	7-14-98
603 KAR 7:080E	37	5-15-98
702 KAR 7:125E	555	8-6-98
704 KAR 3:480E	1021	10-14-98
704 KAR 20:720E	558	7-15-98

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
705 KAR 4:240E	559	8-6-98	11 KAR 5:130		
735 KAR 2:010E	236	6-30-98	Amended	888	
735 KAR 2:020E	238	6-30-98	11 KAR 8:030		
735 KAR 2:030E	239	6-30-98	Amended	890	
735 KAR 2:040E	240	6-30-98	11 KAR 12:010		
735 KAR 2:050E	241	6-30-98	Amended	392	
735 KAR 2:060E	243	6-30-98	As Amended	810	10-1-98
750 KAR 1:010E	1022	9-23-98	11 KAR 12:040		
750 KAR 2:010E	244	7-1-98	Amended	393	
787 KAR 1:200E	245	6-30-98	As Amended	811	10-1-98
803 KAR 2:306E	246	7-2-98	11 KAR 12:060		
803 KAR 2:307E	249	7-2-98	Amended	395	
803 KAR 2:308E	251	7-2-98	As Amended	812	
803 KAR 2:311E	253	7-2-98	Reprint	991	10-1-98
803 KAR 2:316E	255	7-2-98	11 KAR 12:070		
803 KAR 2:317E	256	7-2-98	Amended	397	
803 KAR 2:320E	258	7-13-98	As Amended	812	10-1-98
803 KAR 2:403E	264	7-2-98	11 KAR 14:010	451	
803 KAR 2:404E	265	7-2-98	As Amended	813	10-1-98
803 KAR 2:418E	269	7-2-98	11 KAR 14:020	453	
803 KAR 2:425E	271	7-2-98	As Amended	813	10-1-98
806 KAR 15:040E	560	7-21-98	11 KAR 14:030	454	
806 KAR 17:160E	272	6-19-98	As Amended	814	10-1-98
806 KAR 17:170E	564	8-6-98	11 KAR 14:040	456	
806 KAR 17:180E	275	6-19-98	As Amended	814	10-1-98
806 KAR 17:190E	277	7-2-98	11 KAR 14:050	457	
806 KAR 17:200E	278	7-2-98	As Amended	815	10-1-98
806 KAR 17:210E	280	7-2-98	11 KAR 14:060	459	
806 KAR 17:220E	281	7-2-98	As Amended	815	10-1-98
904 KAR 2:006E	775	9-14-98	11 KAR 14:070	460	
904 KAR 2:018E	42	5-15-98	As Amended	815	10-1-98
904 KAR 2:116E	782	9-15-98	11 KAR 14:080	462	
904 KAR 2:370E	786	9-14-98	As Amended	815	10-1-98
904 KAR 2:380E	44	6-15-98	11 KAR 15:010	464	
904 KAR 2:490E	283	6-22-98	As Amended	816	10-1-98
907 KAR 1:013E	1025	9-29-98	11 KAR 15:020	465	
907 KAR 1:025E	285	6-30-98	As Amended	817	10-1-98
907 KAR 1:635E	790	9-1-98	11 KAR 15:030	467	
907 KAR 1:755E	793	9-1-98	As Amended	817	10-1-98
907 KAR 3:065E	48	5-15-98	11 KAR 15:040	468	
			As Amended	818	10-1-98
			11 KAR 15:050	470	
			As Amended	818	10-1-98
			11 KAR 15:060	472	
			As Amended	819	10-1-98
			11 KAR 15:070	474	
			As Amended	819	10-1-98
			12 KAR 2:031		
			Amended	892	
			12 KAR 2:041		
			Amended	1087	
			12 KAR 2:046		
			Amended	893	
			12 KAR 2:051		
			Amended	894	
			12 KAR 2:056		
			Amended	894	
			12 KAR 2:061		
			Amended	895	
			12 KAR 2:066		
			Amended	897	
			12 KAR 3:012		
			Amended	1088	
			12 KAR 3:017		
			Amended	1090	
ORDINARY ADMINISTRATIVE REGULATIONS:					
9 KAR 1:010					
Amended	883				
9 KAR 1:015					
Amended	883				
9 KAR 1:030					
Amended	884				
9 KAR 1:036	1259				
9 KAR 1:040					
Amended	1086				
9 KAR 1:050					
Amended	887				
11 KAR 3:100					
Amended	375				
As Amended	798	10-1-98			
11 KAR 4:050					
Amended	385				
As Amended	806	10-1-98			
11 KAR 4:070	450				
As Amended	808	10-1-98			
11 KAR 5:001					
Amended	390				
As Amended	809	10-1-98			

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
12 KAR 3:022			201 KAR 20:110		
Amended	898		Amended	594	
12 KAR 3:027			As Amended	1031	
Amended	899		201 KAR 20:240		
12 KAR 3:037			Amended	596	
Amended	900		As Amended	1032	
12 KAR 3:042			201 KAR 20:260		
Amended	1091		Amended	597	
30 KAR 4:010	1259		As Amended	1033	
31 KAR 4:120	1260		201 KAR 20:370		
31 KAR 4:130	1261		Amended	598	
32 KAR 2:050			As Amended	1034	
Amended	1092		201 KAR 26:121		
40 KAR 2:070			Amended	403	
Amended	1093		As Amended	820	9-16-98
40 KAR 2:075	1263		201 KAR 26:125		
40 KAR 2:076	1265		Amended	406	
40 KAR 6:010	1265		As Amended	823	9-16-98
101 KAR 1:325			201 KAR 26:180		
Amended	398	10-12-98	Amended	407	
103 KAR 7:011	677		As Amended	823	9-16-98
105 KAR 1:070			201 KAR 26:215		
Amended	589		Amended	408	9-16-98
105 KAR 1:230			201 KAR 34:030	476	
Amended	901		As Amended	824	10-12-98
200 KAR 5:021			201 KAR 34:040	476	
Amended	903		As Amended	826	10-12-98
200 KAR 6:060	946		201 KAR 35:030	947	
200 KAR 7:010			201 KAR 35:040	949	
Repealed	139	9-8-98	201 KAR 36:020	480	
200 KAR 7:011	139	9-8-98	As Amended	828	9-16-98
200 KAR 15:010			201 KAR 36:030	481	
Amended	400		As Amended	829	9-16-98
201 KAR 2:015			201 KAR 36:040	483	
Amended	904		As Amended	831	9-16-98
201 KAR 2:030			201 KAR 36:050	485	
Amended	906		As Amended	832	9-16-98
201 KAR 2:040			202 KAR 3:010		
Amended	907		As Amended	299	
201 KAR 2:050			202 KAR 3:030		
Amended	908		Amended	584	
201 KAR 6:011	1268		As Amended	834	10-12-98
201 KAR 6:020	678		202 KAR 5:010	1269	
201 KAR 6:030	679		301 KAR 1:090		
201 KAR 6:040	680		Amended	409	
201 KAR 6:050	681		As Amended	834	10-16-98
201 KAR 6:060	681		301 KAR 1:155		
201 KAR 6:070	682		Amended	410	
201 KAR 6:080	685		As Amended	834	10-16-98
201 KAR 6:090	686		301 KAR 1:201		
201 KAR 8:140			Amended	411	10-16-98
Amended	590		301 KAR 2:020		
As Amended	1029		Repealed		4-6-95
201 KAR 8:440	475		301 KAR 2:179	486	
As Amended	819	9-16-98	As Amended	835	10-16-98
201 KAR 9:320	687		301 KAR 2:181	1271	
201 KAR 15:030			301 KAR 2:225		
Amended	592		Amended	1095	
As Amended	1030		301 KAR 5:020		
201 KAR 20:070			Amended	600	
Amended	592		As Amended	1035	
As Amended	1030		301 KAR 5:030		
201 KAR 20:091	689		Amended	602	
As Amended	1031		As Amended	1036	
			301 KAR 6:005	1272	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
302 KAR 20:040			600 KAR 6:080		
Amended	415	10-16-98	Amended	350	
302 KAR 20:051	488		As Amended	839	10-6-98
Withdrawn		10-9-98	601 KAR 1:115		
401 KAR 5:002	690		Amended	418	
401 KAR 5:009	701		Amended	871	
Amended	1061		601 KAR 1:140		
401 KAR 63:021			Amended	420	
Amended	603		As Amended	1039	
401 KAR 63:024	711		601 KAR 1:145		
415 KAR 1:050			Amended	422	
Amended	1097		Amended	873	
415 KAR 1:060			As Amended	1040	
Amended	1099		601 KAR 2:020		
415 KAR 1:070			Amended	352	
Amended	1102		As Amended	565	9-1-98
415 KAR 1:080			601 KAR 9:135		
Amended	1104		Amended	425	
415 KAR 1:090			Amended	875	
Amended	1110		As Amended	1042	
415 KAR 1:100			701 KAR 5:021	1279	
Amended	1112		701 KAR 5:120	1279	
415 KAR 1:110			702 KAR 3:060		
Amended	1114		Amended	617	
415 KAR 1:114			As Amended	1045	
Amended	1119		702 KAR 3:110		
415 KAR 1:116	1272		Amended	618	
415 KAR 1:120			702 KAR 4:151	1281	
Amended	1122		702 KAR 7:065		
415 KAR 1:130			Amended	127	
Amended	1128		As Amended	1046	
415 KAR 1:135	1274		702 KAR 7:125		
501 KAR 1:030			Amended	1137	
Amended	607		703 KAR 5:010	1281	
501 KAR 1:050			704 KAR 3:035		
Amended	610		Amended	1141	
As Amended	1037		704 KAR 7:070		
501 KAR 2:070	713		Amended	1143	
501 KAR 6:020			704 KAR 10:051	1282	
Amended	611		704 KAR 20:305		
501 KAR 6:040			Amended	429	
Amended	125	10-12-98	As Amended	841	10-1-98
501 KAR 6:110			704 KAR 20:460		
Amended	126	10-12-98	Amended	1144	
501 KAR 8:010			704 KAR 20:690		
Repealed	490	10-12-98	Amended	129	9-3-98
501 KAR 8:011	490	10-12-98	704 KAR 20:700		
501 KAR 14:010	713		Amended	910	
As Amended	1038		704 KAR 20:710		
502 KAR 31:020	1276		Amended	619	
503 KAR 1:060			As Amended	1046	
Amended	613		704 KAR 20:720	1283	
503 KAR 1:080			705 KAR 7:240	1284	
Amended	614		725 KAR 1:070	714	
503 KAR 3:005	1278		735 KAR 1:010		
503 KAR 3:010			Amended	1146	
Amended	1130		735 KAR 1:020		
505 KAR 1:040			Amended	1149	
Amended	909		735 KAR 2:010	951	
600 KAR 5:010			735 KAR 2:020	953	
Amended	615		735 KAR 2:030	954	
As Amended	1038		735 KAR 2:040	955	
600 KAR 6:050			735 KAR 2:050	956	
As Amended	836	10-6-98	735 KAR 2:060	958	
600 KAR 6:060			750 KAR 2:010		
As Amended	837	10-6-98	Amended	912	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
755 KAR 1:070	959		806 KAR 3:130		
772 KAR 1:010	139	9-3-98	Repealed	852	10-12-98
772 KAR 1:020	141	9-3-98	806 KAR 3:131	491	
772 KAR 1:030	142	9-3-98	As Amended	852	10-12-98
772 KAR 1:040	142	9-3-98	806 KAR 9:241	492	
772 KAR 1:050	144	9-3-98	As Amended	1048	
772 KAR 1:060	145	9-3-98	806 KAR 17:150	718	
772 KAR 1:070	146	9-3-98	As Amended	1049	
781 KAR 1:030			806 KAR 17:160	960	
Amended	131		806 KAR 17:180	961	
As Amended	844	10-1-98	806 KAR 17:190	1286	
781 KAR 1:050			806 KAR 17:210	1288	
Amended	431		806 KAR 17:220	963	
As Amended	845	10-1-98	806 KAR 39:080		
781 KAR 1:060			Repealed	852	10-12-98
Repealed	566	9-3-98	806 KAR 39:081	493	
781 KAR 1:061			As Amended	852	10-12-98
As Amended	566	9-3-98	807 KAR 5:063		
781 KAR 1:070			Amended	916	
Amended	913		808 KAR 1:031	1289	
782 KAR 1:030			808 KAR 1:060		
Amended	133		Amended	1182	
As Amended	847	10-1-98	808 KAR 3:050		
782 KAR 1:040			Amended	1183	
Amended	136		808 KAR 6:060	1290	
Withdrawn		8-31-98	808 KAR 12:020		
787 KAR 1:200			Amended	1185	
Amended	914		810 KAR 1:001		
789 KAR 1:010	147		As Amended	852	10-12-98
As Amended	850	10-1-98	810 KAR 1:015		
802 KAR 1:010			As Amended	854	10-12-98
Amended	434		810 KAR 1:016		
Amended	880		As Amended	855	10-12-98
803 KAR 2:306			811 KAR 1:090		
Amended	1151		As Amended	856	10-12-98
803 KAR 2:307			815 KAR 7:105		
Amended	1153		Amended	1186	
803 KAR 2:308			815 KAR 20:120		
Amended	1155		Amended	1187	
803 KAR 2:311			815 KAR 35:015		
Amended	1158		Amended	1193	
803 KAR 2:316			815 KAR 45:025		
Amended	1159		Amended	1196	
803 KAR 2:317			815 KAR 45:035		
Amended	1161		Amended	1197	
803 KAR 2:320			815 KAR 45:050		
Amended	1162		Amended	1200	
803 KAR 2:403			815 KAR 45:060		
Amended	1168		Amended	1202	
803 KAR 2:404			815 KAR 45:080		
Amended	1170		Amended	1205	
803 KAR 2:418			815 KAR 45:090		
Amended	1173		Amended	1209	
803 KAR 2:425			815 KAR 45:100		
Amended	1175		Amended	1213	
803 KAR 25:026			900 KAR 2:020		
Amended	1176		Amended	1216	
803 KAR 25:089			900 KAR 2:031	965	
Amended	915		900 KAR 6:030		
803 KAR 25:170			Amended	1217	
Amended	1180		900 KAR 6:050		
803 KAR 25:240	1285		Amended	1218	
804 KAR 4:195	716		902 KAR 2:090		
804 KAR 4:350	717		Amended	620	
As Amended	1048		902 KAR 4:110	1291	

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
902 KAR 14:080			907 KAR 1:035		
Amended	1225		Amended	933	
902 KAR 20:036			907 KAR 1:038		
Amended	1232		Amended	1254	
902 KAR 20:081			907 KAR 1:039		
Amended	623		Amended	1255	
Amended	1071		907 KAR 1:360		
902 KAR 20:134	1292		Amended	1257	
902 KAR 20:360	1293		907 KAR 1:383	1298	
902 KAR 55:010			907 KAR 1:560		
Amended	625		Amended	655	
902 KAR 55:030			As Amended	1055	
Amended	627		907 KAR 1:563	731	
902 KAR 55:045			As Amended	1058	
Amended	629		907 KAR 1:595		
902 KAR 55:105	721		Amended	585	
Amended	1074		As Amended	863	9-16-98
902 KAR 55:110	966		907 KAR 1:605		
902 KAR 55:115	723		Amended	442	
904 KAR 2:001			As Amended	864	9-16-98
Amended	632		907 KAR 1:626		
904 KAR 2:018	967		Amended	659	
904 KAR 2:020			907 KAR 1:640		
Amended	634		Amended	444	
904 KAR 2:380			As Amended	865	9-16-98
Amended	636		907 KAR 1:645		
904 KAR 2:390			Amended	447	
Amended	640		As Amended	867	9-16-98
904 KAR 2:400			907 KAR 3:030		
Amended	642		Amended	586	
904 KAR 2:410			As Amended	868	9-16-98
Amended	644		907 KAR 3:065	1299	
904 KAR 2:490	969		908 KAR 1:340		
904 KAR 3:025			Amended	935	
Amended	919		908 KAR 1:370		
904 KAR 3:042			Amended	355	
Amended	922		908 KAR 2:120		
905 KAR 1:320			Amended	661	
Amended	926		908 KAR 2:130		
905 KAR 1:330			Amended	664	
Amended	1236		908 KAR 2:140		
905 KAR 2:100			Amended	667	
Amended	1241		908 KAR 2:160		
905 KAR 2:141	724		Amended	670	
905 KAR 2:160	725		908 KAR 2:200		
Amended	1075		Amended	672	
906 KAR 1:110			908 KAR 2:210	734	
Amended	1246		Amended	1082	
907 KAR 1:006					
Amended	437				
As Amended	858	9-16-98			
907 KAR 1:011					
Amended	438				
As Amended	859	9-16-98			
907 KAR 1:019					
Amended	1248				
907 KAR 1:021					
Amended	1252				
907 KAR 1:022					
Amended	649				
As Amended	1051				
907 KAR 1:026					
Amended	654				
907 KAR 1:034					
Amended	930				

KRS SECTION

REGULATION

KRS SECTION

REGULATION

KRS INDEX

11A.040	9 KAR	1:050	117.045	31 KAR	4:120
11A.050	9 KAR	1:010	117.085	31 KAR	4:130
11A.080	9 KAR	1:015	121.130	32 KAR	2:050
11A.100	9 KAR	1:030	121.140	32 KAR	2:050
	9 KAR	1:036	131.310-131.370	802 KAR	1:010
11A.211	9 KAR	1:040	131.565	11 KAR	4:050
11A.216	9 KAR	1:040	132.420	103 KAR	7:011
11A.221	9 KAR	1:040	133.120	802 KAR	1:010
11A.231	9 KAR	1:040	136.392	815 KAR	45:060
11A.233	9 KAR	1:040		815 KAR	45:080
11A.241	9 KAR	1:040	138.450-138.470	103 KAR	44:060E
11A.990	9 KAR	1:040	138.463	601 KAR	1:140
12.290	735 KAR	1:010		601 KAR	1:145
	735 KAR	1:020	138.4631	601 KAR	1:145
	735 KAR	2:010	140.250	103 KAR	7:011
	735 KAR	2:020	140.990	103 KAR	7:011
	735 KAR	2:030	148.029	301 KAR	2:179
	735 KAR	2:040	150.010	301 KAR	1:155
	735 KAR	2:050		301 KAR	2:181
	735 KAR	2:060		301 KAR	2:226E
Chapter 13B	20 KAR	1:070E	150.025	301 KAR	1:090
	802 KAR	1:010		301 KAR	2:179
	907 KAR	1:560		301 KAR	2:181
	907 KAR	1:563		301 KAR	2:225
13B.005-13B.170	905 KAR	1:320		301 KAR	2:226E
14.150	30 KAR	4:010	150.090	301 KAR	5:030
15A.070	503 KAR	3:005	150.092	301 KAR	2:181
	503 KAR	3:010	150.105	301 KAR	2:179
15.330	503 KAR	1:060	150.120	301 KAR	1:155
	503 KAR	1:080	150.170	301 KAR	1:155
16.530	105 KAR	1:170		301 KAR	2:181
17.165	905 KAR	2:100		301 KAR	5:030
17.500	502 KAR	31:020	150.175	301 KAR	1:090
18A.075	101 KAR	1:325		301 KAR	1:155
18A.0751	101 KAR	1:325		301 KAR	5:030
18A.111	101 KAR	1:325	150.195	301 KAR	5:020
44.030	11 KAR	4:050		301 KAR	5:030
Chapter 45A	200 KAR	5:021	150.235	301 KAR	5:030
	200 KAR	7:011	150.305	301 KAR	2:226E
Chapter 56	200 KAR	7:011	150.320	301 KAR	2:225
56.463	200 KAR	6:060	150.330	301 KAR	2:225
56.800	200 KAR	6:060		301 KAR	2:226E
56.803	200 KAR	6:060	150.340	301 KAR	2:225
61.525	105 KAR	1:170		301 KAR	2:226E
61.526	105 KAR	1:170	150.360	301 KAR	1:090
61.540	105 KAR	1:170		301 KAR	2:179
61.542	105 KAR	1:170		301 KAR	2:225
61.545	105 KAR	1:170	150.390	301 KAR	2:179
61.625	105 KAR	1:170	150.445	301 KAR	1:155
61.637	105 KAR	1:230	150.450	301 KAR	1:155
61.874	201 KAR	20:240	150.470	301 KAR	1:201
78.540	105 KAR	1:170	150.600	301 KAR	2:226E
Chapter 95A	815 KAR	45:035	150.603	301 KAR	2:225
	815 KAR	45:060	150.620	301 KAR	2:181
	815 KAR	45:080		301 KAR	2:225
95A.040	815 KAR	45:025	150.640	301 KAR	2:179
	815 KAR	45:050	150.710	301 KAR	2:179
	815 KAR	45:090	150.990	301 KAR	1:155
95A.050	815 KAR	45:025		301 KAR	1:201
95A.262	815 KAR	45:050		301 KAR	2:226E
	815 KAR	45:100		301 KAR	5:020
Chapter 96A	603 KAR	7:080E		301 KAR	5:030
100.324	807 KAR	5:063	Chapter 151B	603 KAR	7:080E
103.200	200 KAR	15:010	151B.190	781 KAR	1:030
103.2101	200 KAR	15:010		781 KAR	1:050
103.286	200 KAR	15:010		781 KAR	1:070

KRS SECTION

REGULATION

KRS SECTION

REGULATION

	501 KAR	6:040			201 KAR	6:020
	501 KAR	6:110			201 KAR	6:030
197.020	501 KAR	8:011			201 KAR	6:080
198B.010	815 KAR	7:105			201 KAR	6:090
198B.040	815 KAR	7:105	216A.080		201 KAR	6:020
198B.050	815 KAR	7:105	216A.090		201 KAR	6:040
198B.060	815 KAR	7:105			201 KAR	6:070
198B.080	815 KAR	7:105	216A.110		201 KAR	6:060
198B.110	815 KAR	7:105	216A.130		201 KAR	6:050
198B.260	815 KAR	7:105			201 KAR	6:060
198B.990	815 KAR	7:105	216B.010-216B.130		900 KAR	6:030
199.420-199.990	505 KAR	1:040			900 KAR	6:050
199.892-199.896	905 KAR	2:141			902 KAR	14:080
	905 KAR	2:160			902 KAR	20:036
199.898	905 KAR	2:100			902 KAR	20:081
199.8982	905 KAR	2:100			902 KAR	20:134
200.080-200.120	505 KAR	1:040			902 KAR	20:360
200.600-200.645	505 KAR	1:040			906 KAR	1:110
Chapter 202A	603 KAR	7:080E	216B.455		900 KAR	6:030
202A.410	501 KAR	14:010			900 KAR	6:050
Chapter 202B	603 KAR	7:080E			902 KAR	20:134
Chapter 205	603 KAR	7:080E	216B.990		900 KAR	6:030
205.010	904 KAR	2:006E			900 KAR	6:050
205.200	904 KAR	2:006E			902 KAR	14:080
	904 KAR	2:018			902 KAR	20:036
205.211	904 KAR	2:018			902 KAR	20:081
205.231	907 KAR	1:560			902 KAR	20:134
	907 KAR	1:563			902 KAR	20:360
205.237	907 KAR	1:560			906 KAR	1:110
	907 KAR	1:563	217.005-217.215		902 KAR	55:115
205.520	907 KAR	1:006	217.992		902 KAR	55:115
	907 KAR	1:011	218A.020-218A.130		902 KAR	55:045
	907 KAR	1:013E	218A.030-218A.140		902 KAR	55:105
	907 KAR	1:019	218A.150		902 KAR	55:010
	907 KAR	1:026	218A.160		902 KAR	55:010
	907 KAR	1:034	218A.170		902 KAR	55:010
	907 KAR	1:035	218A.170-218A.240		902 KAR	55:105
	907 KAR	1:038	218A.200		902 KAR	55:010
	907 KAR	1:039	Chapter 222		908 KAR	1:340
	907 KAR	1:360	224.01-010		401 KAR	5:002
	907 KAR	1:383	224.10		401 KAR	5:009
	907 KAR	1:560	224.10-100		401 KAR	5:002
	907 KAR	1:605			401 KAR	63:021
	907 KAR	1:626			401 KAR	63:024
	907 KAR	1:635E	224.10-110		401 KAR	5:002
	907 KAR	1:640	224.16-050		401 KAR	5:002
	907 KAR	1:645	224.16-060		401 KAR	5:002
205.560	907 KAR	1:021	224.20-100		401 KAR	63:021
205.565	907 KAR	1:013E			401 KAR	63:024
205.6316	907 KAR	1:019	224.20-110		401 KAR	63:021
205.640	907 KAR	1:013E			401 KAR	63:024
205.710-205.800	904 KAR	2:001	224.20-120		401 KAR	63:021
	904 KAR	2:380			401 KAR	63:024
	904 KAR	2:400	224.60-110		415 KAR	1:114
	904 KAR	2:410	224.60-120		415 KAR	1:050
	904 KAR	2:380			415 KAR	1:060
205.992	603 KAR	7:080E			415 KAR	1:070
Chapter 209	603 KAR	7:080E			415 KAR	1:080
Chapter 210	902 KAR	4:110			415 KAR	1:090
211.090	902 KAR	2:090			415 KAR	1:100
211.180	902 KAR	4:110			415 KAR	1:110
	902 KAR	14:080			415 KAR	1:120
211.950-211.956	902 KAR	20:360	224.60-130		415 KAR	1:050
213.101	201 KAR	8:140			415 KAR	1:060
214.615	902 KAR	2:090			415 KAR	1:070
215.520	603 KAR	7:080E			415 KAR	1:080
Chapter 216	900 KAR	2:031			415 KAR	1:090
216.550	900 KAR	2:020			415 KAR	1:100
216.567	201 KAR	6:011			415 KAR	1:110
216A.070						

KRS SECTION

REGULATION

KRS SECTION

REGULATION

224.60-140

224.70

224.70-100

224.70-110

224.73

227.450

227.489

227.490

227.4901

235.040

235.050

235.070

235.080

241.060

243.040

250.491-250.631

Chapter 257

Chapter 273

278.020

278.650

Chapter 281

281.014

281.615

281.626

281.650

281.655

287.050

287.061

287.180

288.450

288.470

288.600

289.031

289.061

290.015

290.055

290.100

290.225

290.585

290.715

415 KAR 1:114

415 KAR 1:116

415 KAR 1:120

415 KAR 1:130

415 KAR 1:135

415 KAR 1:050

415 KAR 1:060

415 KAR 1:070

415 KAR 1:080

415 KAR 1:090

415 KAR 1:100

415 KAR 1:110

415 KAR 1:116

415 KAR 1:120

415 KAR 1:130

415 KAR 1:135

401 KAR 5:009

401 KAR 5:002

401 KAR 5:002

401 KAR 5:009

815 KAR 35:015

815 KAR 35:015

815 KAR 35:015

815 KAR 35:015

301 KAR 6:005

301 KAR 6:005

301 KAR 6:005

301 KAR 6:005

804 KAR 4:195

804 KAR 4:350

12 KAR 2:031

12 KAR 2:041

12 KAR 2:046

12 KAR 2:051

12 KAR 2:056

12 KAR 2:061

12 KAR 2:066

12 KAR 3:012

12 KAR 3:017

12 KAR 3:022

12 KAR 3:027

12 KAR 3:037

12 KAR 3:042

302 KAR 20:040

603 KAR 7:080E

807 KAR 5:063

807 KAR 5:063

601 KAR 1:115

603 KAR 7:080E

907 KAR 3:065

601 KAR 1:140

601 KAR 1:140

601 KAR 1:145

601 KAR 1:140

601 KAR 1:140

808 KAR 1:031

808 KAR 1:031

808 KAR 1:060

808 KAR 1:031

808 KAR 6:006

808 KAR 6:006

808 KAR 1:031

808 KAR 1:060

808 KAR 3:050

808 KAR 3:050

808 KAR 3:050

808 KAR 3:050

291.440

291.520

294.020

304.12-230

304.39-350

309.085

309.1315

309.1335

311.595

311.597

311.710-311.830

311.720

313.080

313.305

314.011

314.031

314.041

314.042

314.051

314.071

314.073

314.091

314.101

314.111

314.131

314.142

314.161

Chapter 315

315.191

316.125

316.130

316.140

318.010

318.130

318.150

318.165

318.200

319.015

319.032

319.050

320.120

320.210

335.515

335.535

335.540

335.545

808 KAR 1:031

808 KAR 6:006

808 KAR 12:020

803 KAR 25:240

806 KAR 39:081

201 KAR 35:040

201 KAR 34:040

201 KAR 35:030

201 KAR 34:030

201 KAR 9:320

201 KAR 9:320

902 KAR 20:360

902 KAR 4:110

201 KAR 8:140

201 KAR 8:440

201 KAR 8:140

201 KAR 8:440

902 KAR 20:081

902 KAR 20:360

907 KAR 1:019

201 KAR 20:110

201 KAR 20:070

201 KAR 20:110

201 KAR 20:240

201 KAR 20:260

201 KAR 20:370

201 KAR 20:240

201 KAR 20:370

902 KAR 20:081

902 KAR 20:360

201 KAR 20:070

201 KAR 20:110

201 KAR 20:240

201 KAR 20:260

201 KAR 20:370

201 KAR 20:240

201 KAR 20:370

201 KAR 20:091

201 KAR 20:110

201 KAR 20:260

201 KAR 20:260

201 KAR 20:240

201 KAR 20:240

201 KAR 2:015

201 KAR 2:040

201 KAR 2:050

201 KAR 2:030

201 KAR 15:030

201 KAR 15:030

201 KAR 15:030

815 KAR 20:120

815 KAR 20:120

815 KAR 20:120

815 KAR 20:120

815 KAR 20:120

201 KAR 26:215

201 KAR 26:121

201 KAR 26:180

201 KAR 26:125

907 KAR 1:019

902 KAR 20:081

201 KAR 36:040

201 KAR 36:020

201 KAR 36:030

201 KAR 36:040

201 KAR 36:050

201 KAR 36:050

KRS SECTION

REGULATION

KRS SECTION

REGULATION

338.051

803 KAR 2:306
 803 KAR 2:307
 803 KAR 2:308
 803 KAR 2:311
 803 KAR 2:316
 803 KAR 2:317
 803 KAR 2:320
 803 KAR 2:403
 803 KAR 2:404

338.061

803 KAR 2:418
 803 KAR 2:425
 803 KAR 2:306
 803 KAR 2:307
 803 KAR 2:308
 803 KAR 2:311
 803 KAR 2:316
 803 KAR 2:317
 803 KAR 2:320
 803 KAR 2:403
 803 KAR 2:404
 803 KAR 2:418
 803 KAR 2:425

341.360

341.380

Chapter 342

342.019

342.020

342.035

342.038

342.039

342.267

342.735

355.2a-103

355.9-105

355.9-401A

355.9-402

355.9-403

355.9-404

355.9-405

355.9-406

367.150

367.46971

367.46973

367.46981

393.010

393.040

393.110

393.140

393.150

393.160

403.210-403.240

403.215

403.715-403.785

405.450

405.465

405.467

405.490

405.520

907 KAR 1:011
 787 KAR 1:200
 803 KAR 25:026
 803 KAR 25:089
 803 KAR 25:089
 803 KAR 25:089
 803 KAR 25:170
 803 KAR 25:170
 803 KAR 25:240
 803 KAR 25:089

30 KAR 4:010
 30 KAR 4:010
 30 KAR 4:010
 30 KAR 4:010
 30 KAR 4:010
 30 KAR 4:010
 30 KAR 4:010
 40 KAR 2:070
 40 KAR 2:075
 40 KAR 2:076

40 KAR 2:070

40 KAR 2:075

40 KAR 2:076

40 KAR 2:070

40 KAR 2:075

40 KAR 2:076

40 KAR 2:070

40 KAR 2:075

40 KAR 2:076

20 KAR 1:040E

20 KAR 1:070E

20 KAR 1:040E

20 KAR 1:040E

20 KAR 1:080E

20 KAR 1:040E

20 KAR 1:040E

20 KAR 1:070E

904 KAR 2:001

904 KAR 2:400

904 KAR 2:410

908 KAR 2:210

904 KAR 2:410

904 KAR 2:410

904 KAR 2:410

904 KAR 2:410

904 KAR 2:410

904 KAR 2:001

406.011-406.180

407.010-407.480

431.240

431.600

Chapter 439

439.340

439.352

439.356

439.358

523.043

532.060

533.010

600.010

605.115

605.130

620.010-620.050

620.990

Chapter 645

1998 Acts c. 57

1998 Acts c. 75

1998 Acts c. 105

1998 Acts c. 153

1998 Acts c. 166

1998 Acts c. 228

1998 Acts c. 231

1998 Acts c. 256

1998 Acts c. 303

1998 Acts c. 312

1998 Acts c. 330

1998 Acts c. 339

1998 Acts c. 380

1998 Acts c. 403

1998 Acts c. 426

1998 Acts c. 444

1998 Acts c. 473

1998 Acts c. 483

1998 Acts c. 496

1998 Acts c. 524

1998 Acts c. 531

1998 Acts c. 542

1998 Acts c. 556

1998 Acts c. 561

1998 Acts c. 565

904 KAR 2:400

904 KAR 2:410

904 KAR 2:390

904 KAR 2:001

501 KAR 8:011

905 KAR 1:330

501 KAR 6:020

501 KAR 6:040

501 KAR 6:110

501 KAR 1:030

501 KAR 1:050

501 KAR 1:050

501 KAR 1:050

501 KAR 1:050

501 KAR 1:050

501 KAR 2:070

905 KAR 1:330

907 KAR 1:034

907 KAR 1:035

905 KAR 1:330

905 KAR 1:330

905 KAR 1:330

603 KAR 7:080E

905 KAR 1:330

905 KAR 2:100

105 KAR 1:230

105 KAR 1:170

105 KAR 1:230

905 KAR 2:100

601 KAR 1:140

601 KAR 1:145

907 KAR 1:019

907 KAR 1:021

807 KAR 5:063

11 KAR 4:070

11 KAR 14:010

11 KAR 14:020

11 KAR 14:030

11 KAR 14:040

11 KAR 14:050

11 KAR 14:060

11 KAR 14:070

11 KAR 14:080

905 KAR 1:330

806 KAR 9:241

701 KAR 5:120

905 KAR 1:330

907 KAR 1:013E

806 KAR 15:040E

904 KAR 2:001

904 KAR 2:116E

905 KAR 1:330

705 KAR 4:240

806 KAR 3:131

806 KAR 3:131

806 KAR 39:081

806 KAR 17:150

806 KAR 17:160

806 KAR 17:170E

806 KAR 17:180

806 KAR 17:190

806 KAR 17:210

806 KAR 17:220

905 KAR 2:100

907 KAR 1:019

30 KAR 4:010E

201 KAR 8:440

907 KAR 1:021

905 KAR 2:100

KRS SECTION

REGULATION

KRS SECTION

REGULATION

1998 Acts c. 575

11 KAR 4:070
 11 KAR 15:010
 11 KAR 15:020
 11 KAR 15:030
 11 KAR 15:040
 11 KAR 15:050
 11 KAR 15:060
 11 KAR 15:070

1998 Acts c. 580

704 KAR 3:480E

1998 Acts c. 581

40 KAR 2:070
 40 KAR 2:075
 40 KAR 2:076

1998 Acts c. 598

703 KAR 5:010

1998 Acts c. 606

40 KAR 6:010

1998 Acts c. 614

902 KAR 20:360

1998 Acts c. 615

600 KAR 5:010

1998 Acts c. 616

40 KAR 6:010

1998 GA, SB 28

902 KAR 20:081

1998 GA, HB 115

902 KAR 55:105

902 KAR 55:110

902 KAR 2:090

1998 GA, HB 131

806 KAR 17:200E

1998 GA, HB 315

7 CFR

904 KAR 3:025

904 KAR 3:042

21 CFR

902 KAR 55:010

902 KAR 55:045

908 KAR 1:340

26 CFR

105 KAR 1:230

29 CFR

803 KAR 2:306

803 KAR 2:307

803 KAR 2:308

803 KAR 2:311

803 KAR 2:316

803 KAR 2:317

803 KAR 2:320

803 KAR 2:403

803 KAR 2:404

803 KAR 2:418

803 KAR 2:425

31 CFR

11 KAR 4:050

34 CFR

11 KAR 3:100

11 KAR 15:060

781 KAR 1:030

781 KAR 1:050

782 KAR 1:030

782 KAR 1:040

40 CFR

401 KAR 5:002

401 KAR 5:009

415 KAR 1:050

415 KAR 1:060

415 KAR 1:070

415 KAR 1:080

415 KAR 1:090

415 KAR 1:100

415 KAR 1:110

415 KAR 1:120

42 CFR

907 KAR 1:011

907 KAR 1:019

907 KAR 1:021

907 KAR 1:022

907 KAR 1:025E

907 KAR 1:034

907 KAR 1:035

907 KAR 1:038

907 KAR 1:360

907 KAR 1:560

907 KAR 1:563

907 KAR 1:605

907 KAR 1:626

45 CFR

50 CFR

7 USC

8 USC

15 USC

20 USC

26 USC

29 USC

31 USC

33 USC

38 USC

42 USC

49 USC

PL 94-142.2

907 KAR 1:645

907 KAR 1:755E

907 KAR 3:065

806 KAR 17:160

904 KAR 2:001

904 KAR 2:006E

904 KAR 2:380

904 KAR 2:390

904 KAR 2:400

904 KAR 2:410

905 KAR 1:320

905 KAR 2:141

905 KAR 2:160

301 KAR 2:226E

904 KAR 3:025

904 KAR 3:042

904 KAR 2:006E

904 KAR 3:025

907 KAR 1:011

904 KAR 2:001

904 KAR 2:410

11 KAR 3:100

11 KAR 15:010

908 KAR 2:120

908 KAR 2:130

908 KAR 2:140

908 KAR 2:160

908 KAR 2:200

11 KAR 12:070

105 KAR 1:230

781 KAR 1:030

781 KAR 1:050

782 KAR 1:030

782 KAR 1:040

905 KAR 1:320

11 KAR 4:050

904 KAR 2:001

401 KAR 5:002

907 KAR 1:011

806 KAR 17:160

806 KAR 17:220

904 KAR 2:001

904 KAR 2:006E

904 KAR 2:018

904 KAR 2:116E

904 KAR 2:370E

904 KAR 2:490

905 KAR 1:320

905 KAR 2:100

907 KAR 1:006

907 KAR 1:011

907 KAR 1:019

907 KAR 1:021

907 KAR 1:022

907 KAR 1:025E

907 KAR 1:026

907 KAR 1:034

907 KAR 1:035

907 KAR 1:038

907 KAR 1:560

907 KAR 1:563

907 KAR 1:605

907 KAR 1:626

907 KAR 1:645

907 KAR 1:755E

907 KAR 3:065

601 KAR 9:135

603 KAR 7:080E

905 KAR 2:141

KRS SECTION**REGULATION****KRS SECTION****REGULATION**

PL 99-457	905 KAR	2:141
PL 105-33	907 KAR	1:006
PL 105-34	11 KAR	12:070
PL 105-185	904 KAR	3:025
EO 98-731	904 KAR	2:116E
EO 396-1576	505 KAR	1:040

SUBJECT INDEX

ABORTIONS

(See Public Health)

ABSENTEE BALLOT

(See Elections, State Board)

AD VALOREM TAX

(See Taxation)

AGENTS, CONSULTANTS, SOLICITORS, ADJUSTERS

(See Insurance)

AGRICULTURAL EXPERIMENT STATION

(See also particular subject)

Commercial feeds; 12 KAR Chapter 2

Pet food; 12 KAR Chapter 3

AGRICULTURE

Livestock sanitation; 302 KAR Chapter 20

AIR QUALITY

General Standards of Performance

Existing sources emitting toxic air pollutants; 401 KAR 63:021

Repeal of 401 KAR 63:022; 401 KAR 63:024

ALCOHOL AND DRUG COUNSELORS

Code of ethics; 201 KAR 35:030

Continuing education requirements; 201 KAR 35:040

ALCOHOLIC BEVERAGE CONTROL

Licensing

Out-of-state brewers' licenses; 804 KAR 4:350

Repeal of 804 KAR 4:190; 804 KAR 4:195

AMBULANCE SERVICES

(See Public Health)

ARCHIVES

(See Libraries and Archives)

ART THERAPISTS

Code of ethics; 201 KAR 34:040

Continuing education requirements; 201 KAR 34:030

ASSESSMENT AND ACCOUNTABILITY (EDUCATION)

(See Learning Results Services)

ASSISTIVE TECHNOLOGY LOAN CORPORATION

General eligibility criteria; 789 KAR 1:010

BLIND, DEPARTMENT FOR

Appeal procedures; 782 KAR 1:040

Scope and nature of services; 782 KAR 1:030

BUILDING CODE

Kentucky Building Code/1997; 815 KAR 7:105

CABINET FOR FAMILIES AND CHILDREN

Social Insurance

Food Stamp Program; 904 KAR Chapter 3

Public assistance; 904 KAR Chapter 2

CERTIFICATE OF NEED

Administrative regulations; 900 KAR 6:050

Expenditure minimums; 900 KAR 6:030

CHIEF STATE SCHOOL OFFICER'S OFFICE

(See Education, Arts, and Humanities Cabinet)

CHILD WELFARE

(See Juvenile Justice, or Community-Based Services)

CLASS D FELONS

(See Corrections)

COMMONWEALTH MERIT SCHOLARSHIP PROGRAM

(See Higher Education Assistance Authority)

COMMUNICABLE DISEASES

(See Public Health)

COMMISSION ON MILITARY AFFAIRS

(See Military Affairs Commission)

COMMUNITY-BASED SERVICES

Child Welfare

Child protective services; 905 KAR 1:330

Fair hearing; 905 KAR 1:320

Day Care

Child day care assistance program; 905 KAR 2:160

Family child care homes, certification; 905 KAR 2:100

Repeal of 905 KAR 2:140; 905 KAR 2:141

CONSUMER LOANS

(See Financial Institutions)

CONSUMER PROTECTION

No Telephone Solicitation Calls List; 40 KAR 2:075

Telephone solicitation merchants, registration procedure; 40 KAR 2:070

Violations of act, procedures, notification; 40 KAR 2:076

CONTROLLED SUBSTANCES

(See Public Health)

CORRECTIONS, DEPARTMENT OF

Class D Felons

Work release; 501 KAR 2:070

Execution Hearings

Repeal of 501 KAR 8:010; 501 KAR 8:011

Institution Policies and Procedures

Corrections policies and procedures; 501 KAR 6:020

Kentucky State Penitentiary; 501 KAR 6:040

Roederer Correctional Complex; 501 KAR 6:110

Parole Board

Determining parole eligibility; 501 KAR 1:030

Granting final discharge from parole; 501 KAR 1:050

Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR 14:010

COUNSELORS (PROFESSIONAL)

Code of ethics; 201 KAR 36:040

Complaint management process; 201 KAR 36:050

Continuing education requirements; 201 KAR 36:030

Fees, renewal date; 201 KAR 36:020

CREDIT UNIONS

(See Financial Institutions)

SUBJECT INDEX

CRIMINAL JUSTICE TRAINING

- Law Enforcement Council
 - Certification of schools; 503 KAR 1:080
 - Definitions; 503 KAR 1:060
- Law enforcement training; 503 KAR Chapter 3

DAY CARE

- (See Community-Based Services)

DEAF AND HARD OF HEARING (COMMISSION)

- Interpreter Referral Services
 - Definitions; 735 KAR 2:010
 - Grievance procedure; 735 KAR 2:060
 - Interpreter protocols; 735 KAR 2:040
 - Interpreter qualifications; 735 KAR 2:030
 - Processing requests for services; 735 KAR 2:050
 - Program parameters; 735 KAR 2:020
- Telecommunication Devices
 - Specialized telecommunications equipment, processing system including vendor participation, security, maintenance, repair; 735 KAR 1:020
 - Telecommunications devices, eligibility requirements, application, certification; 735 KAR 1:010

DEER

- (See Fish and Wildlife Resources)

DENTAL HYGIENISTS

- (See Dentistry)

DENTISTRY

- Continuing education compliance; 201 KAR 8:140
- Fee schedule; 201 KAR 8:440

DISTRICT SUPPORT SERVICES

- Facilities Management
 - Repeal of 702 KAR 4:150; 702 KAR 4:151
- School Administration, Finance
 - Document filing dates; 702 KAR 3:110
 - Procedure for payment of employees; 702 KAR 3:060
- School Terms, Attendance, Operations
 - High school interscholastic athletics, designation of agent; 702 KAR 7:065
 - Pupil attendance; 702 KAR 7:125

EDUCATION, ARTS, AND HUMANITIES CABINET

- Chief State School Officer's Office
 - Prevention of sexually explicit materials transmitted to schools via computer; 701 KAR 5:120
 - Repeal of 701 KAR 5:020; 701 KAR 5:021
- Deaf and Hard of Hearing Commission
 - Telecommunications devices; 735 KAR Chapter 1
 - Interpreter referral services; 735 KAR Chapter 2
- Education Department
 - District Support Services
 - Facilities management; 702 KAR Chapter 4
 - School administration, finance; 702 KAR Chapter 3
 - School terms, attendance, operation; 702 KAR Chapter 7
 - Learning Programs Development
 - Elementary, Secondary Education Act; 704 KAR Chapter 10
 - Instruction; 704 KAR Chapter 3
 - Learning support services; 704 KAR Chapter 7
 - Learning Results Services
 - Assessment and accountability; 703 KAR Chapter 5
 - Special Instructional Services
 - Instructional programs; 705 KAR Chapter 4
- Education Professional Standards Board; 704 KAR Chapter 20
- Libraries and Archives
 - Archives; 725 KAR Chapter 1

EDUCATION DEPARTMENT

- District Support Services
 - Facilities management; 702 KAR Chapter 4
 - School administration, finance; 702 KAR Chapter 3
 - School terms, attendance, operation; 702 KAR Chapter 7
- Learning Programs Development
 - Elementary, Secondary Education Act; 704 KAR Chapter 10
 - Instruction; 704 KAR Chapter 3
 - Learning support services; 704 KAR Chapter 7
- Learning Results Services
 - Assessment and accountability; 703 KAR Chapter 5
- Special Instructional Services
 - Instructional programs; 705 KAR Chapter 4

EDUCATION PROFESSIONAL STANDARDS BOARD

- Admission to teacher education, standards; 704 KAR 20:700
- Examination prerequisites for principal certification; 704 KAR 20:460
- Kentucky Teacher Internship Program; 704 KAR 20:690
- Professional certificate for exceptional work experience, limited to secondary education; 704 KAR 20:720
- Professional certificate for instructional leadership-school principal, all grades; 704 KAR 20:710
- Written examination prerequisites for teacher certification; 704 KAR 20:305

EDUCATION TECHNOLOGY FUNDING PROGRAM

- (See School Facilities Construction Commission)

EDUCATIONAL SAVINGS PLAN TRUST

- (See Higher Education Assistance Authority)

ELECTIONS, STATE BOARD

- Forms and Procedures
 - Absentee ballot application by facsimile; 31 KAR 4:130
 - Additional precinct officers; 31 KAR 4:120

ELECTRICAL INSPECTORS

- Certification of electrical inspectors; 815 KAR 35:015

ELEMENTARY, SECONDARY EDUCATION ACT

- (See Learning Programs Development)

EMBALMERS, FUNERAL DIRECTORS

- Fees; 201 KAR 15:030

EMERGENCY MEDICAL SERVICES

- (See Public Health)

EMPLOYEES, STATE

- (See also Personnel)
- Personnel
 - Board; 101 KAR Chapter 1
 - Retirement; 105 KAR Chapter 1

EMPLOYMENT SERVICES

- Unemployment Insurance
 - Maximum weekly benefit rate; 787 KAR 1:200

ENGINEERING

- Repeal of 200 KAR 7:010; 200 KAR 7:011

ETHICS

- (See Executive Branch Ethics Commission)

EXECUTION HEARINGS

- (See Corrections)

EXECUTIVE BRANCH ETHICS COMMISSION

- Administrative proceedings; 9 KAR 1:030
- Financial disclosure statement; 9 KAR 1:010

SUBJECT INDEX

Outside employment of public servant, approval; 9 KAR 1:050
Preadministrative proceedings; 9 KAR 1:015
Registration statement, card; executive agency lobbying handbook; 9
KAR 1:040
Repeal of 9 KAR 1:035; 9 KAR 1:036

FAMILIES AND CHILDREN CABINET

Community-Based Services
Child welfare; 905 KAR Chapter 1
Day care; 905 KAR Chapter 2

FEED (COMMERCIAL)

Additives; 12 KAR 2:041
Feed with additives, directions, precautionary statements; 12 KAR
2:031
List of manufacturers; 12 KAR 2:056
Manufacturing conditions; 12 KAR 2:051
Poisonous or deleterious substances; 12 KAR 2:046
Registration; 12 KAR 2:061
Suitability; 12 KAR 2:066

FINANCE AND ADMINISTRATION

Engineering; 200 KAR Chapter 7
Personnel pilot programs; 200 KAR Chapter 22
Private Activity Bond Allocation Committee; 200 KAR Chapter 15
Property; 200 KAR Chapter 6
Purchasing; 200 KAR Chapter 5

FINANCIAL INSTITUTIONS

Administration
Automated teller machines; 808 KAR 1:060
Repeal of 808 KAR 1:030 and 808 KAR 1:070; 808 KAR 1:031
Consumer Loans
Repeal of 808 KAR 6:005; 808 KAR 6:006
Credit Unions
Conduct; 808 KAR 3:050
Mortgage Loan Companies, brokers
Claims of exemption; 808 KAR 12:020

FIRE DEPARTMENTS (LOCAL)

Commission meets and proceedings; 815 KAR 45:025
Education incentive; 815 KAR 45:035
Firefighter's training facility grants; obtaining; 815 KAR 45:050
Fire protection instructors, certification, qualifications; 815 KAR
45:090
Survivor benefits for death of a firefighter; 815 KAR 45:060
Volunteer fire department aid; 815 KAR 45:080
Volunteer fire department loan fund; 815 KAR 45:100

FISH AND WILDLIFE RESOURCES

Fish
Commercial fishing requirements; 301 KAR 1:155
Bow fishing; 301 KAR 1:090
Fishing limits; 301 KAR 1:201
Game
Dove, wood duck, teal, other migratory game bird hunting; 301
KAR 2:225
Quota deer hunt procedures; 301 KAR 2:181
State park deer hunts; 301 KAR 2:179
Youth waterfowl hunting season; 301 KAR 2:226E
Licensing
License agent requirements, responsibilities; 301 KAR 5:020
Purchasing licenses, obtaining replacement licenses; 301 KAR
5:030
Water Patrol
Boat registration fees; 301 KAR 6:050

FOOD STAMP PROGRAM

(See Social Insurance)

FUNERAL DIRECTORS

(See Embalmers and Funeral Directors)

HEALTH INSURANCE CONTRACTS

(See Insurance)

HEALTH SERVICES AND FACILITIES

(See Public Health)

HEALTH SERVICES CABINET

Certificate of need; 900 KAR Chapter 6
Inspector General; 906 KAR Chapter 1
Long-term Care; 900 KAR Chapter 2
Medicaid; 907 KAR Chapters 1 and 2
Mental Health/Mental Retardation Services
Mental health; 908 KAR Chapter 2
Substance abuse; 908 KAR Chapter 1
Public Health
Communicable diseases; 902 KAR Chapter 2
Controlled substances; 902 KAR Chapter 55
Health services, facilities; 902 KAR Chapter 20
Maternal and child health; 902 KAR Chapter 4

HIGHER EDUCATION ASSISTANCE AUTHORITY

Authority
Authority claims, set off; 11 KAR 4:050
Reports by postsecondary institutions; 11 KAR 4:070
Commonwealth Merit Scholarship Program
Definitions; 11 KAR 15:010
Determination procedure; 11 KAR 15:040
Disbursement; 11 KAR 15:050
Dual enrollment under consortium agreement; 11 KAR 15:030
Overaward, refund, repayment procedure; 11 KAR 15:060
Records and reports; 11 KAR 15:070
Student eligibility report; 11 KAR 15:020
Educational Savings Plan Trust
Benefits payable from the fund; 11 KAR 12:070
Definitions; 11 KAR 12:010
Residency classification for vested participation agreements; 11
KAR 12:040
Refund cancellation, payment; 11 KAR 12:060
Grant Program
Definitions; 11 KAR 5:001
Student application; 11 KAR 5:130
Loan Program
Administrative wage garnishment; 11 KAR 3:100
Osteopathic Medicine Scholarship Program
Application of payments; 11 KAR 14:060
Award determination; 11 KAR 14:020
Disbursement process; 11 KAR 14:030
Notification; 11 KAR 14:070
Overawards and refunds; 11 KAR 14:040
Process; 11 KAR 14:010
Records and administrative regulations; 11 KAR 14:050
Repayment deferment; 11 KAR 14:080
Teacher Scholarship Loan Program
Teacher scholarships; 11 KAR 8:030

HIGHWAYS

Mass Transportation
Human service transportation delivery; 603 KAR 7:080E

HOME HEALTH

(See Public Services)

HOUSING, BUILDINGS AND CONSTRUCTION

Electrical inspectors; 815 KAR Chapter 35
Kentucky Building Code; 815 KAR Chapter 7
Local fire departments; 815 KAR Chapter 45

SUBJECT INDEX

Plumbing; 815 KAR Chapter 20

INSPECTOR GENERAL (HEALTH SERVICES)

Critical access hospital services; 906 KAR 1:110

INSTRUCTION (EDUCATION)

(See Learning Programs Development)

INSURANCE

Agents, Consultants, Solicitors, Adjusters

Repeal of 806 KAR 9:240; 806 KAR 9:241

Authorization of Insurers, General Requirements

Repeal of 806 KAR 3:130; 806 KAR 3:131

Health Insurance Contracts

Approval criteria, requirements for reentry into the Kentucky health insurance market; 806 KAR 17:220

Creditable coverage for health insurance; 806 KAR 17:160

Genetic testing; 806 KAR 17:170E

Guaranteed Acceptance Program reporting requirements; 806 KAR 17:210

Guaranteed Acceptance Program requirements; 806 KAR 17:190

Health benefit plan rate filing requirements; 806 KAR 17:150

Severity codes for high-cost conditions; 806 KAR 17:200E

Standard health benefit plan, comparison format; 806 KAR 17:180

Life Insurance and Annuity Contracts

Licensing, reporting, general requirements for viatical settlement providers and brokers; 806 KAR 15:040E

Motor Vehicle Repairs (No-fault)

Repeal of 806 KAR 39:080; 806 KAR 39:081

INTERPRETER REFERRAL SERVICES

(See Deaf and Hard of Hearing (Commission))

INSTRUCTIONAL PROGRAMS

(See Special Instructional Services)

JUSTICE CABINET

Corrections Department

Class D felons; 501 KAR Chapter 2

Execution hearings; 501 KAR Chapter 8

Institution policies and procedures; 501 KAR Chapter 6

Parole Board; 501 KAR Chapter 1

Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR Chapter 14

Criminal Justice Training

Law Enforcement Council; 503 KAR Chapter 1

Law Enforcement Training

General training provisions; 503 KAR Chapter 3

Juvenile Justice

Child welfare; 505 KAR Chapter 1

State Police

Sex Offender Registration System; 502 KAR Chapter 31

JUVENILE JUSTICE

Child Welfare

Policies and procedures manual; 505 KAR 1:040

KENTUCKY LIEN INFORMATION SYSTEM

Implementation of system; 30 KAR 4:010

KENTUCKY LOAN PROGRAM

(See Higher Education Assistance Authority)

KENTUCKY VICTIM AND WITNESS PROTECTION PROGRAM

Program; 40 KAR 6:010

KENTUCKY WORKS

(See Social Insurance)

LABOR CABINET

Occupational safety, health; 803 KAR Chapter 2

Workers' claims; 803 KAR Chapter 25

LAW, DEPARTMENT OF

Consumer protection; 40 KAR Chapter 2

Kentucky Victim, Witness Protection Program; 40 KAR Chapter 6

LAW ENFORCEMENT COUNCIL

(See Criminal Justice Training)

LAW ENFORCEMENT TRAINING

General Training Provisions

Basic training, conduct, procedures, penalties; 503 KAR 3:010

Definitions; 503 KAR 3:005

LEARNING PROGRAMS DEVELOPMENT

Elementary, Secondary Education Act

Repeal of 704 KAR 10:050; 704 KAR 10:051

Instruction

Annual professional development plan; 704 KAR 3:035

Early reading incentive grants; 704 KAR 3:480E

Learning Support Services

Guidelines for dropout prevention programs; 704 KAR 7:070

LEARNING RESULTS SERVICES

Assessment and Accountability

Strategies for reducing time required for writing portfolio preparation; 703 KAR 5:010

LEARNING SUPPORT SERVICES

(See Learning Programs Development)

LIBRARIES AND ARCHIVES

Archives

Standards for documents presented for recording; 725 KAR 1:070

LIEN INFORMATION SYSTEM

(See Kentucky Lien Information System)

LIVESTOCK SANITATION

Composting of domestic livestock, poultry, fish; 302 KAR 20:051

Entry into Kentucky; 302 KAR 20:040

LONG-TERM CARE

Appeals; 900 KAR 2:020

Repeal of 900 KAR 2:030; 900 KAR 2:031

MATERNAL AND CHILD HEALTH

(See Public Health)

MEDICAID

Medicaid Services

Dental services; 907 KAR 1:026

Dental services reimbursement; 907 KAR 1:626

Drugs, amounts payable; 907 KAR 1:021

Early, periodic screening, diagnosis, treatment services, special services; 907 KAR 1:034

Early, periodic screening, diagnosis, treatment services, special services, payments; 907 KAR 1:035

Hearing services, payments; 907 KAR 1:039

Hearing, vision program services; 907 KAR 1:038

Hospital Care Program, conditions of coverage; 907 KAR 1:635E

Hospital inpatient services, payments; 907 KAR 1:013E

Income standards; 907 KAR 1:640

Initial, continuing eligibility, procedures for determining; 907 KAR 1:605

Medicaid covered services hearings, appeals; 907 KAR 1:563

Medicaid hearings, appeals regarding eligibility; 907 KAR 1:560

SUBJECT INDEX

Nursing, intermediate care facilities for the mentally retarded; 907 KAR 1:022
Nursing, intermediate care facilities for the mentally retarded, payments; 907 KAR 1:025E
Pharmacy services; 907 KAR 1:019
Preadmission Screening, Resident Review Program; 907 KAR 1:755E
Preventive, remedial public health services provided through interagency agreement; 907 KAR 1:360
Repeal of 907 KAR 1:382; 907 KAR 1:383
Resource standards; 907 KAR 1:645
Technical eligibility requirements; 907 KAR 1:011
Title XVIII benefits, coverage for eligible persons; 907 KAR 1:006
Payment and Services
Nonemergency medical transportation waiver services, payments; 907 KAR 3:065

MEDICAL LICENSURE

Physician training, supervision of noncertified individuals in the use of automatic external defibrillators (AEDs), procedures; 201 KAR 9:320

MENTAL HEALTH, MENTAL RETARDATION SERVICES

Mental Health
Domestic violence offender treatment certification standards; 908 KAR 2:210
Kentucky Early Intervention Program
Assessment, service planning; 908 KAR 2:130
Coverage, payment for services; 908 KAR 2:200
Covered services; 908 KAR 2:160
Primary service coordination, assistive technology; 908 KAR 2:140
Program; 908 KAR 2:120
Substance Abuse
Narcotic Treatment Program; 908 KAR 1:340

MILITARY AFFAIRS COMMISSION

Criteria for allocation of grant money; 202 KAR 5:010

MOREHEAD STATE UNIVERSITY

Affiliated corporations; 755 KAR 1:070

MORTGAGE LOAN COMPANIES, BROKERS

(See Financial Institutions)

MOTOR CARRIERS

(See Vehicle Regulation)

MOTOR VEHICLE REPARATIONS

(See Insurance)

MOTOR VEHICLE TAX

(See Vehicle Regulation; and Taxation)

MURRAY STATE UNIVERSITY

Affiliated corporations; 772 KAR 1:070
Annual audit; 772 KAR 1:030
Financial management responsibility delegation; 772 KAR 1:020
Fund acquisition, disbursement, accounting system, records and annual report; 772 KAR 1:010
Fund for excellence; 772 KAR 1:060
Issuance of bonds; 772 KAR 1:050
Purchase, inventories, sales of surplus property, capital construction procedures; 772 KAR 1:040

NATURAL RESOURCES, ENVIRONMENTAL PROTECTION

Environmental Protection
Air Quality; 401 KAR Chapter 63
Water; 401 KAR Chapter 5

NONPUBLIC SCHOOL TRANSPORTATION

(See Transportation)

NURSING (BOARD OF)

Applications for licensure and registration; 201 KAR 20:370
Fees for applications and services; 201 KAR 20:240
Licensure by endorsement; 201 KAR 20:110
Licensure by examination; 201 KAR 20:070
Prelicensure programs of nursing, organization, administration; 201 KAR 20:260
Repeal of 201 KAR 20:090; 201 KAR 20:091

NURSING HOME ADMINISTRATORS

Code of ethics; 201 KAR 6:080
Complaint management process; 201 KAR 6:090
Continuing education requirements; 201 KAR 6:070
Fees; 201 KAR 6:060
License renewal; 201 KAR 6:040
Licensure, other requirements; 201 KAR 6:020
Licensure by endorsement; 201 KAR 6:050
Repeal of 201 KAR 6:010; 201 KAR 6:011
Temporary permits; 201 KAR 6:030

OCCUPATIONAL SAFETY, HEALTH

Air contaminants; 803 KAR 2:320
Fire protection; 803 KAR 2:311
Hazardous materials; 803 KAR 2:307
Occupational health, environmental control; 803 KAR 2:306; 803 KAR 2:403
Personal protective equipment; 803 KAR 2:308
Personal protective, life saving equipment; 803 KAR 2:404
Special industries; 803 KAR 2:317
Toxic and hazardous substances; 803 KAR 2:425
Underground construction, caissons, cofferdams, compressed air; 803 KAR 2:418
Welding, cutting, brazing; 803 KAR 2:316

OCCUPATIONS AND PROFESSIONS

Alcohol and drug counselors; 201 KAR 35:030
Art therapists; 201 KAR Chapter 34
Counselors (professional); 201 KAR Chapter 36
Dentistry; 201 KAR 8:440
Embalmers and funeral directors; 201 KAR Chapter 15
Medical licensure; 201 KAR Chapter 9
Nursing; 201 KAR Chapter 20
Nursing home administrators; 201 KAR Chapter 6
Pharmacists; 201 KAR Chapter 2
Psychology; 201 KAR Chapter 26

OSTEOPATHIC MEDICINE SCHOLARSHIP PROGRAM

(See Higher Education Assistance Authority)

PAROLE BOARD

(See Corrections)

PENAL INSTITUTIONS

(See Corrections Department)

PERSONAL CARE HOMES

(See Public Health)

PERSONNEL

(See also Employees, State)
Board

Probationary periods; 101 KAR 1:325

PERSONNEL PILOT PROGRAMS

Repeal of 200 KAR 22:010, 020, 030, 050, 060, 070, 080, 090, 100, 110, 120, 130; 200 KAR 22:005E

SUBJECT INDEX

PET FOOD

Additives; 12 KAR 3:037
Brand and product names; 12 KAR 3:017
Caloric content statement; 12 KAR 3:042
Guarantees; 12 KAR 3:022
Ingredients; 12 KAR 3:027
Uniform labeling format; 12 KAR 3:012

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND

Certification of contracting companies; 415 KAR 1:116
Claims procedures; 415 KAR 1:080
Contractor certification; 415 KAR 1:114
Contractor costs; 415 KAR 1:110
Definitions; 415 KAR 1:050
Financial audits; 415 KAR 1:135
Financial responsibility account; 415 KAR 1:060
Hearings; 415 KAR 1:120
Petroleum storage tank account; 415 KAR 1:070
Ranking system; 415 KAR 1:090
Small owners tank removal account; 415 KAR 1:130
Third party claims; 415 KAR 1:100

PHARMACY BOARD

Continuing education; 201 KAR 2:015
Fees, licenses and permits; 201 KAR 2:050
Intern registration; 201 KAR 2:040
License transfer; 201 KAR 2:030

PLUMBING

Water supply and distribution; 815 KAR 20:120

PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE

Formula for allocation of private activity bonds; 200 KAR 15:010

PROPERTY (STATE)

Lease of new construction; 200 KAR 6:060

PSYCHIATRIC OR FORENSIC PSYCHIATRIC FACILITY VICTIM NOTIFICATION SYSTEM

(See Corrections)

PSYCHOLOGY (BOARD)

Health service provider designation; 201 KAR 26:125
Licensure or certification by reciprocity; 201 KAR 26:180
Nonresident status; 201 KAR 26:215
Scope of practice; 201 KAR 26:121

PUBLIC HEALTH

Communicable Diseases
Tuberculosis detection, prevention, control; 902 KAR 2:090
Controlled Substances
Controlled substance prescription blanks, requirements; 902 KAR 55:015
Drug possession by hospice, home health agency; 902 KAR 55:115
Exempt prescription products; 902 KAR 55:045
Licensing of manufacturers, wholesalers; 902 KAR 55:010
Prescription controlled substances, monitoring system; 902 KAR 55:1210
Schedule IV substances; 902 KAR 55:030
Emergency Medical Services, Ambulance Service Providers
Class I ground ambulance providers; 902 KAR 14:080
Health Services and Facilities
Abortion facilities; 902 KAR 20:360
Home health agencies, operation, services; 902 KAR 20:081
Personal care homes, operation, services; 902 KAR 20:036
Repeal of 902 KAR 20:135; 902 KAR 20:134
Maternal and Child Health

Abortion information; 902 KAR 4:110

PUBLIC PROTECTION AND REGULATION

Alcoholic Beverage Control
Licensing; 804 KAR Chapter 4
Financial Institutions
Administration; 808 KAR Chapter 1
Consumer loans; 808 KAR Chapter 6
Credit unions; 808 KAR Chapter 3
Mortgage loan companies, brokers; 808 KAR Chapter 12
Housing, Buildings and Construction
Electrical inspectors; 815 KAR Chapter 35
Kentucky Building Code; 815 KAR Chapter 7
Local fire departments; 815 KAR Chapter 45
Plumbing; 815 KAR Chapter 20
Insurance
Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9
Authorization of Insurers, general requirements; 806 KAR Chapter 3
Health insurance contracts; 806 KAR Chapter 17
Life insurance, annuity contracts; 806 KAR Chapter 15
Motor vehicle reparations (no-fault); 806 KAR Chapter 39
Petroleum Storage Tank Environmental Assurance Fund; 415 KAR Chapter 1
Public Service Commission; 807 KAR Chapter 5
Tax Appeals Board; 802 KAR Chapter 1

PUBLIC SERVICE COMMISSION

Antenna towers for cellular telecommunications services or personal communication services, filing requirements and procedures for construction proposals; 807 KAR 5:063

PURCHASING

Manual of policies and procedures; 200 KAR 5:021

REGISTRY OF ELECTION FINANCE

Practice and Procedure
Conciliation; 32 KAR 2:050

RETIREMENT

Kentucky Employees Retirement System
Membership form requirements; 105 KAR 1:170
Reemployment after retirement; 105 KAR 1:230

REVENUE

(See also Taxation)
Ad Valorem Tax
Local assessment; 103 KAR Chapter 7
Selective Excise Tax
Motor vehicle usage; 103 KAR Chapter 44

SCHOOL FACILITIES CONSTRUCTION COMMISSION

Education Technology Funding Program
Guidelines; 750 KAR 2:010
Procedures
Commission procedures; 750 KAR 1:010E

SECRETARY OF STATE

Kentucky Lien Information System; 30 KAR Chapter 4

SELECTIVE EXCISE TAX

(See Taxation)

SEX OFFENDER REGISTRATION SYSTEM

(See State Police)

SOCIAL INSURANCE

Food Stamp Program
Employment and Training Program; 904 KAR 3:042

SUBJECT INDEX

Technical requirements; 904 KAR 3:025
Public Assistance
Child support collection, distribution; 904 KAR 2:410
Child Support Program
Application process; 904 KAR 2:380
Confidentiality, program administration contracts,
agreements; 904 KAR 2:020
Paternity establishment; 904 KAR 2:390
Definitions; 904 KAR 2:001
Establishment, review, modification of child support, medical
support orders; 904 KAR 2:400
Home Energy Assistance Program; 904 KAR 2:116E
K-TAP technical requirements; 904 KAR 2:006E
Kentucky Works technical requirements; 904 KAR 2:370E
Transportation services for Kentucky Works; 904 KAR 2:018
Welfare to Work Grant Program; 904 KAR 2:490

SPECIAL INSTRUCTIONAL SERVICES

Instructional Programs
School to careers; 705 KAR 4:240

STATE POLICE

Sex Offender Registration System
System; 502 KAR 31:020

SUBSTANCE ABUSE

(See Mental Health/Mental Retardation Services)

SWINE FEEDING OPERATIONS

(See Water)

TAX APPEALS (BOARD)

Rules of practice and procedure; 802 KAR 1:010

TAXATION

Ad Valorem Tax, Local Assessment
Repeal of 103 KAR 7:010 and 020; 103 KAR 7:011
Selective Excise Tax, Motor Vehicle Usage
Motor vehicle usage tax valuation; 103 KAR 44:060E

TEACHER SCHOLARSHIP LOAN PROGRAM

(See Higher Education Assistance Authority)

TELEPHONE SOLICITATION

(See Consumer Protection)

TOURISM DEVELOPMENT CABINET

Fish and Wildlife Resources
Fish; 301 KAR Chapter 1
Game; 301 KAR Chapter 2
Licensing; 301 KAR Chapter 5
Water patrol; 301 KAR Chapter 6

TRANSPORTATION CABINET

Highways
Mass transportation; 603 KAR Chapter 7
Nonpublic School Transportation
Transportation of nonpublic school students; 600 KAR 5:010
Vehicle Regulation
Motor carriers; 601 KAR Chapter 1
Motor vehicle tax; 601 KAR Chapter 9

TREASURY

Unclaimed Properties
Administrative hearing, appeals process; 20 KAR 1:070E
Claims; 20 KAR 1:040E
Reports to be filed by holders; 20 KAR 1:080E

UNEMPLOYMENT INSURANCE

(See Employment Services)

UNIVERSITY OF KENTUCKY

Agricultural Experiment Station; 12 KAR Chapters 1-7

VEHICLE REGULATION

Motor Carriers
Taxicabs, limousines, disabled persons vehicles; 601 KAR 1:115
U-drive-it permit application procedures; 601 KAR 1:140
U-drive-it permit, usage tax reporting, paying; 601 KAR 1:145
Motor Vehicle Tax
Apportioned registration; 601 KAR 9:135

VICTIM AND WITNESS PROTECTION PROGRAM

(See Kentucky Victim and Witness Protection Program)

VICTIM NOTIFICATION

(See Corrections)

VOCATIONAL REHABILITATION

Administration
Carl D. Perkins Comprehensive Rehabilitation Center; 781 KAR
1:050
Fees for service; 781 KAR 1:070
Selection, economic test, order; 781 KAR 1:030

WATER

Quality
Definitions for 401 KAR Chapter 5; 401 KAR 5:002
Swine feeding operations, permits; 401 KAR 5:009

WORKERS' CLAIMS

Claims information, filing with the department; 803 KAR 25:170
Group self-insurers; 803 KAR 25:026
Workers' compensation medical fee schedule for physicians; 803
KAR 25:089
Workers' compensation unfair claims settlement practices; 803 KAR
25:240

WORKFORCE DEVELOPMENT CABINET

Assistive Technology Loan Corporation; 789 KAR Chapter 1
Blind, Department for; 782 KAR Chapter 1
Employment Services
Unemployment insurance; 787 KAR Chapter 1
Vocational Rehabilitation
Administration; 781 KAR Chapter 1

