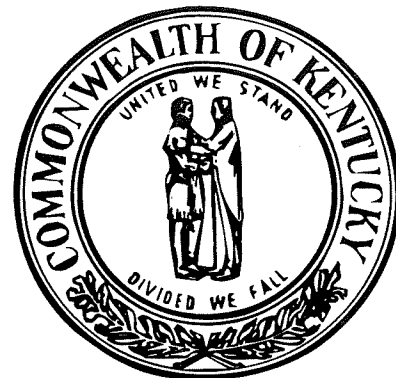


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 6
TUESDAY, DECEMBER 1, 1998

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on December 8, 1998, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1313-1318 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1998 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

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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

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VOLUME 25, NUMBER 6 – DECEMBER 1, 1998
ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – December 8, 1998 at 10:00 a.m. in Room 149, Capitol Annex

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

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Ethics Commission

- 9 KAR 1:010. Statement of financial disclosure. (Deferred from November)
- 9 KAR 1:015. Preadministrative proceedings. (Deferred from November)
- 9 KAR 1:030. Administrative proceedings. (Deferred from November)
- 9 KAR 1:036. Repeal of 9 KAR 1:035, Posthearing procedure.
- 9 KAR 1:040. Initial and updated registration statements and registration cards for executive agency lobbyists, lobbyist employers and real parties in interest; expenditure statements; financial disclosure forms; termination forms; Executive Agency Lobbying Handbook; and enforcement procedure.
- 9 KAR 1:050. Approval of outside employment of a public servant. (Deferred from November)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
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Teacher Scholarship Loan Program

- 11 KAR 8:030. Teacher scholarships. (Amended After Hearing)

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- 12 KAR 2:031. Directions and precautionary statements for feed with additives. (Deferred from November)
- 12 KAR 2:041. Additives.
- 12 KAR 2:046. Poisonous or deleterious substances. (Deferred from November)
- 12 KAR 2:051. Manufacturing conditions. (Deferred from November)
- 12 KAR 2:056. List of manufacturers. (Deferred from November)
- 12 KAR 2:061. Registration. (Deferred from November)
- 12 KAR 2:066. Suitability. (Deferred from November)

Pet Food (Deferral Requested)

- 12 KAR 3:012. Uniform labeling format.
- 12 KAR 3:017. Brand and product names.
- 12 KAR 3:022. Guarantees. (Deferred from November)
- 12 KAR 3:027. Ingredients. (Deferred from November)
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- 30 KAR 4:010 & E. Implementation of Kentucky Lien Information System.

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- 31 KAR 4:120 & E. Additional precinct officers. (Emergency expired November 18, 1998)
- 31 KAR 4:130 & E. Submitting absentee ballot application by facsimile.

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DEPARTMENT OF LAW
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Division of Consumer Protection

- 40 KAR 2:070 & E. Procedure for registration of telephone solicitation merchants.
- 40 KAR 2:075 & E. Commonwealth of Kentucky, no telephone solicitation calls list.
- 40 KAR 2:076 & E. 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 6:010 & E. Kentucky Victim and Witness Protection Program.

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Division of Tax Policy**

Selective Excise Tax; Motor Vehicle Usage

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

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

Purchasing

200 KAR 5:021 & E. Manual of policies and procedures. (Deferred from November)

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Kentucky Board of Licensure for Nursing Home Administrators

201 KAR 6:011. Repeal of 201 KAR 6:010.
201 KAR 6:020. Other requirements for licensure. (Deferred from October)
201 KAR 6:030. Temporary permits. (Deferred from October)
201 KAR 6:040. Renewal of license. (Deferred from October)
201 KAR 6:050. Licensure by endorsement. (Deferred from October)
201 KAR 6:060. Fees. (Deferred from October)
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201 KAR 6:080. Code of ethics. (Deferred from October)
201 KAR 6:090. Complaint management process. (Deferred from October)

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). (Not Amended After Hearing) (Deferred from November)

Board of Certification of Alcohol and Drug Counselors (Deferred from November)

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

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301 KAR 2:225 & E. Dove, wood duck, teal and other migratory game bird hunting.
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301 KAR 6:005 & E. Boat registration fees.

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Division for Air Quality**

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401 KAR 63:024. Repeal of 401 KAR 63:022. (Not Amended After Hearing)

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Office of the Petroleum Storage Tank Environmental Assurance Fund

Petroleum Storage Tank Environmental Assurance Fund

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415 KAR 1:060. Financial responsibility account.
415 KAR 1:070. Petroleum storage tank account.
415 KAR 1:080. Claims procedures.
415 KAR 1:090. Ranking system.
415 KAR 1:100. Third-party claims.
415 KAR 1:110. Contractor costs.
415 KAR 1:114. Contractor certification.
415 KAR 1:116. Certification of contracting companies.
415 KAR 1:120. Hearings.
415 KAR 1:130. Small owners tank removal account.
415 KAR 1:135. Financial audits.

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Department of State Police**

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502 KAR 31:020 & E. Sex offender registration system.

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Kentucky Law Enforcement Council (Deferred from October)

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

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503 KAR 3:005. Definitions.

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties.

Department of Juvenile Justice

Child Welfare

505 KAR 1:040. Policies and procedures manual. (Not Amended After Hearing)

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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)

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

Office of Chief State School Officer

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.

701 KAR 5:120. Prevention of sexually explicit materials transmitted to schools via computer.

Office of District Support Services

Facilities Management

702 KAR 4:151. Repeal of 702 KAR 4:150, Procedures for approving energy conservation projects.

School Terms, Attendance and Operation

702 KAR 7:125 & E. Pupil attendance.

Office of Learning Programs Development

Office of Instruction

704 KAR 3:035. Annual professional development plan.

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

Office of Learning Support Services

704 KAR 7:070. Guidelines for dropout prevention programs.

Emergency and Secondary Education Act

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EDUCATION PROFESSIONAL STANDARDS BOARD

Board

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704 KAR 20:720 & E. Professional certificate for exceptional work experience, limited to secondary education.

EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Special Instructional Services

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735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

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750 KAR 2:010 & E. Education Technology Funding Program guidelines. (Deferred from November)

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Kentucky Board of Tax Appeals**

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

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Division of Occupational Safety and Health Education and Training**

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803 KAR 2:308 & E. Personal protective equipment.
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803 KAR 2:317 & E. Special industries.
803 KAR 2:320 & E. Air contaminants.
803 KAR 2:403 & E. Occupational health and environmental controls.
803 KAR 2:404 & E. Personal protective and life saving equipment.
803 KAR 2:418 & E. Underground construction, caissons, cofferdams, and compressed air.
803 KAR 2:425 & E. Toxic and hazardous substances.

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Workers' Claims

803 KAR 25:026. Group self-insurers.
803 KAR 25:170. Filing of claims information with the Department of Workers' Claims.
803 KAR 25:240. Workers' compensation unfair claims settlement practices.

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806 KAR 17:180 & E. Standard health benefit plan and comparison format. (Amended After Hearing)
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808 KAR 1:060. Automated teller machines.

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815 KAR 45:035. Education incentive.
815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.
815 KAR 45:060. Survivor benefits for death of a firefighter.
815 KAR 45:080. Volunteer fire department aid.
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Emergency Medical Services and Ambulance Service Providers

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Health Services and Facilities

902 KAR 20:036. Operation and services; personal care homes.

902 KAR 20:134. Repeal of 902 KAR 20:135.
902 KAR 20:360. Abortion facilities.

Milk and Milk Products (Deferred from February)

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Division of Adult and Child Health

Controlled Substances

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**Department for Community Based Services
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904 KAR 2:018 & E. Transportation services for Kentucky Works. (Deferred from November)
904 KAR 2:020. Child Support Program. (Deferred from October)
904 KAR 2:116E. Home Energy Assistance Program. (Deferred from November)
904 KAR 2:370E. Technical requirements for Kentucky Works. (Deferred from November)
904 KAR 2:380 & E. Child Support Program application process. (Deferred from October)
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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. (Amended After Hearing)

Child Welfare

905 KAR 1:320. Fair hearing. (Deferred from November)
905 KAR 1:330. Child protective services.

Day Care

905 KAR 2:100. Certification of family child care homes.

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Division of Licensing and Regulation

Office of Inspector General

906 KAR 1:110. Critical access hospital services.

Department for Medicaid Services

Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

907 KAR 1:019. Pharmacy services.

907 KAR 1:021. Amounts payable for drugs.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from September)

907 KAR 1:038. Hearing and Vision Program services.

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907 KAR 1:039. Payments for hearing services.

907 KAR 1:360. Preventive and remedial public health services provided through interagency agreement.

907 KAR 1:383. Repeal of 907 KAR 1:382.

907 KAR 1:635E. Conditions of coverage for the Kentucky Hospital Care Program (KHCP). (Deferred from November)

907 KAR 1:755E. Preadmission Screening and Resident Review Program. (Deferred from November)

Payment and Services

907 KAR 3:065 & E. 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. (Deferred from July)

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

Division of Mental Retardation

Mental Health

908 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility. (Amended After Hearing)

908 KAR 2:130. Kentucky Early Intervention Program assessment and service planning. (Amended After Hearing)

908 KAR 2:140. Kentucky Early Intervention Program primary service coordination and assistive technology. (Amended After Hearing)

908 KAR 2:160. Kentucky Early Intervention Program covered services. (Amended After Hearing)

908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program services. (Amended After Hearing)

VOLUME 25, NUMBER 6 – DECEMBER 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.

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NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS
RECEIVED AS OF NOON, NOVEMBER 13, 1998

KENTUCKY LEGISLATIVE ETHICS COMMISSION

October 30, 1998

- (1) **2 KAR 2:031.** Repeal of 2 KAR 2:030.
- (2) The Kentucky Legislative Ethics Commission intends to repeal 2 KAR 2:030.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1998, at 10 a.m., 22 Mill Creek Park, Frankfort, Kentucky, 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky, (502) 573-2863, or fax (502) 573-2929.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Legislative Ethics Commission at the address listed above.
- (7) Information relating to the proposed amendments:
 - (a) The statutory authority for the repeal of the amendment is KRS 13A120(2)(f).
 - (b) The administrative regulation that the Legislative Ethics Commission will repeal is 2 KAR 2:030. It will repeal the current rules of procedure which are duplicative and prohibited by law.
 - (c) The necessity and function of the proposed amendment is as follows: KRS 6.686 establishes the complaint and preliminary investigations procedures to be followed by the commission. KRS 6.691 establishes the commission's adjudicatory proceedings. KRS 13A.120(2)(f) prohibits the promulgation of an administrative regulation if a statute establishes a comprehensive scheme of regulation of a subject matter. This administrative regulation is repealed because it is not required and is prohibited by the provisions of KRS Chapter 13.
 - (d) The benefit expected from the proposed amendment is: Elimination of the rules of procedure which are prohibited by law.
 - (e) The administrative regulation will be implemented as follows: The regulation will be repealed.

COUNCIL ON POSTSECONDARY EDUCATION

September 15, 1998

- (1) **13 KAR 2:020.** Guidelines for undergraduate admissions to the state-supported higher education institutions. The subject matter of the proposed amendment to the administrative regulation is the setting of minimum admissions requirements to Kentucky's state-supported postsecondary education institutions.
- (2) The Council on Postsecondary Education (CPE) is charged by KRS 164.020 with responsibility for determining minimum admissions to the state-supported postsecondary education institutions. The current administrative regulation needs to be revised to recognize the new minimum high school graduation requirements and the new programs of study.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 22, 1998, at 9 a.m., in the conference room, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
 2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing and agree in writing to be present at the public hearing, it will be held as scheduled.
- (c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to December 22, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request no later than December 12, 1998, to the following address: Council on Postsecondary Education; Attn: Roger Sugarman, Associate Director for Research and Policy Studies; 1024 Capital Center Drive, Suite 320; Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Council on Postsecondary Education at the address listed above.
- (7) The following information relates to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of an administrative regulation relating to the admissions process is KRS 164.020.
 - (b) The administrative regulation the CPE intends to promulgate is a new regulation as 13 KAR 2:020, Undergraduate admissions to state-supported higher education institutions.
 - (c) The necessity and function of the proposed administrative regulation is as follows: In order to implement effectively the provisions of KRS 164.020, CPE revise the standards for admission to state-supported postsecondary education institutions.
 - (d) The benefit expected from the administrative regulation is to ensure that students are able to understand the requirements for admission to state-supported postsecondary education institutions.
 - (e) This administrative regulation will be implemented as follows: By the CPE, KHEAA and KDE with participation by local education agencies and, by public and private postsecondary education institutions.

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KENTUCKY REGISTRY OF ELECTION FINANCE

October 28, 1998

- (1) **32 KAR 2:210.** Judicial hearing procedures.
- (2) The Kentucky Registry of Election Finance 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 December 21, 1998, at 9:30 a.m., at the office of the Kentucky Registry of Election Finance, 140 Walnut 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 December 21, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rosemary F. Center, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky, 40601, (502) 573-2226, FAX (502) 573-5622.
- (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 Registry of Election Finance 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 judicial hearing procedure under KRS 121.140(4) is KRS 121.120(1)(g).
- (b) The administrative regulation that the Kentucky Registry of Election Finance intends to promulgate is 32 KAR 2:210, Judicial hearing procedure. It will establish the procedural guidelines to be followed in the initiation of hearings before a retired or former justice or judge, as provided by KRS 121.140(4), as amended by the General Assembly in regular session in 1998.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 121.140(4), as amended by the General Assembly in regular session in 1998, effective July 15, 1998, provides for a hearing before one (1) retired or former justice or judge in cases in which the Registry of Election Finance and a respondent fail to reach a conciliation agreement. It is necessary to promulgate this administrative regulation to establish procedural guidelines to be followed in the initiation of those hearings, selection of a justice or judge, and payment of per diem compensation and expenses of judges.
- (d) The benefits expected from administrative regulation are: Clarification of the changes enacted by the 1998 General Assembly, so that the existing regulation not conflict with KRS 121.140(4).
- (e) The administrative regulation will be implemented as follows: Retroactive to the enactment of the legislative amendment to KRS 121.140(4).

KENTUCKY BOARD OF MEDICAL LICENSURE

November 9, 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 Wednesday, December 30, 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 December 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: 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.

November 9, 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 Wednesday,

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December 30, 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 December 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: 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 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.

November 9, 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 Wednesday, December 30, 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 December 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: 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 efforts.

(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 determine whether or not to discontinue resuscitation efforts.

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

BOARD OF NURSING

November 2, 1998

(1) **201 KAR 20:370**. Applications for licensure and registration.

(2) The Board of Nursing 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 December 22, 1998 at 9 a.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 December 22, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 Whitting-

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ton 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 of Nursing intends to promulgate amends an existing regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To remove a hearing for denial of license applications for felony convictions.

(d) The benefits expected from the administrative regulation are: To lessen the cost to the applicant and the agency for licensure denial procedures.

(e) The administrative regulation will be implemented as follows: Applicants will receive a letter denying their applications. No hearing will be held.

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

November 4, 1998

(1) Regulation number and title: **301 KAR 2:140**, Requirements for wild turkey hunting.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 21, 1998 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation is KRS 150.025(1), 150.390(1) and 150.620.

(a) The statutory authority for the promulgation of this administrative regulation will amend 301 KAR 2:140 as follows: It will add a requirement that a person with a senior/disabled combination hunting/fishing license make carcass tags and use them to tag turkey.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:140 as follows: It will add a requirement that a person with a senior/disabled combination hunting/fishing license make carcass tags and use them to tag turkey.

(c) The necessity and function of the proposed administrative regulation is the protection and conservation of wild turkey populations. This amendment will address tagging requirements for those hunting with the senior/disabled license authorized by the 1998 General Assembly.

(d) The benefits expected from the administrative regulation are control of illegal taking of wild turkey and more complete data on turkey harvest.

(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.

November 4, 1998

(1) Regulation number and title: **301 KAR 2:142**, Spring wild turkey hunting.

(2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 21, 1998 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation is KRS 150.025(1), 150.390(1) and 150.620.

(a) The statutory authority for the promulgation of this administrative regulation will amend 301 KAR 2:142 as follows: It will add a youth turkey hunt on the West Kentucky Wildlife Management area.

(b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:142 as follows: It will add a youth turkey hunt on the West Kentucky Wildlife Management area.

(c) The necessity and function of the proposed administrative regulation is the protection and conservation of wild turkey populations. This amendment will create limited hunting on an area presently closed to spring turkey hunting.

(d) The benefits expected from the administrative regulation are protection and conservation of Kentucky's wild turkey resource.

(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.

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November 4, 1998

- (1) Regulation number and title: **301 KAR 2:144**, Fall wild turkey hunting.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1998, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 21, 1998 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1), 150.390(1) and 150.620.
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:144 as follows: It will authorize fall archery turkey hunting on the West Kentucky Wildlife Management area.
 - (c) The necessity and function of the proposed administrative regulation is the protection and conservation of wild turkey populations. This amendment will create limited hunting on an area presently closed to spring turkey hunting.
 - (d) The benefits expected from the administrative regulation are protection and conservation of Kentucky's wild turkey resource.
 - (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

August 21, 1998

- (1) Regulation number and title: **301 KAR 2:221**, Waterfowl seasons and limits.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1); 150.600(1); 50 CFR Parts 20 and 21.
 - (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:221 as follows: It will establish season dates and bag limits for the 1998-99 waterfowl seasons within federal guidelines.
 - (c) The necessity and function of the proposed administrative regulation is to set waterfowl dates and limits within frameworks established by the U. S. Fish and Wildlife Service.
 - (d) The benefits expected from the administrative regulation are allowing regulated hunting with sound conservation and management of waterfowl resources.
 - (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

August 21, 1998

- (1) Regulation number and title: **301KAR 2:222**, Waterfowl hunting requirements.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:

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1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1); 150.600(1); 50 CFR Parts 20 and 21.
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:222 as follows: It will adjust season dates, bag limits and other requirements for hunting at wildlife management areas and other public hunting areas.
- (c) The necessity and function of the proposed administrative regulation is to establish season dates and other waterfowl hunting requirements that differ from statewide regulations.
- (d) The benefits expected from the administrative regulation are allowing regulated hunting with sound conservation and management of waterfowl resources.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

August 21, 1998

- (1) Regulation number and title: **301 KAR 2:223**. Waterfowl seasons and limits.
- (2) The Department of Fish and Wildlife Resources intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 21, 1998 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten days prior to December 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400 or FAX (502) 564-6508.
- (b) In a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 150.025(1); 150.600(1); CFR 50 Parts 20 and 21.
- (b) The administrative regulation that the department intends to promulgate will amend 301 KAR 2:223 as follows: It will require waterfowl hunters to report their goose harvest twice-weekly instead of weekly in the Ballard and Henderson-Union reporting areas.
- (c) The necessity and function of the proposed administrative regulation is monitor Canada goose harvest so that the season can be closed if federally mandated harvest quotas are reached.
- (d) The benefits expected from the administrative regulation are allowing regulated hunting with sound conservation and management of waterfowl resources.
- (e) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; it will be enforced by the department's Division of Law Enforcement.

KENTUCKY DEPARTMENT OF AGRICULTURE

November 12, 1998

- (1) Regulation number and title: **302 KAR 20:051**. Domestic livestock, poultry and fish composting.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for Tuesday, December 21, 1998 at 9 a.m. in the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to December 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, phone: (502) 564-4696; FAX (502) 564-2133.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to domestic livestock, poultry and fish composting is KRS Chapter 257.
- (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is a new regulation 302 KAR 20:051. It will set forth the definitions related to animal carcass composting, the process for acquiring a facility permit, the requirements for a permitted

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facility, and the process by which animal carcasses are to be composted.

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

(d) The benefits expected from the proposed administrative regulation are: A less expensive more environmentally safe method of converting organic wastes into acceptable materials which can be used as fertilizers or soil amendments.

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

JUSTICE CABINET Department of Corrections

November 13, 1998

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

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

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

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Phone (502) 564-2024, FAX (502) 564-6494.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. Communication and Recording Devices (CPP 3.20) is being established to preclude the use of personal communication and recording devices during work hours.

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

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

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

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

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

KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

October 23, 1998

(1) Regulation number and title: **803 KAR 25:175**, Filing of insurance coverage and notice of policy change or termination.

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

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

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to December 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number 564-5934.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 342.260(1).

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

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insurance carriers more options for timely and adequately filing the workers' compensation coverage information required by KRS 342.340(2).
(c) The necessity and function of the proposed administrative regulation is as follows: The amendment is imperative to prevent continuing problems with obtaining proof of coverage, change or termination of coverage data.
(d) The benefits expected from administrative regulation are: Insurance carriers will have more options to fulfill the requirement of KRS 342.340(2). The department will have correct data with regard to workers' compensation coverage for employees.
(e) The administrative regulation will be implemented as follows: The department will have electronic data filed directly with the department from the insurance carrier or from an authorized data collection agent.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals Mine Electrical Safety Standards

November 13, 1998

- (1) Regulation number and title: **805 KAR 3:091**. Repeal of 805 KAR 3:090.
- (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 December 21, 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 December 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 mine electrical safety standards is KRS 352.220(3)(b).
 - (b) The summary of the administrative regulation that the Department of Mines and Minerals intends to promulgate as 805 KAR 3:091 is as follows: The proposed regulation repeals 805 KAR 3:090.
 - (c) The necessity and function of the proposed administrative regulation is: New and better electrical safety standards applicable to the coal mining industry are needed to afford greater protection to those who work in coal mines.
 - (d) The benefits expected from administrative regulation are: Repeal of the current electrical safety standards in favor of the proposed electrical safety standards will save coal miners 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 Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

November 13, 1998

- (1) Regulation number and title: **805 KAR 3:130**. General safety standards
- (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 December 21, 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 December 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 mine electrical safety standards is KRS 352.220(3)(b).
 - (b) The summary of the administrative regulation that the Department of Mines and Minerals intends to promulgate as 805 KAR 3:130 is as follows: The proposed regulation sets out general safety standards for the use of electricity in coal mines. It also describes requirements for the use of electrical installations and conductors.
 - (c) The necessity and function of the proposed administrative regulation is: The ever-present and inherent dangers of electrical machinery

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and equipment require vigilance in the maintenance and proper use of that machinery and equipment.

(d) The benefits expected from administrative regulation are: The proposed regulation will enhance the safety of coal miners who work with or around electrical machinery or equipment.

(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 Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

November 13, 1998

(1) Regulation number and title: **805 KAR 3:140**. Disconnecting devices.

(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 December 21, 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 December 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 mine electrical safety standards is KRS 352.220(3)(b).

(b) The summary of the administrative regulation that the Department of Mines and Minerals intends to promulgate as 805 KAR 3:140 is as follows: The proposed regulation establishes requirements for the type and use of disconnecting devices and the proper means and methods of grounding electrical machinery and equipment.

(c) The necessity and function of the proposed administrative regulation is: Electrical machinery and equipment need to be properly grounded and have appropriate disconnecting devices to ensure the persons working with or around them will be protected from injury or death due to electrical shock.

(d) The benefits expected from administrative regulation are: The proposed regulation will save coal miners 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 Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

November 13, 1998

(1) Regulation number and title: **805 KAR 3:150**. Protective devices.

(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 December 21, 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 December 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 mine electrical safety standards is KRS 352.220(3)(b).

(b) The summary of the administrative regulation that the Department of Mines and Minerals intends to promulgate as 805 KAR 3:150 is as follows: The proposed regulation sets out the protective devices required for the use of electrical machinery and equipment and the testing of those devices. The proposed regulation also sets out the requirements for the use and maintenance of methane monitors and for the location and use of such machinery and equipment.

(c) The necessity and function of the proposed administrative regulation is: Electrical machinery and equipment need to have protective devices for their safe operation and they need to be used only where such use would be safe. Methane monitors need to be used to warn coal miners of the presence of potentially explosive gas.

(d) The benefits expected from administrative regulation are: The proposed regulation will enhance the safety of working in coal mines.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the De-

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Department of Mines and Minerals, Division of Mine Safety and Health and the Division of Mine Safety Analysis through their inspections.

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

November 12, 1998

- (1) Regulation number and title: **815 KAR 10:051**, Repeal of 815 KAR 10:050.
- (2) The department 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 10 a.m., local time, on Tuesday, December 22, 1998, in the department's conference room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and
 2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to December 22, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.
- (b) On a request for public hearing, a persons shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 227.300 and 13A.100.
- (b) The department intends to promulgate 815 KAR 10:051 to repeal 815 KAR 10:050.
- (c) The necessity and function of the proposed administrative regulation is as follows: To repeal 815 KAR 10:050, Kentucky Fire Prevention Code, which will be replaced with the adoption, by reference, of NFPA 1, Fire Prevention Code, in 815 KAR 10:060 as the new Standards of Safety.
- (d) The benefits expected from this administrative regulation are: Fire safety will be upgraded by implementation of a more comprehensive and consistent national fire code standard to govern hazardous conditions.
- (e) This administrative regulation will be implemented by Division of Fire Prevention inspectors and where adopted by local ordinance, by fire code officials statewide.

November 12, 1998

- (1) Regulation number and title: **815 KAR 10:060**, Kentucky Standards of Safety/1999 Edition.
- (2) The department 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 10 a.m., local time, on Tuesday, December 22, 1998, in the department's conference room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and
 2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to December 22, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.
- (b) On a request for public hearing, a persons shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation is KRS 227.300 and 13A.100.
- (b) The department intends to promulgate 815 KAR 10:060 to adopt, by reference, NFPA 1, Fire Prevention Code, to establish minimum fire safety standards for specific occupancies, operations, conditions, and building uses; and the maintenance of fire safety equipment in buildings.
- (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation will update fire safety standards and repeal the 1996 Kentucky Fire Prevention Code and will continue to be based upon nationally recognized standards providing a reasonable degree of safety for human life against emergencies such as fire and explosion. These standards shall be enforceable by the State Fire Marshal and local authorities.
- (d) The benefits expected from this administrative regulation are: Continued protection for the public by having reviewed and revised the existing standards to guide the state and local authorities in assessing minimum safety requirements for human life and property.
- (e) This administrative regulation will be implemented by Division of Fire Prevention Inspectors and where adopted by local ordinance, by fire code officials statewide.

November 12, 1998

- (1) Regulation number and title: **815 KAR 20:030** - License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.
- (2) The Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10:15 a.m., local time, on Friday, October 28, 1994 in the Department of Housing's conference room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least twenty (20) days prior to October 28, 1994, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 318.030; 040; 050; 054.

(b) The department intends to amend 815 KAR 20:030, License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses, by amending Section 3 increasing the annual license renewal fee from \$150 to \$250 for master plumbers and from \$25 to \$40 for journeyman plumbers.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 318.040 requires the department to conduct examinations for master and journeyman plumber applicants. This administrative regulation relates to those requirements and the fees required. It also relates to the time, place and methods of examinations.

(d) The benefits expected from administrative regulation are: To allow the Division of Plumbing to enforce the plumbing laws and provide an adequate inspection program which benefits both the public and the licensed plumber.

(e) This administrative regulation will be implemented by the Division of Plumbing through each county area inspector writing the permit and receiving the fees from licensed master plumbers.

October 30, 1998

(1) Regulation number and title: **815 KAR 25:030**, Certified installers of manufactured housing.

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

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

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 227.590 and 13A.100.

(b) Summary of proposed amendments to existing regulation: The department intends to amend 815 KAR 25:030 to create better record-keeping in inspection responsibilities by certified installers and add reasons for revoking certification.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish criteria for the proper installation of regulated manufactured housing by persons qualified to make the installation as required by KRS 227.570(2) and to clarify certified dealer and installer obligations.

(d) The benefits expected from this administrative regulation are: Assurance of safety to consumer by requiring proper training and certification by installers of manufactured housing.

(e) This administrative regulation will be implemented by manufactured housing inspectors.

**CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services**

November 15, 1998

(1) **900 KAR 1:041**, Repeal of 900 KAR 1:040.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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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 December 29, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulations Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (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, Judy Trigg, Administrative Regulation Coordinator, Department for Social Services, Cabinet for Families and Children, CHR Building, 3rd Floor East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to 900 KAR 1:041 is KRS 194B.050 and 13A.310.
- (b) The administrative regulation that the Department for Community Based Services intends to promulgate will repeal 900 KAR 1:040, Guardianship responsibilities, which is no longer needed.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This regulation is being repealed because it is no longer applicable.
- (d) The benefits expected from administrative regulation are: Making an unnecessary regulation obsolete.
- (e) The administrative regulation will be implemented as follows: The Department for Community Based Services will implement the repeal of 900 KAR 1:040.

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

November 13, 1998

- (1) **902 KAR 17:041**, State health plan for facilities and services.
- (2) The Cabinet for Health Services, Department for Public Health, Division of Health Systems Development, intends to promulgate an amended administrative regulation governing the subject matter cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 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 December 29, 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, Cabinet for Health Services, 275 East Main Street, 4-C, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 regulation.
- (a) The statutory authority for the promulgation of this administrative regulation relating to 902 KAR 17:041 are KRS 216B.010, 216B.015 and 194A.030.
- (b) The amended administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the State Health Plan for Facilities and Services and the annual updating of that plan.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 216B.015(18) requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B.
- (d) The benefits expected from the administrative regulation are: Orderly and effective determination of health policy goals for health facilities and services in the Commonwealth. Ensure appropriate distribution of health services to all Kentuckians.
- (e) The administrative regulation will be implemented as follows: The Division of Epidemiology and Health Planning and the Department for Public Health will be responsible for the implementation of this amended administrative regulation.

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

November 15, 1998

(1) **905 KAR 1:180**, DSS Policy and Procedural Manual.

(2) Cabinet for Families and Children, Department for Community-Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 29, 1998, the public hearing will be canceled.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community-Based Services, Division of Policy Development, CHR Building, 3rd Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the DSS policy and procedures manual are KRS 194B.050, 605.150, 615.050, 620.180, 625.120, 630.140, 1998 Ky. Acts ch.150, 42 USC 5106a, PL 105-89 and EO 98-731.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 905 KAR 1:180, DSS policy and procedures manual to include requirements from legislation passed in the 1998 General Assembly, 42 USC 5106a and PL 105-89 within the incorporated policy and procedures manual. The changes are as follows:

1. Revise foster care rates;
2. Develop a written transfer summary;
3. Reduce the time frame for permanency reviews by the district court from 18 months to 12 months;
4. Provide notification of hearings to caregivers, the court-appointed special advocate, and the foster care review board member assigned to the case;
5. Require the termination of commitment for children in cabinet custody upon attainment of 18 years of age unless extension is planned;
6. Lower the threshold for intervention by the courts and DCBS in emergency situations;
7. Prevent children from undergoing abuse or neglect when their parent(s) have a past history of abuse or neglect of other children;
8. Expedite the process for permanency when a termination of parental rights has been filed;
9. Amend the definition of abused or neglected children;
10. Provide the district court with a specific set of relevant factors to be considered in determining the best interest of the child;
11. Allow for cabinet appeal of Juvenile Court decisions where the cabinet is the petitioner;
12. Require a permanency hearing to be held by the court within 30 days after a determination is made that reasonable efforts are not required;
13. Require the consideration of termination of parental rights if a child has been in out of home care for twelve (12) months;
14. Establish uniform conditions, requirements, and exceptions relating to child-placing and child-caring facility agencies and include such in administrative regulations;
15. Amend the definition of "state agency children" and redefine "child-caring facility" and "group home";
16. Revise policy relating to the newly established Kentucky Children's Health Insurance Program for the purposes of providing coordinated services to children;
17. Establish policy relating to the safety net services of the Department for Community-Based Services;
18. Develop clear criteria for out-of-state placement of children committed to the Department for Community-Based Services, which identifies the availability of providers of residential care and establishes uniform conditions requiring exceptions for the determination of the availability of appropriate in-state providers of residential care;
19. Establish areas of jurisdiction for the out-of-state placement of children;
20. Implement initiatives forthcoming from the Strategic Planning Committee of the Department for Community-Based Services;
21. Implement initiatives of the Adoption 2002 Task Force;
22. Implement requirements of federal regulations regarding child welfare programs;
23. Implement policies and procedures relating to the state and district placement coordinators;
24. Complete other housekeeping changes required due to the reorganization of the cabinet.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 42 USC 9901-9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 194B.050 authorizes the Cabinet for Families and Children to adopt, administer and enforce regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program.

(d) The benefits expected from administrative regulation are: This amendment implements required provisions passed in the 1998 General Assembly.

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

CABINET FOR HEALTH SERVICES Department for Medicaid Services

November 15, 1998

(1) **907 KAR 1:330**, Hospice 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 December 29, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 29, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Hospice Services are 42 USC 1396a(a), KRS 194A.030, 194A.050 and 205.520

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:330, Hospice services, to incorporate federal requirements regarding reimbursement for hospice services, to clarify the hospice services which are provided to Kentucky's Medicaid eligible recipients, to eliminate outdated material, to revise the language to comply with the drafting requirements of KRS Chapter 13A and to make minor changes in order to clarify policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage provisions relating to in-patient, nursing facility and home- and community-based hospice services provided to Kentucky's Medicaid eligible recipients.

(d) The benefits expected from administrative regulation are:

1. To incorporate the federal requirements of 42 USC 1395f and 1396a and clarify the hospice services provided under the Kentucky Medicaid Hospice Program;

2. Outdated material will be eliminated; and

3. The language will be consistent with the requirements of KRS Chapter 13A.

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

November 15, 1998

(1) **907 KAR 1:340**, Payments for hospice 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 December 29, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 29, 1998 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

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

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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 hospice services are 42 USC 1396a(a), KRS 194A.030, 194A.050 and 205.520

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:330, Payments for hospice services to delete outdated material, to revise the language to comply with the requirements of KRS Chapter 13A, to set forth the method for determining amounts payable by the Medicaid Program for hospice services, and to make minor changes in order to clarify 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 Medicaid Program for hospice services.

(d) The benefits expected from administrative regulation are:

1. Updating the method for determining amounts payable by the Kentucky Medicaid Program for hospice services will make the process consistent with the requirements of 42 USC 1395 and 1396;

2. Outdated material will be eliminated; and

3. The language will be consistent with the requirements of KRS Chapter 13A.

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

November 15, 1998

(1) **907 KAR 1:437**, Repeal of 907 KAR 1:436, Incorporation by reference of the Hospice Services Manual.

(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 December 29, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 29, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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 907 KAR 1:437 are KRS 194A.030, 194A.050, 205.520 and 216B.020.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:436, Incorporation by reference of the Hospice Services Manual. The regulation will not be replaced. The Hospice Services Manual will be replaced by the Hospice Services and Reimbursement Manual which will be incorporated by reference in 907 KAR 1:330 and 907 KAR 1:340.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation repeals 907 KAR 1:436.

(d) The benefits expected from administrative regulation are: Repeals 907 KAR 1:436, Incorporation by reference of the Hospice Services Manual. The administrative regulation will not be replaced. However, the Hospice Services Manual will be replaced by the Hospice Services and Reimbursement Manual which will be incorporated by reference in 907 KAR 330, Hospice services, and 907 KAR 1:340, Payments for hospice services.

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

November 15, 1998

(1) **907 KAR 3:035**, Criteria for certification for out-of-state residential services for Medicaid eligible children under age twenty-one (21).

(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 December 29, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to December 29, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 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:

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1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Financial Management and Analysis, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the criteria for certification for out-of-state residential services for Medicaid eligible children under age 21 are KRS 194A.050, 199.011, 199.640, 199.670, 199.680, 205.520, 205.634, and 1998 Ky. Acts ch. 615.
- (b) The administrative regulation that the Department for Medicaid Services intends to promulgate is a new regulation that sets forth criteria for certification for out-of-state residential services for Medicaid eligible children under age 21 as required by KRS 205.634. This new regulation shall establish uniform conditions and requirements for certification for out-of-state residential services for Medicaid eligible children under age 21. The new regulation shall also establish uniform conditions and requirements for determining the availability of providers of residential care within the Commonwealth.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth criteria for certification for out-of-state residential services for Medicaid eligible children under the age of 21 in compliance with KRS 205.634.
- (d) The benefits expected from this administrative regulation are: It sets forth criteria for certification for out-of-state residential services for Medicaid eligible children as required by KRS 205.634.
- (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.

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

November 15, 1998

- (1) **921 KAR 3:010**. Definitions (Food Stamp Program).
- (2) Cabinet for Families and Children, Department for Community-Based Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or one (1) person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 29, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community-Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 3:010, Definitions for the Food Stamp Program, are KRS 194B.050 and 7 CFR 271.4.
- (b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 921 KAR 3:010, Definitions (Food Stamp Program), to:
 1. Define the Electronic Benefits Transfer (EBT) system for the Food Stamp Program.
 2. Make amendments to conform with language in KRS 194B.050 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required to administer the Food Stamp Program, in accordance with KRS 194B.050. This administrative regulation defines the terms used by the Cabinet for Families and Children in the administration of the Food Stamp Program.
- (d) The benefits expected from the administrative regulation are: The amendments to this administrative regulation will define the electronic benefit transfer system. This system will provide for issuance of food stamp benefits electronically to purchase eligible food items at authorized food retailers. Eligible households will utilize magnetic-strip plastic cards and have accounts maintained on the EBT System in lieu of food stamp coupons to purchase food items at authorized food retailers. The system will replace the paper coupon delivery system, reduce the cost of benefit delivery and reduce fraud. This system will also reduce the stigma of being a food stamp recipient.
- (e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Community-Based Services will be responsible for implementing the administrative regulation.

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November 15, 1998

(1) **921 KAR 3:035.** Certification process (Food Stamp Program).

(2) Cabinet for Families and Children, Department for Community-Based Services, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 29, 1998, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 3:035, Certification Process for the Food Stamp Program, are KRS 194B.050 and 7 CFR 271.4

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 921 KAR 3:035, Certification process for the Food Stamp Program, to:

1. Transfer the section on information concerning replacement issuance from this administrative regulation to 921 KAR 3:045, Coupon issuance procedures, due to subject matter.

2. Make amendments to conform with language in KRS 194B.050 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required to administer the Food Stamp Program, in accordance with KRS 194B.050. This administrative regulation set forth the certification process used by the Cabinet in the administration of the Food Stamp Program.

(d) The benefits expected from the administrative regulation are: The transfer of information concerning Replacement Issuance from this administrative regulation to 921 KAR 3:045, Coupon Issuance Procedures, will place this section in the appropriate administrative regulation.

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

November 15, 1998

(1) **921 KAR 3:045.** Coupon issuance procedures.

(2) Cabinet for Families and Children, Department for Community-Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 29, 1998, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 3:045, Coupon issuance procedures, are KRS 194B.050 and 7 CFR 271.4.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 921 KAR 3:045, Coupon issuance procedures, to:

1. Add criteria for issuance of benefits through an electronic benefits transfer system.

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2. Due to subject matter, add transferred information concerning replacement issuance to this administrative regulation from 921 KAR 3:035, Certification process.

3. Make amendments to conform with language in KRS 194B.050 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required to administer the Food Stamp Program, in accordance with KRS 194B.050. This administrative regulation sets forth the issuance procedures used by the Cabinet for Families and Children in the administration of the Food Stamp Program.

(d) The benefits expected from the administrative regulation are: The amendments to this administrative regulation will add criteria for an electronic benefit transfer system. This system will provide for issuance of food stamp benefits electronically to purchase eligible food items at authorized food retailers. Eligible households will utilize magnetic-strip plastic cards and have accounts maintained on the EBT System in lieu of food stamp coupons to purchase food items at authorized food retailers. The system will replace the paper coupon delivery system, reduce the cost of benefit delivery and reduce fraud. This system will also reduce the stigma of being a food stamp recipient.

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

November 15, 1998

(1) **921 KAR 3:060.** Administrative disqualification hearing and penalties.

(2) Cabinet for Families and Children, Department for Community-Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for December 29, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to December 29, 1998, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 3:060, Administrative disqualification hearings and penalties, are KRS 194B.050 and 7 CFR 271.4.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 921 KAR 3:060, Administrative disqualification hearings and penalties, to:

1. Amend the intentional program violation section to provide for an electronic benefits transfer system.

2. Amend FS-80 and FS-111 to reflect policy changes and to change the name of the department.

3. Make amendments to conform with language in KRS 194B.050 and EO 98-731 regarding reorganization of the Cabinet for Families and Children.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required to administer the Food Stamp Program, in accordance with KRS 194B.050. This administrative regulation sets forth the claims procedures used by the Cabinet for Families and Children in the administration of the Food Stamp Program.

(d) The benefits expected from the administrative regulation are: The amendments to this administrative regulation will amend claims procedures to incorporate an electronic benefit transfer system. This system will provide for issuance of food stamp benefits electronically to purchase eligible food items at authorized food retailers. Eligible households will utilize magnetic-strip plastic cards and have accounts maintained on the EBT System in lieu of food stamp coupons to purchase food items at authorized food retailers. The system will replace the paper coupon delivery system, reduce the cost of benefit delivery and reduce fraud. This system will also reduce the stigma of being a food stamp recipient.

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

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT
(NOTE: Emergency administrative regulations expire 170 days from publication
or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY
201 KAR 9:330E

This emergency administrative regulation provides a protocol for determination of death by paramedics. In order to comply with newly enacted KRS 311.660 which requires paramedics to determine whether or not a patient is dead by utilizing specified protocol, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 9:330 shall be filed with the Regulations Compiler at the same time as 201 KAR 9:330E.

PAUL E. PATTON, Governor
DANNY M. CLARK, President

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure

201 KAR 9:330E. Determination of death by a paramedic.

RELATES TO: KRS 72.020, 216B.410I, 311.621 to 311.643,
311.660, 446.400

STATUTORY AUTHORITY: KRS 311.660

EFFECTIVE: November 12, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.660 directs the Kentucky Board of Medical Licensure to adopt administrative regulations relating to determination of death by paramedics. The function of this administrative regulation is to provide a protocol for determination of death by paramedics.

Section 1. When it appears that a person whom a paramedic has been called to attend is dead the following procedure shall be followed prior to determining that the person is dead.

Section 2. The paramedic shall determine and document that the following signs of death are present:

- (1) Unresponsiveness; and
- (2) Apnea; and
- (3) The absence of a palpable pulse at the carotid site; and
- (4) Bilaterally fixed and dilated pupils; and
- (5) Except in cases of trauma, asystole determined in two (2) leads on an electrocardiograph in accordance with the American Heart Association standards.

Section 3. The paramedic shall determine, in addition, that one (1) of the following factors or conditions exist:

- (1) Lividity of any degree;
- (2) Rigor mortis of any degree;
- (3) The presence of venous pooling in the body;
- (4) Damage or destruction of the body which is incompatible with life;
- (5) A standard form or identification evidencing a patient's desire not to be resuscitated in accordance with KRS 311.623.

Section 4. If the paramedic has determined and documented that the conditions of Sections 2 and 3 of this administrative regulation exist, the paramedic may, subject to the provisions of Section 5 of this administrative regulation, declare the patient dead.

Section 5. The paramedic may contact medical control or a licensed physician, authorized in writing by the medical director, for advice and assistance in making any determination required by this administrative regulation, except that the medical director of the service may direct, in the service's protocol, that prior to making a determination that a patient is dead that the medical director, or a physician authorized in writing by the medical director, be contacted

and that the determination be concurred in by the physician.

Section 6. The paramedic shall document all items required by this administrative regulation on the ambulance run report form required by KRS 216B.410.

Section 7. When a paramedic determines a patient to be dead, the paramedic shall remain on the scene until the arrival of the coroner or law enforcement officer.

DANNY M. CLARK, President
DONNA L. DELAHANTY, Assistant General Counsel
APPROVED BY AGENCY: November 9, 1998
FILED WITH LRC: November 12, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna L. Delahanty, Assistant General Counsel

(1) Type and number of entities affected: 268 ambulance services and approximately 800 licensed and certified paramedics in the Commonwealth 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: No effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect on the cost of doing business.

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

1. First year following implementation: Cost of training.

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

(3) Effects on the promulgating administrative body: The board will review a written report from the medical director listing the names of all paramedics who complete the training.

(a) Direct and indirect costs or savings: None

1. First year: Costs involved are costs of initial training.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No increase in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

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

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

(a) Geographical area in which administrative regulation will be implemented: Commonwealth of Kentucky.

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were suggested or needed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Benefits public health by assuring paramedics are properly trained. There is no effect on the environment.

(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 state, administrative regulation or government

policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: Board is not aware of any statute, regulation, or government policy which is in conflict or is duplicated by this proposed regulation.

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

(10) Any additional information or comments: The board believes this regulation is beneficial to the health, welfare and safety of the citizens of the Commonwealth.

(11) TIERING: Is tiering applied? No. The board does not provide for different classifications of paramedics.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation affects. 268 ambulance services and approximately 800 licensed and certified paramedics.

3. State the aspect of service of local government to which this administration regulation relates: The regulation relates to the duties of paramedics.

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

Other Explanation: The effect of this administrative regulation on the expenditures and revenues of local government will be small. The amount expended would be costs involved in the training of new paramedics and retraining of those paramedics already certified and licensed. The cost of the training would vary and is indeterminable. The cost of materials is negligible.

STATEMENT OF EMERGENCY 201 KAR 9:335E

This emergency administrative regulation provides a protocol for determination of death by paramedics. In order to comply with newly enacted KRS 311.660 which allows paramedics to determine whether or not to discontinue resuscitation efforts on a patient by utilizing specified protocol, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 9:335 shall be filed with the Regulations Compiler at the same time as 201 KAR 9:335E.

PAUL E. PATTON, Governor
DANNY M. CLARK, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure

201 KAR 9:335E. Discontinuance of resuscitation by a paramedic.

RELATES TO: KRS 72.020, 216B.410, 311.620 to 311.643, 446.400

STATUTORY AUTHORITY: KRS 311.660

EFFECTIVE: November 12, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.660 directs the Kentucky Board of Medical Licensure to adopt administrative regulations relating to discontinuance of resuscitation by a paramedic. The function of this administrative regulation is to provide protocol for discontinuance of resuscitation by a paramedic.

Section 1. A paramedic may discontinue resuscitation when the patient has suffered a cardiac arrest prior to arrival at the hospital and does not meet the criteria specified in 201 KAR 9:330. The paramedic may discontinue resuscitation when the criteria specified in Section 1 of 201 KAR 9:330 are met and the resuscitative efforts

specified in the applicable resuscitation protocol have been performed and documented.

Section 2. A paramedic may discontinue resuscitation initiated by someone other than a paramedic when the patient suffers cardiac arrest and when the treatment and resuscitation protocols applicable to the patient's medical condition have been performed and documented and patient meets the criteria specified in Section 1 of 201 KAR 9:330.

Section 3. The paramedic shall contact medical control or a licensed physician, authorized in writing by the medical director, for advice and assistance prior to making any determination required by this administrative regulation. The discontinuation of resuscitation shall be approved by the physician prior to the discontinuance.

Section 4. The paramedic may discontinue resuscitation on any patient meeting the requirements specified in KRS 311.621 to 311.643 when presented with a copy of a standard form or identification authorized in KRS 311.623.

Section 5. The paramedic shall document all items required by this administrative regulation on the ambulance form required by KRS 216B.410.

Section 6. If a paramedic discontinues resuscitation on a patient prior to transport of the patient to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and remain on the scene until the arrival of the coroner or law enforcement officer.

Section 7. If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 and shall continue to the medical facility unless advised to the contrary by the coroner or a law enforcement officer. If advised to the contrary by the coroner or law enforcement officer, the paramedic shall take the deceased to a facility within the primary service area of the ambulance provider as directed by the coroner or the law enforcement officer.

DANNY M. CLARK, President
DONNA L. DELAHANTY, Assistant General Counsel
APPROVED BY AGENCY: November 9, 1998
FILED WITH LRC: November 12, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna L. Delahanty, Assistant General Counsel

(1) Type and number of entities affected: 268 ambulance services and approximately 800 licensed and certified paramedics in the Commonwealth 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: No effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect on the cost of doing business.

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

1. First year following implementation: Cost of training.

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

(3) Effects on the promulgating administrative body: The board will review a written report from the medical director listing the names of all paramedics who complete the training.

(a) Direct and indirect costs or savings: None

1. First year: Costs involved are costs of initial training.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No increase in re-

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porting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

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

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

(a) Geographical area in which administrative regulation will be implemented: Commonwealth of Kentucky.

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were suggested or needed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Benefits public health by assuring paramedics are properly trained. There is no effect on the environment.

(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 state, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: Board is not aware of any statute, regulation, or government policy which is in conflict or is duplicated by this proposed regulation.

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

(10) Any additional information or comments: The board believes this regulation is beneficial to the health, welfare and safety of the citizens of the Commonwealth.

(11) TIERING: Is tiering applied? No. The board does not provide for different classifications of paramedics.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation affects. 268 ambulance services and approximately 800 licensed and certified paramedics.

3. State the aspect of service of local government to which this administrative regulation relates: The regulation relates to the duties of paramedics.

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

Other Explanation: The effect of this administrative regulation on the expenditures and revenues of local government will be small. The amount expended would be costs involved in the training of new paramedics and retraining of those paramedics already certified and licensed. The cost of the training would vary and is indeterminable. The cost of materials is negligible.

STATEMENT OF EMERGENCY 201 KAR 9:340E

This emergency administrative regulation provides a protocol for determination of death by paramedics. In order to comply with newly enacted KRS 311.660 which requires paramedics to determine whether or not a patient is dead and allows paramedics to discontinue resuscitation efforts on a patient in accordance with specified protocol, it is necessary to promulgate this emergency administrative regulation setting forth the training requirements in determination of death and discontinuance of resuscitation efforts. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 9:340 shall be filed with the Regulations Compiler at the same time as 201 KAR

9:340E.

PAUL E. PATTON, Governor
DANNY M. CLARK, President

GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure

201 KAR 9:340E. Training of paramedics in determination of death and discontinuance of resuscitation.

RELATES TO: KRS 72.020, 216B.410, 311.621 to 311.643, 311.660, 446.400

STATUTORY AUTHORITY: KRS 311.660

EFFECTIVE: November 12, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.660 directs the Kentucky Board of Medical Licensure to specify how paramedics are to be trained in determination of death and in the discontinuance of resuscitation. The function of this administrative regulation is to implement the training program.

Section 1. The training program shall not be less than three (3) hours in length and shall include at least the following:

- (1) Information on and a copy of KRS 311.660; and
- (2) Information on and a copy of 201 KAR 9:330; and
- (3) Information on and a copy of 201 KAR 9:335; and
- (4) Information on and a copy of KRS 72.020; and
- (5) Information on and a copy of KRS 311.621 to 311.643; and
- (6) Information on the duties of and role of the coroner and state medical examiner, and
- (7) Information on preservation of evidence; and at the scene of a death.

Section 2. The training shall be conducted under the supervision of and physical presence of the medical director or supervising physician of the ambulance service for whom the paramedic works. The medical director shall certify that the training has been conducted in accordance with the requirements of this administrative regulation.

Section 3. The medical director of the ambulance service providing the training shall invite the coroner of the county in which the training is conducted to attend the training and assist in the instruction.

Section 4. A paramedic may, with the written approval of the medical director of the ambulance service for which the paramedic works, attend the training specified in this administrative regulation at any location in this Commonwealth where the training is being conducted.

Section 5. The medical director conducting training under this administrative regulation shall make a written report to the Board of Medical Licensure containing the names of all paramedics who successfully complete the training. The report shall be sent to the Board of Medical Licensure within ten (10) working days after the conclusion of the training.

DANNY M. CLARK, President

DONNA L. DELAHANTY, Assistant General Counsel

APPROVED BY AGENCY: November 9, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Donna L. Delahanty, Assistant General Counsel

(1) Type and number of entities affected: 268 ambulance services and approximately 800 licensed and certified paramedics in the Commonwealth 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: No effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect on the cost of doing business.

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

1. First year following implementation:

2. Cost of training.

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

(3) Effects on the promulgating administrative body: The board will review a written report from the medical director listing the names of all paramedics who complete the training.

(a) Direct and indirect costs or savings: None

1. First year: Costs involved are costs of initial training.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None anticipated.

(b) Reporting and paperwork requirements: No increase in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No effect.

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

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

(a) Geographical area in which administrative regulation will be implemented: Commonwealth of Kentucky.

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: No alternatives were suggested or needed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Benefits public health by assuring paramedics are properly trained. There is no effect on the environment.

(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 state, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: Board is not aware of any statute, regulation, or government policy which is in conflict or is duplicated by this proposed regulation.

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

(10) Any additional information or comments: The board believes this regulation is beneficial to the health, welfare and safety of the citizens of the Commonwealth.

(11) TIERING: Is tiering applied? No. The board does not provide for different classifications of paramedics.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation affects. 268 ambulance services and approximately 800 licensed and certified paramedics.

3. State the aspect of service of local government to which this administration regulation relates: The regulation relates to the duties of paramedics.

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

Other Explanation: The effect of this administrative regulation on the expenditures and revenues of local government will be small. The amount expended would be costs involved in the training of new

paramedics and retraining of those paramedics already certified and licensed. The cost of the training would vary and is indeterminable. The cost of materials is negligible.

STATEMENT OF EMERGENCY 301 KAR 2:221E

This emergency administrative regulation establishes seasons, limits and shooting hours for 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 regulations 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 2:221 was filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

PAUL E. PATTON, Governor

C. THOMAS BENNETT, Commissioner

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:221E. Waterfowl seasons and limits.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 CFR Parts 20, 21
STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 CFR Parts 20, 21

EFFECTIVE: October 22, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to set waterfowl season dates and limits. This administrative regulation is necessary to set limits and dates within federal waterfowl hunting frameworks established by 50 CFR Part 20. This administrative regulation imposes a shorter season in the Ballard Reporting Area [Western-Goose-Zone] than permitted by federal frameworks in an effort to build Canada goose populations in that portion of the state.

Section 1. Definitions. (1) "Dark goose" means a Canada goose, white-fronted goose, or brant.

(2) "Snow goose" means a snow goose or Ross' goose.

(3) "Waterfowl" is defined by KRS 150.010(4).

Section 2. (1) Except as authorized by 301 KAR 2:222, 301 KAR 2:225, or 301 KAR 2:226, a person shall not take waterfowl except on the dates and within the limits prescribed by this administrative regulation.

(2) Hunting zones, special hunt areas and reporting areas are described in 301 KAR 2:224.

Section 3. [2:] Gun and Archery Season Dates and Bag Limits for Duck, Coot, and Merganser. (1) Season dates. Statewide, the first Saturday in November for two (2) consecutive days and the third Saturday in November for fifty-eight (58) consecutive days [November 1 through November 2 and November 22 through January 18].

(2) The gun and archery daily limit shall be: [Gun and archery daily limits:]

(a) Six (6) ducks, which shall not include more than:

1. Four (4) mallards, which shall not include more than two (2) hen mallards.

2. Two (2) wood ducks.

3. One (1) black duck.

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4. Two (2) redheads.
5. One (1) pintail [~~Three (3) pintails~~].
6. One (1) canvasback.
- (b) Fifteen (15) coots.
- (c) Five (5) mergansers, which shall not include more than one (1) hooded merganser.
- (d) The possession limits shall be double the daily limit.

Section 4. [3-] Gun and Archery Seasons Dates and Bag Limits for Geese. (1) White-fronted goose and brant season dates: Thanksgiving Day through January 30, except that hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached. [November 27 through:

- (a) January 20 in the Ballard Reporting Area;
- (b) January 31 in the remainder of the state.]

(2) Snow goose [and Ross' goose] season dates: Thanksgiving Day through March 10.

[~~(a) Ballard Reporting Area: November 27 through January 20 and February 14 through March 10.~~

~~(b) Remainder of state: November 27 through March 10.~~

~~(c) The reporting requirements specified in 301 KAR 2:223 shall not apply when a Canada goose season is not open.]~~

(3) Canada goose season dates: December 12 through January 30, except:

(a) The last day of hunting shall be:

1. February 14 in Fulton County; and
2. January 24 in the Ballard Reporting Area.

(b) The season shall not open until:

1. December 27 in the Pennyroyal-Coalfield Goose Zone;
2. January 9 in the West-Central Kentucky Goose Zone;
3. January 22 in the Northeast Kentucky Goose Zone.

(c) Hunting for dark geese in the Western Goose Zone shall cease if a quota specified in Section 7 of this administrative regulation is reached.

[~~(a) Eastern Goose Zone: December 13 through January 31.~~

~~(b) Pennyroyal/Coalfield Goose Zone: December 28 through January 31.~~

~~(c) Western Goose Zone: December 6 through:~~

1. January 20 in the Ballard Reporting Area;
2. February 15 in the portion of Fulton County in the Western Goose Zone;

~~3. January 31 in the remainder of the Western Goose Zone, unless a quota specified in Section 6 of this administrative regulation is reached.~~

~~(d) West-Central and Northeast Special Hunt zones: January 23 through January 31.]~~

(4) A person shall not goose hunt in:

(a) Breathitt, Knott, and Perry counties.

(b) The portions of Bell, Clay, Laurel, Pulaski and Whitley Counties owned by the U.S. Forest Service, including Laurel River Lake.

(c) McCreary County east of US 27.

(d) Cave Run Lake and the public land inside a boundary formed by Highways 801, 1274, 36, 211, US 60 and Highway 826.

(e) Martin County.

(5) The gun and archery daily limit shall be:

(a) Six (6) dark geese, to include no more than:

1. Daily limits:

(a) Two (2) Canada geese;

2. [(b)] Two (2) white-fronted geese; and

3. [(c)] Two (2) brant.

(b) Twenty (20) [(d) Ten (10)] snow geese.

(6) The possession limit shall be double the daily limit, except that there shall be no possession limit on snow geese.

Section 5. [4-] Shooting Hours. A person shall not hunt waterfowl except from one-half (1/2) hour before sunrise until:

(1) 2 p.m. in the Northeast Special Hunt Zone during a Canada goose season; or

(2) Sunset in the remainder of the state, except as specified in 301 KAR 2:222.

Section 6. [5-] Falconry Waterfowl Season and Limits. (1) Season dates:

- (a) Snow geese and Ross' geese: November 25 [24] through March 10;
- (b) Other waterfowl: November 5 through January 31.
- (2) Daily limit: three (3) waterfowl.
- (3) Possession limit: six (6) waterfowl.

Section 7. [6-] Quotas and Early Goose Season Closings. (1) If hunters reach a quota of 5,800 [8,000] Canada geese in the Ballard Reporting Area before January 24, dark [20-] goose hunting shall cease in the Ballard Reporting Area.

(2) If hunters reach a quota of 1,800 [3,135] Canada geese in the Henderson-Union Reporting Area before January 30 [31]:

[(a)] dark goose hunting shall cease in the Henderson-Union Reporting Area.

(3) [(b)] In a county [the counties] associated with the Ballard Reporting Area or the Henderson-Union Reporting Area, dark goose hunting shall cease:

(a) [1-] Seven (7) days after the reporting area closes [later]; or

(b) [2-] On the scheduled closing date, whichever occurs first.

[(3) If hunters reach a quota of 16,500 Canada geese in the Western Goose Zone before January 31, goose hunting shall cease in the Western Goose Zone.]

(4) The department shall provide at least a twenty-four (24) hour notice of the time and date of an early closure [closures].

[(5) A closure stipulated in this section shall not apply after January 31-]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: October 22, 1998 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually in Kentucky.

(2) Direct and indirect costs or savings on:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should 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 impacts are anticipated.

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

1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional 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 direct or indirect costs or savings will be incurred.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement 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: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

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

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was used to apply different season dates and harvest limits to various regions of the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, Federal Register, Vol. 63, No 189, Wednesday, September 30, 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. Ducks, coots and mergansers: Not more than a 60 day season with a six bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 6 ducks and may not include more than 4 mallards (no more than 2 hen mallards), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western Goose Zone season may extend for 50 days (65 days in Fulton County) between October 1 and January 31 (except February 28 in Fulton County), or until the harvest of 9,000 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall include no more than 20 snow geese, 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit, except there is no possession limit on

snow geese.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY 301 KAR 2:222E

This emergency administrative regulation establishes hunting dates and other requirements for hunting on wildlife management areas. 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 regulations 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 2:222 was filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

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

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:222E. Waterfowl hunting requirements.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 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: October 22, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements and to specify seasons and other requirements on wildlife management areas. Waterfowl seasons in the Ballard Wildlife Management Area, Cane Creek Wildlife Management Area, Cumberland Lake Wildlife Management Area, Cyprus-AMAX Wildlife Management Area, Land Between the Lakes, Ohio River Waterfowl Refuge, Robinson Forest Wildlife Management Area, and Yellowbank Wildlife Management Area differ from and are shorter than federal regulations to optimize public use within sound waterfowl conservation practices.

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Section 1. Definitions. (1) "Blind" means:

- (a) A concealing enclosure.
- (b) A pit.
- (c) A boat.

(2) "Party" means:

- (a) A person hunting alone; or
- (b) From two (2) to four (4) persons who share a blind.

(3) "Permanent blind" means a blind left in place more than twenty-four (24) hours.

(4) "Statewide waterfowl seasons" means the provisions of this administrative regulation and of 301 KAR 2:221.

(5) "Waterfowl" is defined by KRS 150.010(40).

Section 2. A waterfowl hunter shall not use or carry a shotgun shell:

- (1) Longer than three and one-half (3 1/2) inches; or
- (2) Containing shot:
 - (a) Made of lead;
 - (b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or
 - (c) Larger than size "T."

Section 3. In the Ballard Reporting Area, as described in 301 KAR 2:224:

- (1) A waterfowl hunter shall:
 - (a) Hunt from a blind unless hunting in flooded, standing timber.
 - (b) Not hunt from or establish a blind:
 - 1. Within 100 yards of another blind; or
 - 2. Within fifty (50) yards of a property line.
 - (c) Not possess more than one (1) shotgun while in a blind.
 - (2) More than five (5) persons shall not occupy a blind.
 - (3) The requirements of subsection (1) of this section shall not apply after Canada goose season closes.

Section 4. (1) Except as specified in this section or in Section 5 of this administrative regulation, on a wildlife management area:

- (a) A waterfowl hunter shall not establish or hunt from:
 - 1. A permanent blind.
 - 2. A blind within 200 yards of:
 - a. Another blind; or
 - b. A waterfowl refuge.
 - (b) A person shall not hunt in a designated recreation area or access point.
 - (c) More than four (4) persons shall not occupy a blind.
 - (d) A hunter shall remove decoys and personal effects from the wildlife management area daily, except that a hunter drawn for a multi-day hunt may leave decoys in place for the duration of his hunt.
 - (2) A person wishing to establish a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake or Taylorsville Lake Wildlife Management Areas:
 - (a) Shall first obtain a permit from the U. S. Army Corps of Engineers.
 - (b) May designate one (1) other person as a partner.
 - (c) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Taylorsville areas.
 - (d) Shall present a valid hunting license at the time of the drawing.
 - (e) Shall not hold more than one (1) permit per area.
 - (3) The holder of a blind permit shall:
 - (a) Construct his blind before November 20 or forfeit the permit.
 - (b) Not lock a blind.
 - (c) Unless an extension of time is granted, remove his blind within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.
 - (4) A blind not occupied by the permit holder one (1) [one-half (1/2)] hour before sunrise shall be available to another hunter on a first-come, first-serve basis.
 - (5) A blind restriction specified in this section shall not apply to a falconer when a gun or archery season is not open.

Section 5. On a wildlife management area:

- (1)(a) Statewide waterfowl seasons shall apply unless otherwise stated in this section.

(b) If specific hunting dates are given in this section, a person shall not hunt waterfowl except on those dates.

(c) Paragraph (b) of this subsection shall not apply to a waterfowl hunting season opening before October 15.

(2) A person shall not:

(a) Hunt on an area or the portion of an area marked by a sign as closed to hunting;

(b) Enter an area or a portion of an area marked by signs as closed to public access; or

(c) Hunt a species on an area or a portion of an area marked by signs as closed to hunting for that species.

(3) Wildlife management areas in Ballard County.

(a) A person shall not:

1. Have ~~[in his possession]~~ more than fifteen (15) shotgun shells in one (1) day while waterfowl hunting; or

2. Hunt past 12 noon.

(b) At least one (1) person in a blind shall be eighteen (18) years of age or older while hunting from a department blind at Ballard WMA or Barlow Bottoms WMA.

(c) At Ballard Wildlife Management Area:

1. Waterfowl hunting shall be permitted during an open waterfowl season occurring before October 15.

2. The duck, coot, and merganser season shall be:

a. December 16 [9] through January 17; or

b. Until the Ballard Reporting Area Canada goose quota is reached.

3. ~~[2:]~~ The goose season shall be:

a. December 16 [9] through January 24 [20]; or

b. Until the Ballard Reporting Area Canada goose quota is reached.

4. ~~[3:]~~ A waterfowl hunter shall not hunt on a ~~[Sunday:]~~ Monday, Tuesday, Christmas Day, or New Year's Day.

5. ~~[4:]~~ A waterfowl hunter shall:

a. Apply in advance in accordance with Section 6 of this administrative regulation;

b. Case his gun while using department-supplied transportation to and from a blind; and

c. ~~[Be accompanied by an adult if under eighteen (18) years old; and~~

d. ~~Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.~~

(d) At Barlow Bottoms Wildlife Management Area, including the Lower Bottoms, Peal and Swan Lake units:

1. A person shall:

a. Not hunt on a Monday or Tuesday; and

b. Check in and out daily at the designated check station during Canada goose season.

2. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.

3. ~~[At least one (1) person in a blind shall be eighteen (18) years old or older.~~

4. ~~[3:]~~ A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.

4. ~~[5:]~~ A person shall not, on Lower Bottoms unit ~~[Public Waterfowl Hunting Area]:~~

a. Hunt waterfowl except from a permanent department blind;

b. Be on the area after 1 p.m. during a waterfowl season, except as authorized by the department; and

c. Hunt waterfowl except from a blind assigned by the department during Canada goose season.

5. On the (e) Peal unit [Public Hunt Lakes]:

a. ~~[1:]~~ More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;

b. ~~[2:]~~ More than four (4) parties shall not hunt at the same time on Fish Lake;

c. ~~[3:]~~ More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;

6. ~~[4:]~~ On Swan Lake Unit, a person shall not hunt duck, coot, merganser, or ~~[geese]~~ other than a Canada goose ~~[Canadian geese]~~ except from a blind assigned by the department and unless:

a. The season for these species is open; and

- b. The season for Canada goose [Canadian geese] is also open.
- (4) Barkley Lake Wildlife Management Area.
- (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind marker within:
1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
 2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
- (c) The following refuge areas are closed to the public:
1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);
 - a. Including the row of islands on the west side of the main river channel; and
 - b. Not including Taylor Bay and Jake Fork Bay.
 2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.
- (d) From October 15 through March 15, a person shall not hunt:
1. Within 200 yards of; or
 2. Within the area defined by the levee between river mile 68.4 and river mile 70.4.
- (5) Barren River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (7) Cane Creek Wildlife Management Area shall be closed to goose hunting.
- (8) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 15.
- (9) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
- (a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
 - (b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.
- (10) Cyprus-AMEX Wildlife Management Area shall be closed to waterfowl hunting.
- (11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
- (a) Within the no wake zone at the dam site marina;
 - (b) From the shore of Camp Webb;
 - (c) From the shore of the state park; or
 - (d) On Deer Creek Fork of Grayson Lake.
- (12) Green River Lake Wildlife Management Area.
- (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
- (13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
- (14) Land Between the Lakes.
- (a) The following portions shall be closed to the public from November 1 through March 15:
1. Long Creek Pond.
 2. The eastern one-third (1/3) of Smith Bay.
 3. The eastern two-thirds (2/3) of Duncan Bay.
- (b) The following portions shall be closed to waterfowl hunting:
1. The Environmental Education Center.
 2. Energy Lake.
- (c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
 2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
- (d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
- (e) A person shall not establish or use a permanent blind:
1. On inland areas; or
 2. Along the Kentucky Lake shoreline of Land Between the Lakes.
- (f) A waterfowl hunter shall remove decoys and personal effects daily.
- (15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.
- (17) Ohio River Waterfowl Refuge.
- (a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.
- (b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.
- (18) Peabody Wildlife Management Area.
- (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
- (b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:
1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.
 2. Sinclair Mine, as bounded by railroad tracks, the haul road and posted signs.
 3. Homestead, as bounded by the haul road and the Green River.
- (19) Pioneer Weapons Wildlife Management Area. A waterfowl hunter:
- (a) May use a breech-loading shotgun along the shoreline of Cave Run Lake.
 - (b) Shall not use a breech-loading firearm elsewhere on the area.
- (20) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.
- (21) Sloughs Wildlife Management Area.
- (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
- (b) On the Grassy-Pond Powells Lake Unit, a waterfowl hunter:
1. Shall use one (1) of the permanent blinds provided by the department.
 2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily.
- (c) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:
1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party.
 2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.
- (d) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:
1. May hunt from a boat without regard to department blinds.
 2. Shall not hunt closer than 200 yards from another boat.
- (e) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:
1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.
 2. May occupy a blind not claimed by the permittee one (1) hour before sunrise [by the opening of shooting hours].
 3. Shall not have more than fifteen (15) shotgun shells in one (1) day while waterfowl hunting [his possession].
 4. Shall be accompanied by an adult if under eighteen (18) years of age.
- (f) The Crenshaw and Duncan tracts shall be closed to hunting except waterfowl from October 15 through March 15.
- (g) The remainder of the Sauerheber Unit shall be closed to the public from October 15 through March 15.
- (22) Taylorsville Lake Wildlife Management Area.
- (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (b) The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 [the Monday following the scheduled quota deer hunt] through the last day of February, except for quota deer hunting.
- (23) Westvaco Wildlife Management Area.
- (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

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- (b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.
- (c) A person shall obtain a Westvaco Permit before hunting.
- (24) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.
- (25) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

Section 6. (1) A person wishing to apply to hunt waterfowl on Ballard, Barlow Bottoms [Swan Lake] or the Sauerheber unit of Sloughs wildlife management areas shall:

- (a) Apply on a form provided by the department.
- (b) Submit the completed application form before the deadline date on the form.
- (2) A form which are not completed according to the instructions on the form shall be disqualified from the drawing.
- (3) A person shall not apply more than one (1) time for each hunt.
- (4) Each hunter drawn may bring up to three (3) additional hunters.

Section 7. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) Sloughs Wildlife Management Area Waterfowl Hunting Application, August, 1997.
- (b) Ballard Wildlife Management Area Goose Hunt Application, August, 1997.
- (c) Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County, August 1997.
- (2) These forms may be inspected, copied or obtained at the Department of Fish and Wildlife, #1 Game Farm Road, Frankfort, Kentucky 40601 Monday through Friday from 8 a.m. through 4:30 p.m.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman
DOUGLAS SCOTT PORTER, Assistant Attorney General
APPROVED BY AGENCY: August 21, 1998
FILED WITH LRC: October 22, 1998 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

- (1) Type and number of entities affected: Approximately 14,000 persons hunt waterfowl annually 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: No public comments received. This administrative regulation should 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 impacts are anticipated.
 - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 - 1. First year following implementation: Waterfowl hunters must purchase licenses as well as state and federal waterfowl stamps. This is a continuing requirement that will impose no additional 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 direct or indirect costs or savings will be incurred.
 - 2. Continuing costs or savings: Same as for first year.
 - 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.
 - (4) Assessment of anticipated effect on state and local revenues: No increase or decrease on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue from the sale of hunting and fishing licenses and from the Federal Aid to Wildlife Restoration will be used to implement 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: No public comments received. Waterfowl hunting creates substantial economic activity in certain sections of the state. This administrative regulation will allow waterfowl hunting to continue by establishing hunting seasons within federal frameworks.

(b) Kentucky: The statewide impact of waterfowl hunting is minimal, but this administrative regulation does allow for the continuance of this activity.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not having a waterfowl season was rejected because waterfowl represent a renewable natural resource which affords recreational opportunities and generates economic activity throughout the commonwealth.

(8) Assessment of expected benefits: Continuation of waterfowl hunting and short- and long-term conservation of waterfowl resources are the primary benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated harvest of waterfowl ensures the continuation of this important component of the Commonwealth's biological diversity.

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

(c) If detrimental effect would result, explain detrimental effect: Inability to regulate waterfowl resource.

(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? (Explain why tiering was or was not used) Tiering was used to apply different season dates and other specialized hunting requirements to various wildlife areas across the state. This was done to maximize hunter opportunity while conserving waterfowl resources.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, Federal Register, Vol. 63, No. 189, Wednesday, September 30, 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. Ducks, coots and mergansers: Not more than a 60 day season with a six bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into two zones with no more than two segments in each zone. The daily bag limit is 6 ducks and may not include more than 4 mallards (no more than 2 hen mallards), 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback and 2 redheads. The possession limit shall be twice the daily bag. The coot daily bag shall be 15 with the possession limit being 30. The merganser limit shall be 5 daily (only 1 may be a hooded merganser) and the possession limit being twice the daily bag. Both the coot and merganser bag shall be in addition to the duck limit.

Geese: The season for light geese (snow geese) may extend for 107 days and the season for white-fronted geese may extend for 70 days. Season framework for light geese is between the Saturday nearest October 1 and March 10. The season framework for white-fronted geese is between the Saturday nearest October 1 and January 31.

The Canada goose season in the Western Goose Zone season may extend for 50 days (65 days in Fulton County) between October 1 and January 31 (except February 15 in Fulton County), or until the harvest of 9,000 birds is taken, whichever occurs first.

Pennyroyal/Coalfield Zone Canada goose season may extend for 35 days with a daily bag limit of 2 Canada geese.

The Canada goose season in the remainder of the state may extend for 50 days with a daily bag limit of 2 Canada geese.

The daily bag limit shall include no more than 20 snow geese, 2 Canada geese, 2 white-fronted geese and 2 brant. Possession limit is twice the daily bag limit, except there is no possession limit for snow geese.

Shooting hours shall be one-half hour before sunrise until sunset daily for all species.

Falconry season for migratory birds mentioned above shall fall between September 1 and March 10 and shall not exceed 107 days. Daily bag and possession limits shall not exceed 3 birds daily or 6 in possession, singly or in the aggregate of species. Hunting hours shall be the same as for firearms hunting.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Seasons for light geese are shorter due to the paucity of birds wintering in Kentucky during the early parts of the framework dates. Exerting hunting pressure on so few birds could jeopardize long-term bird use in Kentucky.

The Ballard Wildlife Management Area season is shorter than the Western Goose Zone so that controlled hunts will not jeopardize goose and duck use. Scheduled resting periods during the framework is a good means of enhancing historic use patterns. Other wildlife management area season dates and shooting hours were adjusted to optimizing public use within sound waterfowl conservation practices.

STATEMENT OF EMERGENCY 301 KAR 2:223E

This emergency administrative regulation establishes requirements for reporting goose harvest in areas of the state where the U. S. Fish and Wildlife Service requires that the season close early if certain quotas are reached. 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 regulations 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 2:223 was filed with the Regulations Compiler simultaneously with this emergency administrative regulation.

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

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

301 KAR 2:223E. Waterfowl reporting requirements.

RELATES TO: KRS 150.010, 150.015, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 15.603, 150.630, 150.990, 50 CFR Parts 20, 21 [59-CFR-20]

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 CFR Parts 20, 21 [150.015, 150.021, 150.170, 150.175, 150.300-150.330, 150.600, 150.603, 59-CFR-20]

EFFECTIVE: October 22, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 50 CFR Parts 20

and 21 establish Canada goose quota and require the state to close goose hunting season if these quotas are reached. KRS 150.025(1) and 150.600(1) authorize the department to promulgate administrative regulations governing the taking of waterfowl. [Monitoring hunter harvest is necessary because of federally mandated quotas or limited populations in goose restoration areas.] This administrative regulation is necessary to assure that complete harvest data are collected in a timely manner. [This amendment is necessary to allow hunting area operators to submit weekly report cards instead of harvest register.]

Section 1. Definitions. (1) "Commercial waterfowl hunting area" means private lands or waters where a fee is charged for hunting waterfowl.

(2) "Noncommercial waterfowl hunting area" means private land or water where a fee is not charged for hunting waterfowl.

(3) "Operator" means:

(a) The owner, manager or other person in charge of a commercial waterfowl hunting area;

(b) The owner or tenant of a noncommercial waterfowl hunting area; or

(c) A person to whom the owner or tenant has assigned, in writing on forms provided by the department, exclusive control of waterfowl hunting rights on a noncommercial waterfowl hunting area.

Section 2. When Canada goose season is open in the Ballard Reporting Area or the Henderson-Union Reporting Area, as described in 301 KAR 2:224:

(1) The operator of a commercial waterfowl hunting area [Operators of commercial waterfowl hunting areas] shall obtain a commercial waterfowl shooting area permit for each area he operates [they operate].

(a) A tract of land divided by a public road may operate under one (1) permit.

(b) Tracts of land separated by property belonging to another person shall require a separate permit [permits] for each tract.

(2) The operator of a commercial waterfowl hunting area [Operators of commercial waterfowl hunting areas] shall:

(a) Display the permit openly on the area; and

(b) Maintain complete and accurate records of waterfowl harvested on a daily waterfowl harvest register form [forms provided by the department].

(3) The operator [Operators] of a noncommercial waterfowl hunting area shall [areas]:

(a) [Shall] Obtain a noncommercial migratory goose hunting permit from the department.

(b) [Shall] Display the permit openly on the area.

(c) [Shall] Make a daily waterfowl harvest register form [forms] available to goose hunters.

(d) [Shall] Require a goose hunter [hunters] to enter:

1. His name, address, hunting license number [Enter their names, addresses, hunting license numbers] and the date on the register before hunting; and

2. [Enter] The number of geese taken by species before leaving the area.

(4) The operator [Operators] of a commercial or a noncommercial waterfowl hunting area shall [areas]:

(a) Close the [Shall close each week's] waterfowl harvest register after shooting hours on Wednesday and Sunday.

(b) [Shall] Mail or hand-deliver:

1. The harvest report card to the address indicated so that it shall arrive [arrives] no later than the following Monday or Thursday; and

2. [(c) Shall mail or hand-deliver] The original forms to the address indicated so that they shall arrive within five (5) days after the close of goose season.

(c) Retain a form [(d) Shall retain forms] for two (2) months after the close of goose season.

(d) Allow an agent [(e) Shall allow agents] of the department or the U. S. Fish and Wildlife Service to inspect his permit and harvest record [permits and harvest records].

(5) A person goose hunting on a commercial or a noncommercial waterfowl hunting area shall [Persons hunting geese on commercial or noncommercial waterfowl hunting areas]:

(a) [Shall] Enter his name, address, hunting license number [their

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names, addresses, hunting license numbers] and the date on the register form before hunting; and

(b) [Shall] Record the number of geese taken by species on the register form before leaving the area.

(6) A person goose hunting on a public area [Persons hunting geese on public areas], including the Ohio or Mississippi Rivers or their overflow areas, within the Ballard or Henderson-Union Reporting Areas shall:

(a) [Shall] Obtain a daily waterfowl harvest register form [from the department].

(b) Before hunting, [shall] enter on the register:

1. His name, address, and hunting license number; [Their names, addresses, hunting license numbers and the date.]

2. [If an individual is carrying the form for a hunting party:] The name, address and hunting license number of each member of the hunting party; and [the date.]

3. The date.

(c) Shall record on the register the number of geese by species taken each day.

(d) Shall mail or hand deliver the completed harvest report card [register] to the address indicated on the form so that it arrives no later than the following Monday or Thursday. [of each week.]

Section 3. A person goose hunting [Persons hunting geese] in the West-Central or Northeast Special Hunt Zones, as defined in 301 KAR 2:224 shall:

(1) [Shall] Carry a permit to hunt Canada Geese on special areas form.

(2) [Shall] Complete and return the harvest survey portion of the permit within ten (10) days after the season closes.

(3) [Shall] Not be eligible for permits the following year if they do not return harvest surveys within ten (10) days after the season closes.

Section 4. Incorporation [Items Incorporated] by Reference. (1) The following material is [forms are] incorporated by reference: [They are available for examination or copying from the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. until 4:30 p.m. eastern time during business days.]

(a) [(1)] Kentucky permit to hunt Canada geese on special areas, August, 1995.

(b) [(2)] Noncommercial migratory goose hunting permit, August, 1995.

(c) [(3)] Daily waterfowl harvest register, August, 1995.

(d) [(4)] Application for commercial waterfowl shooting area permit, August, 1995.

(e) [(5)] Assignment of waterfowl hunting rights, August, 1995.

(f) [(6)] Harvest report card, August 1995.

(2) This material may be inspected, copied or obtained at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 Monday through Friday, 8 a.m. until 4:30 p.m.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: October 22, 1998 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 500 individuals or businesses will be required to report their goose harvest.

(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. Reporting of goose harvest to determine if quotas are reached is a federal requirement. Waterfowl hunting generates substantial economic activity in the areas of Western Kentucky cov-

ered by this administrative regulation, which would be lost if we do not meet this federal 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: No public comments received. Costs of obtaining permits and mailing forms, as required by this regulation, are 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: Waterfowl hunters, as well as operators of commercial and non-commercial waterfowl hunting areas, are required to obtain permits and report goose harvest. This is an existing requirement, so this administrative regulation will neither increase or decrease costs. The amendment to this administrative regulation increases the reporting requirement from weekly to twice weekly. This is necessary because more restrictive harvest quotas will require a closer monitoring of waterfowl harvest.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This is an existing activity; neither costs nor savings will be impacted by this administrative regulation.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department must print and distribute permits and harvest forms and tabulate waterfowl harvest from returned forms.

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease is anticipated.

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

(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. This is a continuing regulation which will have no additional positive or negative economic impact.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a federally mandated requirement. The alternative is not permit Canada goose hunting in two of the areas of the state with high goose populations. This is an unacceptable alternative because geese are a renewable natural resource which provide considerable recreational opportunity and economic benefit in these areas.

(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:

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

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

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

(10) Any additional information or comments: None.

(11) TIERING: IS tiering applied? (Explain why tiering was or was not used) Tiering was used to the extent that differing requirements are placed on operators of commercial waterfowl hunting areas, operators of non-commercial waterfowl hunting areas, and individual hunters.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Part 20, Federal Register, Vol. 63, No 189, Wednesday, September 30, 1998.

2. State compliance standards. The state must curtail dark goose if 5,800 Canada geese are taken in the Ballard Reporting

Area, or 1,800 in the Henderson-Union Reporting Area.

3. Minimum or uniform standards contained in the federal mandate. The U. S. Fish and Wildlife Service has established harvest quotas for the Ballard and Henderson-Union Reporting Areas in the Western Goose Zone, and mandates that the state monitor harvest and close hunting if quotas are reached.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The federal mandate does not specify how harvest information will be monitored. This administrative regulation was amended to required twice-weekly harvest reporting, instead of weekly reporting, as has been the requirement for the past several years.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Lower quotas in 1998 require a closer monitoring of goose harvest. Weekly reporting has been sufficient during the past several years, when quotas were generous and not likely to be met before the scheduled end of the season.

STATEMENT OF EMERGENCY 803 KAR 25:175E

Pursuant to KRS 342.340(2), insurance carriers (as defined in KRS 342.0011(22)) shall file with Department of Workers' Claims proof of workers' compensation insurance coverage or cancellation of coverage. The current administrative regulation requires all insurance carriers to electronically file policy information for Kentucky employers exclusively with NCCI (National Council on Compensation Insurance) as data collection agent for the Department of Workers' Claims. Currently the NCCI system is not adequately transmitting entirely accurate policy information to Department of Workers' Claims. The department has developed alternate, reliable, and cost effective ways to electronically transmit this information. This amendment will grant insurance carriers alternatives to file the required policy information. Because of the extreme importance and urgency of receiving this information to insure that Kentucky employers have proper workers' compensation insurance, the department must immediately amend the administrative regulation to ensure compliance and obtain current and credible policy information. It is imperative to make this amendment in an emergency administrative regulation to enable the Department of Workers' Claims to fulfill its statutory duty with respect to maintaining current records of insurance coverage. This emergency administrative regulation shall be replaced by an ordinary administrative regulation which will be filed at a later date.

PAUL E. PATTON, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET Department of Workers' Claims

803 KAR 25:175E. Filing of insurance coverage and notice of policy change or termination.

RELATES TO: KRS 342.0011(22), 342.340(2)
STATUTORY AUTHORITY: KRS 342.260(1)

EFFECTIVE: October 28, 1998 at noon

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires an insurance carrier to file proof of insurance coverage for an employer and notice of policy change or termination on a form prescribed by the commissioner. KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department. This administrative regulation establishes the requirements for filing proof of coverage and policy change or termination of coverage.

Section 1. Definitions. (1) "Insurance carrier" is defined in KRS 342.0011(22).

(2) "NCCI" means the National Council on Compensation Insurance.

Section 2. Reporting Requirements. (1) Beginning on January 1, 1998, each insurance carrier shall file the [information required on the] Form POC-1 with NCCI pursuant to the time requirements established in KRS 342.340(2).

(2) NCCI shall electronically file the information filed pursuant to subsection (1) with the Department of Workers' Claims.

(3) The time requirements established in KRS 342.340(2) shall be satisfied once the insurance carrier makes the appropriate filing with NCCI.

(4) Until December 31, 1998, an insurance carrier shall file the information required on the POC-1 for each new policy, renewal policy, and a change or termination of a policy.

(5) Beginning January 1, 1999, an insurance carrier shall file the information required on the POC-1 for each new policy and a change or termination of a policy.

Section 3. (1) If an insurance carrier wants acknowledgment of a filing, the insurance carrier shall file a copy of the POC-1 form with a request for acknowledgment to NCCI with the original filing.

(2) A report that is incomplete or provides incorrect information shall:

(a) Be returned by NCCI; and

(b) Not be considered as compliance with KRS 342.340(2) until the information is completed or corrected and refiled with NCCI.

Section 4. (1) Beginning November 1, 1998, each insurance carrier shall file a Form POC-1:

(a) With NCCI in the manner prescribed by Sections 2 and 3 of this administrative regulation; or

(b) Electronically with the Department of Workers' Claims.

(2) Any electronic transmission of data shall have:

(a) Demonstrated its reliability in tests rendered by the department; and

(b) Received the approval of the commissioner.

Section 5. Incorporation by Reference. (1) "POC-1 Form", December 1996 Edition, Department of Workers' Claims is incorporated by reference.

(2) The material may be inspected, copied, or obtained at the Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.

WALTER W. TURNER, Commissioner
STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: October 23, 1998

FILED WITH LRC: October 28, 1998 at noon

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 525 workers' compensation insurers and 22 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: The department does not anticipate an effect on the cost of living or employment in Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Insurance carriers were already filing similar forms with the department. They will now file POC-1 form with the same information with NCCI either in hard copy or electronically. Insurance carriers who are not members are not required to become members of NCCI. Nonmembers pay a filing rate of \$4 per proof of coverage and \$2 per change in policy. Members pay a rate of \$2 per proof of coverage and \$1 per change in policy.

(c) Compliance, reporting, and paperwork requirements, includ-

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ing factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Insurance carriers already file these forms with the Department of Workers' Claims. Now these documents will be filed with NCCI. Costs would increase only to the extent of the rate to be paid to NCCI for each filing as stated above.

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: The Department of Workers' Claims should not have any effect on monetary costs or savings. There will be a time savings since all reports will come from one source electronically. There will be a space savings because the department will not have to save all hard copies of forms.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: As stated earlier the department will be able to save time and space. Time will also be saved because all rejections will be done electronically to avoid the time consuming job of calling insurance carriers and returning hard copies of 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: There will be no fee for the department to receive this information from NCCI. The normal budget will be in place for enforcement of the 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 only economic impact will be for the insurance carriers as stated in (2)(b).

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This option to have the information filed electronically by NCCI will save time and space. It will allow for more timely receipt of proof of coverage and cancellation. It is a free service to the department. To not move forward with this project would prevent better service from the department.

(8) Assessment of expected benefits: As stated earlier, time and space will be saved. Reporting will be more accurate and delivered to the department in a timely manner to allow the department more up-to-date information on workers' compensation coverage.

(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: N/A

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

(10) Tiering: Tiering is not applied because this administrative regulation is applied to workers' compensation insurers and group self-insurers equally.

ADMINISTRATIVE REGULATION AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on November 10, 1998, unless otherwise noted.

FINANCE AND ADMINISTRATION CABINET
Kentucky Retirement Systems
(As Amended at ARRS, November 10, 1998)

105 KAR 1:230. Reemployment after retirement.

RELATES TO: KRS 61.637, 1998 Ky. Acts ch. 105 sec. 28, ch. 75, 26 CFR 1.401-1(b)(1)(i), 26 USC 401(a)

STATUTORY AUTHORITY: KRS 61.645(9)(f), 26 USC 401(a) NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(f)(1) requires the board to promulgate administrative regulations that: (a) implement the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852; and (b) conform with federal statute or regulation; (2) authorizes the board to promulgate administrative regulations that conform with federal statute and regulation; and (3) provides that provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852 that conflict with federal statute or regulation shall not be available to a member of the Kentucky Retirement Systems, 1998 Ky. Acts ch. 105, sec. 28 provides that beginning August 1, 1998, a retired member who is reemployed in a position covered by the same retirement system from which he retired shall be treated as a new member upon reemployment. 26 USC 401(a) provides that a qualified pension plan shall not pay benefits prior to normal retirement age if a separation from service has not occurred. [The statute provides that a member who retires and who is reemployed within the same retirement system from which he is drawing a benefit may have his retirement stopped and be required to participate.] This administrative regulation establishes [sets out] the: (1) procedures, conditions, and requirements for the employment of a retired member by an agency in the County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System; and (2) penalties for violation of the provisions of this administrative regulation.

Section 1. "Regular full-time position" is defined by:

- (1) KRS 16.505(21), for members of the State Police Retirement System;
- (2) KRS 61.510(22), for members of the Kentucky Employees Retirement System; and
- (3) KRS 78.510(22), for members of the County Employees Retirement System.

Section 2. (1) A [who is reemployed:

Section 1. The] retired member or his employer shall notify the retirement system if he has accepted [accepts any] employment with an agency that participates [participating] in the [same] retirement system from which he retired.

(2) If the retired member is under a contract;

(a) He [- the member] shall submit a copy of his contract to the retirement system; and

(b) The retirement system shall determine if he [the member] is an independent contractor for purposes of retirement benefits. [The member shall complete and return a Reemployment After Retirement, Form 60, dated August 1994.]

Section 3. If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of his initial retirement date in a position that is required to participate in the retirement system from which he retired, the:

- (1) The member's retirement shall be voided;
- (2) The member shall repay to the retirement system the retirement allowance he received;
- (3) The member shall contribute to the member account established for him prior to his voided retirement; and

(4) The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable compensation. [2- If the member is age seventy (70) or will be age seventy (70) during the calendar year, the member may certify that his income will exceed the maximum allowed by the Social Security Administration for a retired person over age sixty-five (65) and that he wishes to have his retirement allowance stopped and become a contributing member. The member may elect to have his payments continue and not contribute to the retirement system.]

Section 4. (1) A retired member of the Kentucky Employees Retirement System or the State Police Retirement System who after initial retirement is hired by an agency that participates in the Kentucky Employees Retirement System or the State Police Retirement System shall be considered to have been hired by the same employer.

(2) A retired member of the County Employees Retirement System who after initial retirement is hired by the agency from which he retired shall be considered to have been hired by the same employer.

Section 5. (1)(a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within six (6) months of his initial retirement date by the same employer, he shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position:

1. From which he retired; and
 2. In which he has been reemployed.
- (b) The job descriptions and statements of duties shall be filed with the retirement office.

(2) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:

(a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends six (6) months after the member's initial retirement date.

(b) The retired member shall repay to the retirement system the retirement allowances that he received after reemployment began.

(c) Upon termination, or subsequent to expiration of the six (6) month period from the date of his initial retirement:

1. The retired member's retirement allowance based on his initial retirement account shall no longer be suspended; and
2. He shall receive the amount to which he is entitled, including an increase pursuant to KRS 61.691.

(d) Except as provided by 1998 Ky. Acts ch. 75, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after his date of employment shall be credited to the second member account.

(e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

(3)(a) If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.

(b) If the position is a regular full-time position, he shall contribute to a second member account in the retirement system.

Section 6. (1) The provisions of this section shall apply, if a retired member is employed:

- (a) One (1) month after initial retirement in a different position; or

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(b) Six (6) months after initial retirement and prior to normal retirement age.

(2) The retired member shall:

(a) Contribute to a second-member account in the retirement system; and

(b) Continue to receive his retirement allowance.

(3) Service credit gained after employment shall be credited to the second retirement account.

(3) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account. [3- If the member is under age seventy (70), he shall certify whether his anticipated earnings will exceed the maximum allowable by the Social Security Administration for a retired person.

Section 4. Upon receipt of the reemployed member's certification, the retirement system shall notify the employer to withhold or not withhold contributions on the member.

Section 5. The form required by the administrative regulation is incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.]

RANDY OVERSTREET, Chair

WILLIAM P. HANES, ESQ., Deputy Commissioner of Benefit Services

APPROVED BY AGENCY: September 2, 1998

FILED WITH LRC: September 2, 1998 at 10 a.m.

JUSTICE CABINET Kentucky Parole Board (As Amended at ARRS, November 10, 1998)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 439.340(3), **532.043, 532.060**

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

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

(1) "Board" means the Kentucky Parole Board.

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

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

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

(5) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;

(b) Answer the detainer.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan pursuant to KRS 439.340(2) and has signed his parole certificate.

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

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

(9) "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(10) "Reconsideration" means a decision to review a previous

board action.

(11) "Restitution" is defined in KRS 532.350(1)(a) [1998 Ky. Acts ch. 606, sec. 177].

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

(13) [(12)] "Youthful offender" is defined in KRS 635.020(2) to (8).

Section 2. Ineligibility. (1) An eligible sex offender, as defined in KRS 197.400 to 197.440, convicted after July 15, 1986, but prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:

(a) He has been denied entrance into the Sex Offender Treatment Program (SOTP);

(b) He has been terminated from the SOTP; or

(c) He has successfully completed the SOTP.

(2) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).

(3) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration. [(1) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4);

(2) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to 1998 Ky. Acts ch. 606, sec. 25 and 70, shall not be eligible for parole consideration.]

Section 3. Parole Eligibility. (1) Initial parole review date.

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

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

For a [any] crime, committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony, where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

Sentences of a number of years	85% of sentence received
Sentences of life	20 years

(b) For the crimes, committed on or after July 15, 1986, but prior to July 15, 1998, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping -where there is serious physical injury or death, arson I - where there is serious physical injury or death, criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or a Class A or Class B felony which involves serious physical injury or death of the victim:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentences of life	12 years

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

Sentence Being Served	Time Service Required Before First Review
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(Minus Jail Credit)

1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years]

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

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

Parole eligibility on an individual serving multiple sentences, where one (1) or more of the crimes resulted in a conviction committed under paragraph (b) of this subsection or this paragraph and one (1) or more committed under paragraph (a) of this subsection, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

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

(e)1. If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration and he has not been discharged since his original admission and, if this new conviction shall be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

2. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing.

3. If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

a. The recommendation of parole shall automatically be voided; and

b. The new parole eligibility date shall be calculated from the date of original admission on the aggregate sentences. [If a confined prisoner receives an additional concurrent or consecutive sentence after he has been considered by the board, but not yet released if parole is recommended, the previous action of the board shall be automatically voided and the new parole eligibility shall be calculated from the date of original admission on the aggregate sentences.]

(f) If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. The amount of time to be served for parole eligibility on the additional sentence for the escape;

3. The amount of time to be served for parole eligibility on the time to be served for the crime committed while in the institution and escape; and

4. The amount of time to be served for parole eligibility on the time to be served for the crime committed while on escape.

(h) If a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date. If the prisoner later receives a sentence for the escape the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence.

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

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

(k) If a person is shock probated, or on prerelease probation, and later returned as a shock probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(l) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

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

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

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

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

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

(5) An inmate who is psychologically unstable may be deferred in

absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

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

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

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

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

Section 4. [3:] Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any of the following factors to an inmate:

- (a) Current offense - seriousness, violence involved, firearm used;
- (b) Prior record;
- (c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;
- (d) Attitude toward authority - before and during incarceration;
- (e) History of alcohol or drug involvement;
- (f) History of prior probation, shock probation or parole violations;
- (g) Education and job skills;
- (h) Employment history;
- (i) Emotional stability;
- (j) Mental capacities;
- (k) Terminal illness;
- (l) History of deviant behavior;
- (m) Official and community attitudes toward accepting inmate back in the county of conviction;
- (n) Victim impact statement and victim impact hearing;
- (o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;
- (p) Other factors involved that relate to the inmate's needs and public safety.

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

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

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

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

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

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

Section 5. [4:] Youthful Offender. (1) A youthful offender shall be

subject to the jurisdiction of the board as described in KRS 640.080.

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

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

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

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

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

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

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

Section 6. [5:] Conditions of Parole. (1) The parolee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Pay the balance of the restitution ordered pursuant to KRS 439.563 [1998 Ky. Acts ch. 606, sec. 47].

(o) Pay the balance of the sum payable to the Crime Victims Compensation Fund pursuant to KRS 346.185.

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

(a) Pay restitution;

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

(c) [(b)] Observe a curfew;

(d) [(e)] Not associate with, or contact a specific individual;

(e) [(f)] Not frequent a certain place or business;

(f) [(e)] Be tested periodically for drugs; or

(g) [(f)] Observe any condition the board has determined is necessary for the rehabilitation of the parolee.

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 7, 1998

FILED WITH LRC: August 13, 1998 at 3 p.m.

VOLUME 25, NUMBER 6 – DECEMBER 1, 1998

JUSTICE CABINET
Department of Corrections
(As Amended at ARRS, November 10, 1998)

501 KAR 2:070. Work release.

RELATES TO: KRS 533.010(14)
STATUTORY AUTHORITY: KRS 196.035, 533.010(14)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 533.010(14) requires the Department of Corrections to promulgate an administrative regulation to identify procedures for implementing work release privileges granted by this statute.

Section 1. The criteria to be used in the determination of granting work release shall include the following:

(1) The defendant granted work privileges shall have a suitable job placement, at a lawful wage, as approved by the sentencing court.

(2) The defendant's job placement shall be within the boundaries of the Commonwealth and shall not require travel outside of the Commonwealth.

(3) The defendant shall provide or arrange transportation to and from the employment site in a lawful manner.

(4) The defendant's employer shall be willing to cooperate with all law enforcement agencies in the verification of the conditions of the defendant's work release.

(5) The defendant shall pay for the cost of his incarceration as set by the sentencing court.

Section 2. The jailer may deny work release privileges to a defendant for violating any duly promulgated or adopted rule of the jail governing inmate conduct or work release including:

(1) The defendant returning to the jail under the influence of drugs or alcohol.

(2) The defendant promoting or attempting to promote contraband.

(3) Failure to notify the jailer of any change in the status of his employment.

Section 3. Upon denial of work release privileges, a written report shall be completed stating the reasons for the suspension of these privileges and citing the rule or regulation that has been violated.

(1) The jailer shall provide a copy of the report to the defendant within twenty-four (24) hours.

(2) The jailer shall file the report and supporting documentation with the court of jurisdiction within the time specified in KRS 533.010(13). [The jailer may deny work release privileges to a defendant for violating any duly promulgated or adopted rule of the jail governing inmate conduct.]

~~Section 2. Upon denial of work release privileges, an incident report shall be completed stating the reasons for the suspension of these privileges and citing the disciplinary rule or administrative regulation that has been violated.~~

~~Section 3. The jailer or his designee shall review the incident report within twenty-four (24) hours to determine if the violation is sufficient to justify suspending the work release privileges, pending further review by the court.~~

~~Section 4. The jailer shall file the incident report and supporting documentation with the court of jurisdiction within the time specified in KRS 533.010(13):]~~

DOUG SAPP, Commissioner
TAMELA BIGGS, Staff Attorney
APPROVED BY AGENCY: August 10, 1998
FILED WITH LRC: August 13, 1998 at 2 p.m.

JUSTICE CABINET
Kentucky Department of Corrections
(As Amended at ARRS, November 10, 1998)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, July 13 [January-8], 1998":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media ~~{(Amended 1/8/98)}~~
- 01-04-01 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen ~~(Amended 7/13/98)~~
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law ~~(Amended 7/13/98)~~
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution ~~(Amended 7/13/98)~~
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services ~~(Amended 7/13/98)~~
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program ~~(Amended 7/13/98)~~
- 13.9 Dental Services ~~(Amended 7/13/98)~~
- ~~[13.11 Sex Offender Registration - (Added 7/13/98) - (Deleted 11/10/98)]~~
- 14.1 Investigation of Missing Inmate Property
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures ~~(Amended 7/13/98)~~ ~~{(Amended 1/8/98)}~~

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15.1	Hair and Grooming Standards	27-08-01	Use of Force
15.2	Offenses and Penalties {(Amended 1/8/98)}	27-09-01	Kentucky Community Resources Directory
15.3	Meritorious Good Time <u>(Amended 7/13/98)</u>	27-10-01	<u>Pretrial Diversion (Added 7/13/98)</u>
15-05-01	Restoration of Forfeited Good Time	27-11-01	Intensive Supervision {(Amended 1/8/98)}
15.6	Adjustment Procedures and Programs {(Amended 1/8/98)}	27-11-02	<u>Prerelease Probation (Amended 7/13/98)</u>
15.7	Inmate Account Restriction	27-12-01	Supervision: Case Classification
15.8	Unauthorized Substance Abuse Testing <u>(Amended 7/13/98)</u>	27-12-02	Risk Assessment
16.1	Inmate Visits <u>(Amended 7/13/98)</u>	27-12-03	Initial Interview
16.2	Inmate Correspondence	27-12-04	Conditions of Regular Supervision/Request for Modification
16.3	Telephone Calls {(Amended 1/8/98)}	27-12-05	Releasee's Report
16.4	Inmate Packages	27-12-06	Grievance Procedures for Offenders
17.1	Inmate Personal Property {(Amended 1/8/98)}	27-12-07	Employment, Education/Vocational Referral
17.2	Assessment Center Operations	27-12-08	Supervision Plan
17.3	Controlled Intake of Inmates	27-12-09	Casebook
		27-12-10	Guidelines for Monitoring Supervision Fee
		27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority <u>(Amended 7/13/98)</u>
		27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
		27-12-13	Community Service Work
		27-12-14	Client Travel Restrictions
		27-13-01	Drug and Alcohol Testing of Offenders <u>(Amended 7/13/98)</u>
		27-13-02	Alcohol Detection
		27-14-01	Interstate Compact Transfers
		27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
		27-15-01	Supervision Report; Violations, Unusual Incidents
		27-15-02	<u>Community Confinement Program Subject: Electronic Monitoring (Amended 7/13/98)</u>
		27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
		27-17-01	Absconder Procedures
		27-18-01	Probation and Parole Issuance of Detainer/Warrant
		27-19-01	Preliminary Revocation Hearing
		27-20-01	Division of Probation and Parole Controlled Intake Program
		27-20-02	Prisoner Intake Notification <u>(Amended 7/13/98)</u>
		27-20-03	Prisoner Status Change
		27-21-01	Apprehension and Transportation of Probation and Parole Violators <u>(Amended 7/13/98)</u>
		27-22-01	Fugitive Unit - Apprehensions
		27-22-02	Fugitive Unit - Transportation of Fugitives
		27-23-01	In-state Transfer
		27-24-01	Closing Supervision Report
		27-24-02	Reinstatement of Clients to Active Supervision
		27-25-01	Application for Final Discharge from Parole <u>(Amended 7/13/98)</u>
		27-26-01	Assistance to Former Clients and Dischargees
		27-27-01	Restoration of Civil Rights
		27-28-01	Firearms/Explosives: Application for Relief from Disability
		27-29-01	Parole Review Dates Modification
		27-30-01	<u>Sex Offender Registration (Added 11/10/98)</u>
		28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
		28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
		28-01-03	<u>Presentence, Postsentence, Supplemental and Partial Investigations (Amended 7/13/98)</u> [Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)]
		28-01-04	Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules) (Deleted 7/13/98)
		28-01-05	Probation and Parole Investigation Reports (Computation of Jail Custody Credit) (Deleted 7/13/98)
		28-01-06	Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts) (Deleted 7/13/98)
		28-01-07	Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule) (Deleted 7/13/98)]

(b) "Department of Corrections Policies and Procedures, Volume II, July 13 [January-8], 1998":

18.1	Classification of the Inmate
18.5	Custody and Security Guidelines <u>(Amended 7/13/98)</u>
18.7	Transfers
18.9	Out-of-state Transfers
18-10-01	Preparole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interstate Agreement on Transfers
18.18	International Transfer of Inmates
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program
20.1	Educational Programs and Educational Good Time
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
21.2	Phase I: Program Selection Assessment Criteria {(Amended 1/8/98)}
21.3	Program Schedule - Phase II and Phase III
21.4	Platoon Size and Composition
21.5	Physical Conditions Program Component
21.6	Group and Individual Counseling
21.7	Drug and Alcohol Abuse Counseling and Treatment
21.8	Work Programs Component
21.9	Education and Life Management
21.10	Auxiliary Services
21.11	Offenses and Penalties
22.1	Privilege Trips
23.1	<u>Religious Programs (Amended 7/13/98)</u> [Religion]
25.1	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Inmate Furloughs
25.6	Community Center Program {(Amended 1/8/98)}
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
25.11	Victim Notification

(c) "Department of Corrections Policies and Procedures, Volume III, July 13 [January-8], 1998":

27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies

28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
 28-01-09 Release of Information of Factual Content on Presence/Postsentence Investigation Reports
 28-02-01 Expedient Release Program
 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
 28-04-01 Furlough Verifications
 28-05-01 Out-of-state Investigations

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

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: August 7, 1998

FILED WITH LRC: August 13, 1998 at 3 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, November 10, 1998)

704 KAR 20:700. Standards for admission to teacher education.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to a teacher education program and is not required by federal law or regulation.

Section 1. Selection and Admission to Teacher Education Programs. In addition to appropriate National Council for Accreditation of Teacher Education standards incorporated under 704 KAR 20:696, each teacher education institution shall develop a plan of selection and admission of teacher candidates for the teacher education program, which shall include:

- (1) Tests to measure general academic proficiency;
- (2) Review of the Professional Code of Ethics for Kentucky School Personnel established in 704 KAR 20:680; and
- (3) A declaration signed by each teacher candidate affirming a commitment to upholding the code and acknowledging awareness of information required for state certification.

Section 2. Tests to Measure General Academic Proficiency. (1) The teacher education institution shall determine whether each applicant exhibits an acceptable level of competency in oral and written communication as an admission requirement.

(2) A student who plans to apply for admission to a teacher preparation program shall provide to the teacher education institution official scores of tests to measure general academic proficiency. A person shall not be permitted to apply for admission to a preparation program leading to certification as a teacher without first providing evidence of meeting the general academic proficiency requirement.

(3) The teacher education institution shall implement one (1) or more of the following plans:

(a) Plan I. A minimum composite score of 21 [on the Enhanced American College Test (ACT), or 19] on the American College Test (ACT);

(b) Plan II. The state minimum scores on the Communication Skills and General Knowledge portions of the Praxis tests reevaluated and approved by the Education Professional Standards Board;

(c) Plan III. Preprofessional Skills Test (PPST) results, a minimum either on the [of];

1. Written format:

a. Reading 173;

b. [2:] Mathematics 173; and

c. [3:] Writing 172;

2. Computer-based format:

a. Reading 320;

b. Mathematics 318; and

c. Writing 318;

(d) Plan IV. Graduate Record Examination (GRE) General Tests.

Each institution shall establish a minimum passing score on the GRE for admission when the entry into the teacher preparation program is at the graduate level. In addition, each institution shall administer or require a writing assessment and verify the minimum writing competency for each applicant; [Records Exam (GRE) results, a minimum of 400 in each component (verbal, quantitative, analytical); or]

(e) Plan V. SAT I, a minimum composite score of 990 [910] and writing assessment; or

(f) Plan VI. An institution of higher education may use an alternate test if the following guidelines are met by the institution requesting the alternative:

1. Provide evidence that the alternative test score covers the areas of written communication, reading, and computational skills;
2. Demonstrate that the passing score for a student on the alternative test is equivalent to passing score on the ACT [ACTE], PPST, Praxis, or GRE;
3. Provide a regular review (at least every third year) to show that alternative test passing scores remain equivalent to state required test passing scores; and
4. Describe procedures for the admission of a student who transfers from another teacher education program in the state.

Section 3. Annual Report. Each teacher education institution shall report annually to the Education Professional Standards Board the scores of the admission tests for each applicant, including scores for an applicant denied admission.

JOSEPH E. EARLY, Acting Chair

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: July 22, 1998

FILED WITH LRC: September 10, 1998 at 8 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, November 30, 1998)

735 KAR 2:010. Definitions for 735 KAR Chapter 2.

RELATES TO: KRS 12.290, KRS 163.510(4)

STATUTORY AUTHORITY: KRS 12.290, 163.510(4) [~~HB 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes definitions necessary to implement the referral services program. [This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation sets the definitions necessary to implement the interpreter referral services program for use by state agencies.]

Section 1. (1) "American Sign Language" (ASL) means a non-verbal language consisting of the following elements:

(a) Handshape;

(b) Position;

(c) Hand movement;

(d) Orientation of the hands; and

(e) **Facial expression.** [a language whose medium is visual rather than aural. Like any other language, ASL has its own unique vocabulary, idioms, grammar and syntax, which are different from English. The elements of this language (the individual signs) consist of the handshape, position, movement and the orientation of the hands to the body and each other. ASL also uses eye, direction and speed of movements, and facial expression to convey meaning.]

(2) "Assigned interpreter" means the interpreter who commits to provide interpreting services for a particular event. [Once an interpreter accepts the assignment, verbally or otherwise, it is a binding agreement between the referral agency and the interpreter.]

(3) "Assignment" means an event interpreted for the enhancement of communication between a deaf and hearing individual [individuals].

(4) "Certified interpreter or [f] transliterator" means a sign language, oral, or cued speech interpreter or [f] transliterator who was awarded certification by demonstrating an advanced level of expressive and receptive skills. [Certified interpreters/translilitors have a thorough knowledge of at least one (1) of the codes of ethics on interpreting.]

(5) "Close visual range interpreting" means an interpreting technique used with deaf people with limited vision. [Signing space may also be limited, according to the individual's particular needs for communication.]

(6) "Contracted interpreter" means freelance interpreter.

(7) "Code of ethics" means principles of ethical behavior established by a national certifying organization to guide an interpreter or transliterator in their dealings with a hearing and deaf person. [set by the national certifying organizations to protect and guide interpreters and translilitors and hearing and deaf consumers.]

(8) "Cued speech" means a method of communication for use with and by a deaf and hard of hearing person [persons], in which eight (8) configurations and four (4) positions of one (1) (either) hand are used to supplement the visible manifestations of natural speech.

(9) "Deaf and hard of hearing" means a person who is unable to hear and understand speech clearly by ear, with or without a hearing aid. This term shall include a person who:

(a) Is deaf or hard of hearing;

(b) Is deaf-blind;

(c) Is late deafened;

(d) Is recently deafened;

(e) Is oral deaf; or

(f) Has a similar hearing disorder. [people are individuals who have hearing disorders such that they cannot hear and understand speech clearly through the ear alone, with or without hearing aids. This may include but is not limited to deaf, hard of hearing, deaf-blind, late deafened, recently deafened, oral deaf, etc.]

(10) "Deaf interpreter" means a deaf or hard of hearing individual, who is able to assist in providing an accurate interpretation between standard sign language and variants of sign language (including home signs) by acting as an intermediary between a deaf or hard of hearing person and an interpreter or [f] transliterator.

(11) "Emergency" means a situation of an urgent nature in which the consumer or client determine that the delay of the event for more than twenty-four (24) hours is likely to result in injury or loss.

(12) "Interpretation" means the process of transmitting spoken English into American Sign Language [and/or] gestural communication (voice-to-sign); and the process of transmitting American Sign Language or gestural communication into spoken English (sign-to-voice).

(13) "No show assignment" means an assignment at which the deaf or hard of hearing person or the state agency representative did not appear for the scheduled event. [when either the consumer (deaf) or the client (state agency) does not appear at the scheduled event.]

(14) "Nontraditional interpreting services" means the utilization of video-conferencing technology to eliminate the necessity of the interpreter having to travel to the site of the event.

(15) "Oral interpreting" means facilitating a mode of communication utilizing speech, speech-reading and residual hearing as a primary means of communication and using situational and culturally appropriate gestures, without the use of sign language.

(16) [(15)] "Preferred mode of communication" means the method of communication that the deaf or hard of hearing individual is most expressive and comfortable in using. [This may be American Sign Language, a manual form of English, writing, speaking, or any other mode of communication.]

(17) [(16)] "Referral service" means a service that specializes in coordinating interpreting services and acts as an intermediary between the interpreter and the direct consumers of services.

(18) [(17)] "Replacement interpreter" means an interpreter sent to replace the assigned interpreter for a specific event if there is a:

(a) Schedule conflict;

(b) Illness; or

(c) Unforeseen event that prevents attendance of the assigned interpreter. [in the event of a schedule conflict, illness or other unforeseen conflict, the interpreter sent in to replace the assigned interpreter for a specific event.]

(19) [(18)] "Staff interpreter" means an interpreter who works exclusively for and is considered an employee of a particular agency or [f] organization.

[(19)] "State agency" means all agencies of the executive branch, with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.]

(20) "Tactile interpreting" means a communication technique used by and with deaf-blind and deaf people with limited vision involving touch of the shape, movement and location of signs. [The interpreter signs in a normal fashion and a deaf-blind person puts their hand (or hands) on top of the signer's hand (or hands) to feel the shape, movement and location of the signs.]

(21) "Team interpreting" means the utilization of two (2) or more interpreters who:

(a) Function as a team;

(b) Rotate responsibilities at prearranged intervals; and

(c) Provide support and feedback to each other. [functioning as equal members of a team, rotating responsibilities at prearranged intervals, and providing support and feedback to each other.]

(22) "Transliteration" means the process of transmitting:

(a) Spoken English into [any] one (1) of the [several] English-related or English oriented varieties of sign language (voice-to-sign); and

(b) One of the [process of transmitting] English-related or English-oriented varieties of sign language into spoken English (sign-to-voice).

(23) "Traditional interpreting services" means the interpreter appears at the event in person and provides interpreting services on site.

[(24)] "Nontraditional interpreting services" means the utilization of videoconferencing technology to "bring" the interpreter to the event, without needing the interpreter to travel to the site of the event.]

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, November 10, 1998)

735 KAR 2:020. KCDHH Interpreter Referral Services Program parameters.

RELATES TO: KRS 12.290, 163.510(4), 29 USC 794, 42 USC 12132

STATUTORY AUTHORITY: KRS 12.290, 163.510(4) [1998-GA HB-321, Commonwealth Budget-Final Budget-Memorandum, FB 1998-2000]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes the Interpreter Referral Services Program

parameters and the criteria of receiving and providing these services. [This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the Interpreter Referral Services Program parameters and criteria for receiving and providing these services.]

Section 1. (1) In accordance with the requirements of the Rehabilitation Act (29 USC 794) and the Americans with Disabilities Act (42 USC 12132), KCDHH Interpreter Referral Services shall be provided to a state agency if:

(a) Necessary to receive public service by an individual who is deaf or hard of hearing;

(b) Requested by a state agency employee who is deaf or hard of hearing;

(c) Required under a provision of the Acts; or

(c) Necessary to provide accessibility to a public event, as defined by the Acts. [The KCDHH Interpreter Referral Services are offered to assist state agencies in meeting their legal and ethical obligations under KRS 12.290, PL 93-112 (the Rehabilitation Act), and PL 101-336 (commonly known as the Americans with Disabilities Act) when such services are:

(a) Requested by an individual who is deaf or hard of hearing in order to receive public services; or

(b) Requested by a state agency employee who is deaf or hard of hearing; or

(c) Required under the provisions of PL 101-336 (the Americans with Disabilities Act), PL 93-112 (the Rehabilitation Act) and its subsequent amendments, and KRS 12.290; or

(d) Required to provide accessibility at public events as defined by PL 101-336 or 93-112.]

(2) Participation in the KCDHH Interpreter Referral Services Program shall be [is] voluntary.

(3) The services of a qualified interpreter or [?] transliterator shall be provided at no cost to the deaf or hard of hearing consumer.

(4) The KCDHH shall comply with KRS Chapter 45A in employing staff and contract interpreters with the KCDHH Interpreter Referral Services Program.

(5) The KCDHH Interpreter Referral Service shall honor the preferred communication mode of a deaf or hard of hearing consumer if a qualified interpreter or transliterator is available. [Where it is known and feasible, the KCDHH Interpreter Referral Service shall honor the preferred communication mode of the deaf or hard of hearing consumer.]

(6) The KCDHH may assign two (2) or more interpreters as appropriate for assignments that are longer than one (1) hour, in accordance with the standard practices of "Team Interpreting".

[(a) The standard practices of "Team Interpreting" document is incorporated by reference.

(b) This standard practices of "Team Interpreting" document can be obtained from the national Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.]

(7) The KCDHH shall [will] assign deaf interpreters in accordance with standard practices in the interpreting profession.

[(a) The standard practices of "Use of a Certified Deaf Interpreter" document is incorporated by reference.

(b) This standard practices of "Use of a Certified Deaf Interpreter" document can be obtained from the national Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.]

(8) A nationally-certified interpreter [interpreters] shall be preferred in working for the KCDHH Interpreter Referral Services.

(9) The interpreter fee for a state agency shall [Interpreter fees to state agencies will] be negotiated between the state agency and the interpreter on an individual basis. The KCDHH Interpreter Referral Service shall [will] provide the referral, but shall [does] not dictate

hourly fees nor administer billing for services.

(10) The KCDHH shall:

(a) Respond to all requests for interpreting services;

(b) Not guarantee that all requests will be filled; and

(c) Except in an emergency, provide service on a first-come, first-served basis;

(11) If the KCDHH Interpreter Referral Services is unable to fulfill a request for services by 12 p.m., two (2) working days prior to the date of the assignment, staff shall contact the requesting agency and suggest the following:

(a) That the search for an interpreter cease;

(b) Continuing to seek an interpreter for the assignment, with the understanding that it may not be filled; or

(c) A rescheduling of the event with KCDHH Interpreter Referral Services continuing to seek a qualified interpreter for the assignment. [The judicial branch of the Kentucky state government, including the Administrative Office of the Courts, may be exempt from complying with KRS Chapters 18A and 45A. Therefore, the procurement practices listed here would not apply to the judicial branch.

(11) The KCDHH will respond to all requests for interpreter services; however, as KCDHH recognizes that the demand for interpreting services exceeds the supply, KCDHH does not guarantee that all requests will be filled.

(a) Requests for interpreter services will be filled on a first-come, first-serve basis:

(b) The exception will be requests for interpreters received on an emergency basis. If the KCDHH is not able to fulfill a request by 12 noon, two (2) working days prior to the date of the unfulfilled assignment, the Interpreter Referral Services staff will contact the agency requesting the services and offer the following options:

1. The KCDHH Interpreter Referral Services staff continue to seek an interpreter to fulfill the assignment, with the understanding that it is unlikely to be filled; or

2. The KCDHH Interpreter Referral Services staff will cease seeking an interpreter and the agency may utilize their own contacts to locate a qualified interpreter; or

3. The requesting agency can reschedule the assignment and the KCDHH Interpreter Referral Services staff will seek a qualified interpreter to fulfill the rescheduled assignment.]

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET Commission on the Deaf and Hard of Hearing (As Amended at ARRS, November 10, 1998)

735 KAR 2:030. Interpreter qualifications.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 12.290, 163.510(4) [1998-GA HB-321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes qualifications for the interpreters utilized by the Interpreter Referral Services Program. [This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation sets qualifications of the interpreters utilized by the Interpreter Referral Services Program.]

Section 1. (1) A staff or free-lance sign language and oral interpreter shall be certified by the:

(a) National Association of the Deaf (NAD);

(b) National Registry of Interpreters for the Deaf (RID).

(2) A cued speech transliterator shall be certified by the National Training Evaluation and Certification Unit (TECUnit). [(+) Preferably, sign language and oral interpreters, both staff and freelance, shall possess at least one (+) nationally recognized interpreter certification from the:

(a) National Association of the Deaf (NAD); or

1. The certification standards of the National Association of the Deaf are incorporated by reference.

2. These standards may be inspected or obtained by contacting the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. The phone number is: (301) 587-1788 V or (301) 587-1789 TTY. The fax number is: (301) 587-1791.

(b) National Registry of Interpreters for the Deaf (RID).

1. The certification standards of the National Registry of Interpreters for the Deaf are incorporated by reference.

2. These standards may be inspected or obtained by contacting the National Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(2) Preferably, cued speech transliterators shall possess a national certification from the National Training Evaluation and Certification Unit (TECUnit).

(a) The certification standards of the national TECUnit are incorporated by reference.

(b) These standards may be inspected or obtained by contacting the Cued Speech Transliterator National Training, Evaluation and Certification Unit (TECUnit) at 1112 Spotswood Drive, Silver Spring, Maryland 20905. The phone number is: (301) 236-4863 V/TTY.]

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

**EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, November 10, 1998)**

735 KAR 2:040. Interpreter protocols.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 12.290, 163.510(4) [; 1998 GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes interpreter protocols.** [This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the interpreter protocols.]

Section 1. (1) **A staff or free-lance interpreter shall:**

(a) Keep assignment-related information strictly confidential;

(b) Be impartial to a proceeding;

(c) Recognize and work within his range of ability;

(d) Not accept an assignment beyond his skill level;

(e) Promptly notify referral services staff if the communication mode of a deaf person requires the additional skills of a certified deaf interpreter; and

(f) Arrive at an assignment fifteen (15) minutes before the scheduled starting time to:

1. Arrange logistics; and

2. Confer with the consumer and another interpreter.

(2) A KCDHH Interpreter Referral Services interpreter shall

display professional demeanor and conduct by:

(a) Wearing appropriate professional clothing, which includes:

1. A skirt or dress;

2. A business suit;

3. Slacks and a jacket; or

4. Similar attire; and

(b) Treating a deaf or hard of hearing and hearing consumer pleasantly, fairly, and with respect.

(3) A contract and staff interpreter shall comply with the code of ethics of the:

(a) National Registry of Interpreters for the Deaf; or

(b) National Association of the Deaf. [All interpreters, staff and freelance, shall:

(a) Keep all assignment-related information strictly confidential;

(b) Be impartial to the proceedings;

(c) Recognize and work within their range of abilities and not accept assignments beyond their skill level;

(d) Recognize when the communication ability or mode of the deaf person(s) may require the additional skills offered by a certified deaf interpreter and promptly communicate this need to the KCDHH Interpreter Referral Services staff;

(e) Be punctual and arrive at the assignment location fifteen (15) minutes before the scheduled starting time to arrange logistics and pre-conference with the consumers and other interpreters.

(2) KCDHH Interpreter Referral Services interpreters will display professional demeanor and conduct by:

(a) Wearing professional clothing appropriate for the work being performed, such as skirts/dresses, slacks and jackets, or business suits;

(b) Treating deaf, hard of hearing and hearing consumers pleasantly, fairly and with respect.

(3) All contract and staff interpreters will comply with the code of ethics of either the National Registry of Interpreters for the Deaf or the National Association of the Deaf, which are incorporated by reference.

(a) The National Association of the Deaf Code of Ethics may be inspected or obtained by contacting the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. The phone number is: (301) 587-1788 V or (301) 587-1789 TTY. The fax number is: (301) 587-1791.

(b) The National Registry of Interpreters for the Deaf Code of Ethics may be inspected or obtained by contacting the National Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.]

(4) Assignment **conflicts** ["ownership"].

(a) If a contracted interpreter is unable to fill the assignment because of illness or another unforeseen **conflict, he shall** [conflicts, they must] contact the referral service as soon as **he becomes** [they are] aware of the conflict.

(b) The staff of the KCDHH Interpreter Referral Services **shall be responsible for contacting and attempting to secure a replacement interpreter** [is responsible to contact and attempt to secure the replacement interpreters] for the assignment.

(5) **If resources are available**, the KCDHH Interpreter Referral Services [Program, pending availability of resources,] may provide a professional development **opportunity for contract and staff interpreters. A development opportunity may include:**

(a) A [opportunities for all contract and staff interpreters. Such professional development opportunities may include, but are not limited to:

(a) mentoring program;

(b) Diagnostic assessment and feedback; [and]

(c) Support for interpreter training opportunities; and

(d) Similar programs.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) National "Registry of Interpreters for the Deaf Code of Ethics", (1996), National Registry of Interpreters for the Deaf; and

(b) "National Association of the Deaf Interpreter Code of

Ethics", (1997), National Association of the Deaf.

(2) This material may be inspected, copied, or obtained at 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.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, November 10, 1998)

735 KAR 2:050. Processing of requests for services.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 12.290, 163.510(4) [; 1998-GA HB 321, Commonwealth Budget Final Budget Memorandum, FB 1998-2000]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.510(4) requires the commission to oversee the provision of interpreter services to the deaf and hard of hearing. This administrative regulation establishes the process for requesting services from the KCDHH Interpreter Referral Services Program. [This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary: House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the process for requesting services. Requests for interpreting services must come from an entity as defined in 735 KAR 2:020 (1) and include the following information:]

Section 1. (1) In accordance with the requirements of the Rehabilitation Act (29 USC 794) and the Americans with Disabilities Act (42 USC 12132), KCDHH Interpreter Referral Services shall be provided to a state agency if:

(a) Necessary to receive public service by an individual who is deaf or hard of hearing;

(b) Requested by a state agency employee who is deaf or hard of hearing;

(c) Required under a provision of the Acts; or

(d) Necessary to provide accessibility to a public event, as defined by the Acts.

(2) A request for services shall include the following information: [Requests for interpreting services must come from an entity as defined in 735 KAR 2:020(1) and include the following information:]

- (a) Date and time of interpreted event;
- (b) Expected length of the interpreted event;
- (c) Consumer (deaf) and state agency [client (agency)] names;
- (d) Consumer communication preference (if known);
- (e) Assignment location;
- (f) Type of event to be interpreted, i.e. one-to-one situation, small group meeting, or platform presentation;
- (g) On-site contact person and phone number;
- (h) A [Any] request for a specific interpreter;
- (i) Pertinent billing information including:
 1. Purchase order or interaccount number;
 2. Authorizing agency contact person; and
 3. Billing address and phone number;
- (j) Other information that would be beneficial to the interpreter, including:
 1. Directions to the event location; and
 2. Notice of special needs, including a tactile interpreting request or specialized vocabulary. [Any pertinent billing information including, at a minimum:
 1. Purchase order/interaccount numbers;

2. Authorizing agency contact person;

3. Billing address and phone number(s);

(j) Any additional information such as directions to the event location, or identification of special needs such as tactile interpreting requests, specialized vocabulary, etc.];

(3) An agency shall submit an interpreting services request by the following: [(2) Entities may submit requests for interpreting services to the KCDHH by one (1) of the following means:]

(a) By telephone [Phone calls made directly] to the staff of the KCDHH Interpreter Referral Services;

(b) Faxed form;

(c) Electronic form submittal via email or the KCDHH WWW home page;

(d) Letter;

(e) In person; or

(f) Videoconferencing.

(4) A request for interpreting services shall be considered a binding agreement, in accordance with KRS Chapter 45A, between the requesting agency and KCDHH Interpreter Referral Services, with the terms and conditions as outlined in this administrative regulation.

(5) Unless an emergency or other unforeseen circumstance arises preventing advance notice, an agency shall submit an interpreting request at least two (2) weeks prior to the assignment date. If an emergency or unforeseen circumstance occurs, KCDHH shall attempt to fill the request. However, it may be impossible for KCDHH to fulfill the request for services.

(6) Upon receiving a request for an interpreting assignment, the KCDHH staff shall first attempt to schedule a contract interpreter for the event, if one (1) is available and qualified. If there are no contract interpreters available, staff shall then attempt to schedule a staff interpreter.

(7) If a specific interpreter is requested by an agency, the KCDHH Interpreter Referral Services shall attempt to provide the requested person. However, the program shall not guarantee that a specific request will be honored.

[(3) In making a request for interpreting services from the KCDHH Interpreter Referral Services, the requesting agency is entering a binding agreement with the KCDHH under the auspices of KRS Chapter 45A with all terms and conditions as outlined in this administrative regulation.

(4) KCDHH can best serve agencies that submit requests for interpreting services at least two (2) weeks in advance of the assignment date.

(5) KCDHH recognizes the need for an immediate response to some interpreting requests, i.e. pretrial services, and will make every effort to fill the request.

(6) The KCDHH Interpreter Referral Services staff, upon receiving a detailed request for an interpreting assignment, will locate an interpreter for the assignment by scheduling:

(a) Staff interpreters, if available and qualified; then

(b) Contract interpreters, if available and qualified.

(7) The KCDHH Interpreter Referral Services Program will make every attempt to provide the requested interpreter whenever a specific interpreter is named in a request. However, the KCDHH cannot guarantee that it will be able to successfully honor every request.]

(8) The KCDHH recognizes that the demand for interpreting services exceeds the existing supply of staff and freelance interpreters; therefore, the KCDHH shall [will] hire and assign an interpreter [interpreters] based on the following criteria, in order of importance:

(a) [Those who hold a] Current and valid certification awarded by a nationally recognized organization;

(b) Highly qualified, based on:

1. Years of interpreting experience;

2. Demonstrable interpreting skill, as evidenced by screening, or precertification level;

3. Consumer preference; and

4. Having no financial or personal conflict of interest, as defined by KRS Chapter 45A[; and

5. Other criteria, as may be appropriate for the specific assignment].

(9) The KCDHH Interpreter Referral Services staff shall [will]

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notify the state agency of the name of the assigned interpreter~~[(s)]~~.

(10) Due to the high demand for interpreting services and for specialized skill, the KCDHH Interpreter Referral Services Program shall reserve the right to reassign an interpreter ~~[reserves the right to reassign interpreters]~~, as appropriate, based on skill level and qualifications. ~~If [in the event that]~~ an assigned interpreter should be reassigned, the KCDHH Interpreter Referral Services staff shall [will] notify the state agency of the name of the replacement interpreter.

(11) The KCDHH Interpreter Referral Services staff shall [will] notify the interpreter of the details of the assignment, including any communication preferences, special terminology, the date, the time and the location prior to the actual date of the assignment.

(12) A client or consumer shall have the right to refuse the services of an interpreter and request a replacement. If a replacement is requested, the service shall try to fill the request if possible. However, the KCDHH Interpreter Referral Services shall not guarantee a replacement. ~~[The client or consumer has the right to refuse the services of an interpreter and request a replacement. If the client or consumer decides to request a replacement interpreter at the time of the scheduled event, the KCDHH Interpreter Referral Service will make every effort to fill the request. The client and consumer may need to reschedule the event, if there is no readily available replacement interpreter.]~~

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(As Amended at ARRS, November 10, 1998)

781 KAR 1:070. Fees for service.

RELATES TO: KRS 151B.190

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(2) authorizes the Commissioner, Department of Vocational Rehabilitation, to promulgate administrative regulations governing fees for vocational rehabilitation services to individuals and entities other than applicants or eligible individuals ~~[agency clients]~~. This administrative regulation establishes the fees for services. ~~[implements that provision.]~~

Section 1. Definition ~~[Definitions]~~. ~~[(1) "Agency" or]~~ "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

~~[(2) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.]~~

Section 2. Carl D. Perkins Comprehensive Rehabilitation Center's Fees for Services. (1) Except as provided in this section, rates shall be determined by center utilization, budget expenditures and comparable fees charged by other vendors.

(2) The Carl D. Perkins Comprehensive Rehabilitation Center's fees for services shall be:

- (a) Vocational evaluation - \$132 per day.
- (b) Mobile vocational evaluation - \$100.
- (c) Work hardening/conditioning fees based on prevailing market rates in the Kentucky, West Virginia area.
- (d) Vocational Adjustment Program - \$48 per day.
- (e) Vocational training tuition - \$43 per day or \$150 per month.
- (f) Psychological services based on prevailing market rates in the Kentucky, West Virginia area.
- (g) Psychiatric services - Medicare rate plus ten (10) percent.
- (h) Physical or occupational therapy services - Medicare rate plus ten (10) percent.

(i) Speech/language services fees - prevailing market rates in the Kentucky, West Virginia area.

(j) Audiological services - Medicare rate plus ten (10) percent.

(k) Other outpatient therapy per session - \$76.

(l) Brain injury program - \$600 per day.

(m) Physical restoration - \$190 per day.

(n) Dormitory housing - \$31 per day.

(o) Medical housing - \$200 per day.

(p) Nonresidential meals - state per diem rates.

(q) Wellness maintenance program to include aquatics, aerobics and strengthening;

(r) 1. Initial assessment fee (one (1) time) - ten (10) dollars;

2. Monthly wellness maintenance fee - thirty (30) dollars.

(3) Fees shall include all administrative costs, reports and follow-ups.

Section 3. Rehabilitation Technology. (1) Fees for driver evaluation, driver education, home modification or ~~[and]~~ occupational therapy services shall be based on prevailing market rates in the Kentucky, West Virginia area.

(2) For an individual who desires or needs ~~[individuals who desire or need]~~ driver evaluation, driver training, occupational therapy services or vehicle modification studies by a department ~~[an agency]~~ specialist, the following fees shall apply:

(a) Evaluation automobile (five (5) hour minimum) - \$50 per hour.

(b) Evaluation van (ten (10) hour minimum) - \$50 per hour.

(c) Driver training (one (1) hour minimum) - \$50 per hour.

(d) Occupational therapy services (one (1) hour minimum) - \$50 per hour.

(3) Fees shall include all administrative costs, reports and follow-up.

Section 4. Fee for ~~[Agency]~~ Staff Services. A fee of \$100 per hour shall [may] be charged for ~~[agency]~~ staff services.

Section 5. The department may negotiate a lesser fee with a state or federal program ~~[state/federal programs]~~ or a volume discount for private providers.

SAM SERRAGLIO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: August 24, 1998

FILED WITH LRC: September 3, 1998 at 2 p.m.

LABOR CABINET
Department of Workers' Claims
(As Amended at ARRS, November 10, 1998)

803 KAR 25:089. Workers' Compensation Medical Fee Schedule for Physicians.

RELATES TO: KRS 342.019, 342.020, 342.035, 342.735 ~~[Chapter 342]~~

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. This administrative regulation establishes the medical fee schedule for physicians. ~~[regulates the fees of "physicians" as defined in KRS 342.0011(32).]~~

Section 1. Definitions. (1) "Medical fee schedule" means the Workers' Compensation Medical Fee Schedule for Physicians.

(2) "Physician" is defined by KRS 342.0011(32), and shall [may] also include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

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Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342; and

(2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed CPT code is applicable unless:

(a) [if] Another fee schedule of the Department of Workers' Claims applies; or

(b) ~~[does not apply, unless]~~ A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110. ~~[administrative regulations.]~~

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying the listed unit value for the medical procedure by the applicable conversion factor.

(2) The resulting fee shall be the maximum fee allowed for the service provided.

Section 4. Incorporation by Reference. (1) The 1998 [1994] Workers' Compensation Medical Fee Schedule for Physicians, (September 11, 1998 [13, 1996] edition), ~~[Department of Workers' Claims.]~~ is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained [information and material is available for public inspection and copying] at the Department of Workers' Claims, ~~[main, regional, and branch offices of the agency:]~~

(a) Frankfort – Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.;

(b) Louisville – 410 West Chestnut Street, Suite 700, Louisville, Kentucky 40202;

(c) Paducah – 220B North 8th Street, Paducah, Kentucky 42001;

(d) Pikeville – 101 Summit Drive, Pikeville, Kentucky 41501;

(e) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday.]

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 11, 1998 at 3 p.m.

PUBLIC PROTECTION & REGULATION CABINET

Department of Insurance

(As Amended at ARRS, November 10, 1998)

806 KAR 17:160. Creditable coverage for health insurance.

RELATES TO: KRS 304.17A-200(6)(a)9, 304.17A-220(4)(c)1, 45 CFR 146.113, 42 USC 300gg, 1998 Ky. Acts ch. 496 sec. 1, 4]

STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-220(4)(d) [1998 Ky. Acts ch. 496 sec. 1(6)(a)9, 4(4)(c)1, 4(4)(d)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [permits] the Commissioner of Insurance to promulgate [make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-200(6)(a)9 [1998 Ky. Acts ch. 496, sec. 1(6)(a)9] incorporates a "public health plan" within the definition of "creditable coverage". KRS 304.17A-200(6)(a)9 [1998 Ky. Acts ch. 496, sec. 1(6)(a)9] requires the commissioner to define public health plan. KRS 304.17A-220(4)(c)2 authorizes [in addition, 1998 Ky. Acts ch. 496, sec. 4(4)(c)2 permits] the commissioner to specify categories of benefits. Pursuant to KRS 304.17A-220(2)(c) [in accordance with 1998 RS HB 315, sec. 4(2)(c)], the periods of creditable coverage within these categories of benefits may be used to reduce the preexisting condition exclusion applicable to the participant or beneficiary. KRS 304.17A-220(4)(d) authorizes [Lastly, 1998 Ky. Acts ch. 496, sec. 4(4)(d) permits] the commissioner to specify how periods of creditable coverage may be certified.

Section 1. Definitions. "Public health plan" means any plan established or maintained by a state, county, or other political subdivi-

sion of a state that provides health insurance coverage to individuals who are enrolled in the plan.

Section 2. Categories of Benefits. A group health plan or health insurer offering group health coverage may use the following categories of benefits as creditable coverage, the aggregate periods of which may be used to reduce or eliminate the waiting period for a preexisting condition exclusion:

- (1) Mental health;
- (2) Substance abuse treatment;
- (3) Prescription drugs;
- (4) Dental care; and
- (5) Vision care.

Section 3. Creditable Coverage Certification. (1) The certification for periods of creditable coverage with respect to an insured covered under an individual health benefit plan shall be in the form provided in the Certificate of Individual Health Plan Coverage which is incorporated by reference into this administrative regulation.

(2) The certification for periods of creditable coverage with respect to an insured enrolled in a group health benefit plan shall be in the form provided in the Certificate of Group Health Plan Coverage which is incorporated by reference into this administrative regulation.

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

(a) "Certificate of Individual Health Plan Coverage (05/1998 Edition)", Department of Insurance; and

(b) "Certificate of Group Health Plan Coverage (05/1998 Edition)", Department of Insurance.

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 18, 1998 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended at ARRS, November 10, 1998)

806 KAR 17:220. Approval criteria and requirements for reentry into the Kentucky health insurance market.

RELATES TO: KRS 304.17A-260, 42 USC 300gg sec. 2742[; 1998 Ky. Acts ch. 496 sec. 8]

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes [permits] the Commissioner of Insurance to promulgate [make reasonable rules and] administrative regulations necessary for or as an aid to the effectuation of any provision of the insurance code. KRS 304.17A-260 [1998 Ky. Acts ch. 496, sec. 8] provides that an insurer that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner for approval to reenter the Kentucky market. The Commissioner of Insurance is required to either approve or disapprove an insurer's request to reenter the Kentucky market. This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer's request to reenter the Kentucky market. This administrative regulation is also necessary to assure that the market reentry provisions in KRS 304.17A-260 [1998 Ky. Acts ch. 496] conform to the market reentry provisions in 42 USC 300gg, sec. 2742.

Section 1. Request for Amnesty. Each insurer wishing to apply for approval to reenter this state to engage in health insurance business in accordance with KRS 304.17A-260 [1998 Ky. Acts ch. 496], sec. 8 shall provide the following to the Commissioner of Insurance:

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(1) A copy of the original notice from the insurer to the department notifying the department of the insurer's withdrawal from the health insurance market;

(2) A statement identifying any existing health benefit plan in Kentucky and describing the health benefit plan by stating whether the plan is:

- (a) Individual;
- (b) Small group;
- (c) Large group; or
- (d) Association;

(3) A statement identifying in which of the following markets the insurer intends to participate:

- (a) Individual;
- (b) Guaranteed Acceptance Program;
- (c) Small group;
- (d) Large group; or
- (e) Association;

(4) If the insurer will be utilizing a network, a description of the service area;

(5) A description of the method of distribution for each product that will be marketed;

(6) A statement indicating the anticipated date for marketing new plans; and

(7) A copy of the insurer's audited financial statement for the three (3) years prior to the insurer's request for amnesty.

Section 2. (1) An insurer's anticipated date for marketing new plans shall not be more than ninety (90) days after the insurer's request for reentry into the health insurance market.

(2) Prior to the expiration of the ninety (90) day period in subsection (1) of this section, the insurer shall file the following with the Department of Insurance:

- (a) Rates for each product to be marketed;
- (b) Each form that will be utilized for each product; and

(c) An affidavit from an officer of the company attesting to the fact that the company will be actively marketing each product for which rates and forms were filed with the department.

(3) The receipt by the Department of Insurance of a request for amnesty ~~shall toll~~ [tolls] the deadline for returning to the health insurance market provided that all information required pursuant to Section 1 of this administrative regulation is received by the department within two (2) weeks of the date the request for amnesty is received.

Section 3. Approval for Amnesty. (1) The commissioner shall not approve an insurer's request for amnesty pursuant to 1998 Ky. Acts ch. 496, sec. 8 if:

(a) The commissioner has not received all information required by Section 1 of this administrative regulation; and

(b) The insurer is prohibited by 42 USC 300gg, sec. 2742 from reentering the health insurance market in this state.

(2) The commissioner shall notify each insurer, in writing, of the decision to approve or disapprove the insurer's request for amnesty pursuant to 1998 Ky. Acts ch. 496, sec. 8.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 18, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(As Amended at ARRS, November 10, 1998)

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

RELATES TO: KRS 216.550

STATUTORY AUTHORITY: KRS 194A.050, 216.550 [1998-GA-HB-679, sec. 9]

NECESSITY, FUNCTION, AND CONFORMITY: 900 KAR 2:030

is no longer required because KRS 216.550, requiring the cabinet to establish a system for rating the quality of care provided by long-term care facilities, has been repealed.

Section 1. 900 KAR 2:030, Quality of care rating system for long-term care facilities, is hereby repealed.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: September 15, 1998

FILED WITH LRC: September 15, 1998 at noon

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(As Amended at ARRS, November 10, 1998)

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

RELATES TO: KRS 216B.010 to 216B.130, 216B.990, 311.560(4), 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 li-

censed by the Kentucky State Board of Physical Therapy.

(7) [(9)] "Qualified medical social worker" means a person who has a master's degree from a school of social work accredited by the Council on Social Work Education and who has social work experience in a hospital, outpatient clinic, medical rehabilitation, medical care or mental health program. Such person shall be appropriately licensed, if required, by the State Board of Examiners of Social Work of Kentucky.

(8) [(10)] "Speech pathologist" means a person who:

(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Section 2. Scope. A home health agency is a public agency or private organization, or a subdivision of such an agency or organization which provides intermittent health and health related services, to patients in their place of residence, either singly or in combination as required by a plan of treatment prescribed by a licensed physician.

Section 3. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the home health agency and for compliance with federal, state, and local laws and regulations pertaining to the operation of the service.

(2) The licensee shall establish policies for the administration and operation of the service. The policies shall include:

(a) Acceptance of patients. The policy shall assure that the acceptance of patients is based on medical, nursing and social information provided by the physicians responsible for the patient's care, by institutional personnel and by staff of the home health agency.

(b) Establishment and review of plan of treatment. The policy shall assure that services and items to be provided are specified under a plan of treatment established, signed and regularly reviewed by the physician who is responsible for the care of the patient 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;

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- (e) Awareness of changes in patient's condition that should be reported;
- (f) Work of the agency and the health team; and
- (g) Ethics, confidentiality and recordkeeping.

Section 5. Provision of Services. (1) The home health agency shall provide intermittent skilled nursing services and other services for restoring, maintaining and promoting health and/or rehabilitation with minimum disruption of daily living.

(2) Services shall range from skilled nursing services to basic health related services to unskilled supportive services.

(3) Services shall be available five (5) days a week with back-up arrangements for 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.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

ELLEN M. HESEN, Attorney

APPROVED BY AGENCY: October 6, 1998

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CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, November 10, 1998)

902 KAR 55:105. [Requirements for] Controlled substance prescription blanks.

RELATES TO: KRS 218A.030 to 218A.140, 218A.204, 218A.170 to 218A.240, 218A.281, 218A.282, 218A.284, 218A.286, 218A.288 [-1998 GA HB 115, secs. 14, 16, 17, 18, 19, 20, 21]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 211.090, 218A.204, [-194.050, 211.020;] 218A.250[-1998 GA HB 115, sec. 14]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.204 [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, a pharmacy, professional practice, professional association, or hospital.

(2) "Security prescription blank" means a prescription blank that complies with [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, pursuant to Section 7 of this administrative regulation, the cabinet has granted a waiver to the practitioner who wrote the prescription or to the pharmacy that dispenses it.

(2) [(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, pursuant to Section 7 of this administrative regulation, 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] be printed [appear] across the entire front of the prescription blank. If a [document when the] prescription is photocopied, the word "void" shall appear in a pattern across the entire front of the prescription;

(b) A [custom-artificial] watermark shall [must] be printed on the backside of the prescription blank [base paper] so that it shall [may] only be seen at a forty-five (45) degree angle. The watermark shall consist of the words "Kentucky Security Prescription", and appear [appearing] horizontally in a step-and-repeated format in five (5) lines on the back of the prescription using twelve (12) point Helvetica bold type style;

(c) An opaque R symbol shall [must] appear in the upper right-hand corner, one-eighth (1/8) of an inch from the top of the prescrip-

tion 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 shall be [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; or

(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 a [the controlled substance] prescribed drug is a [listed in] schedule III, IV or V controlled substance, a refill option shall be marked.

(4) If a prescription for a schedule III, IV, or V controlled substance will [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 a [the] pharmacist uses due diligence in ascertaining the validity of a [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) [(9)] If a prescription for a schedule III, IV or V controlled substance has been [is] transmitted to a pharmacy by facsimile, the transmitting 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 for a Schedule III, IV, or V controlled substance.

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. A [The] written purchase order or request shall remain on file for two (2) years.

(2) A [The] purchase order or request shall be signed by:

(a) A practitioner whose name shall [is to] be printed on the security prescription blanks; or

(b) The chief medical official of a health care facility or pharmacist-in-charge of a pharmacy, if the security prescription blanks are requested on behalf of a practitioner [practitioners] who stamps, types [stamp, type] or manually prints his [print their] name, address, telephone number and DEA number on the security prescription blank.

(3) The provisions of this section shall not apply to distributions 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) A detailed statement of the security features provided by the [alternative] system proposed by the applicant for the prevention of forgery or alteration of an original prescription; or

(b) The format of the alternative prescription blank.

(2) The system or prescription blank [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

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CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, November 10, 1998)

902 KAR 55:110. Monitoring system for prescription controlled substances.

RELATES TO: KRS 218A.202 [HB 115 sec. 13]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194.050;] 211.090, 218A.202, 218A.250, 1998 GA HB 115, HB 132]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.202 [HB 115 of the 1998 General Assembly] directs the Cabinet for Health Services to establish an electronic system for monitoring Schedule II, III, IV, and V controlled substances that are dispensed in the Commonwealth or dispensed to an address within the Commonwealth. The purpose of the system is to improve access to controlled substances for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient's pharmaceutical history related to controlled substances. Also the system will enable regulatory or law enforcement agencies to address violations of KRS Chapter 218A. The purpose of this administrative regulation is to establish the criteria for reporting prescription data, for providing reports to authorized persons, and for a waiver for a dispenser who does not have an automated recordkeeping system.

Section 1. Definitions. (1) "Patient identifier" means a patient's:

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- (a) [Patient's] Full name;
- (b) [Patient's] Address, including zip code;
- (c) [Patient's] Date of birth; and
- (d) [Patient's] Social Security number or an alternative identification number established pursuant to Section 5 of this administrative regulation.

(2) "Pharmacy Universal Claim Form" means a form that:

(a) Is in the format of the "Pharmacy Universal Claim Form" incorporated by reference in Section 6 of this administrative regulation; and

(b) Contains the information specified by Section 2(2) of this administrative regulation. [a nationally-recognized form used for billing drug claims to insurance plans. Forms may be obtained from pharmaceutical wholesalers or other business form suppliers.]

(3) "Report" means a compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance.

[(4) "Statistical report" means a compilation of data that does not include identification of a patient, a prescriber, or a dispenser.]

Section 2. Data Reporting. (1) A dispenser shall report all controlled substances dispensed after December 31, 1998.

(2) A dispenser of a [controlled substance listed in] Schedule II, III, IV, or V controlled substance shall transmit or provide the following data to the cabinet or the cabinet's agent:

- (a) Patient identifier;
- (b) National drug code of the drug dispensed;
- (c) Metric quantity of drug dispensed;
- (d) Date of dispensing;
- (e) Estimated days supply dispensed;
- (f) Drug Enforcement Administration registration number of the prescriber;
- (g) Serial number assigned by the dispenser; and
- (h) The Drug Enforcement Administration registration number of the dispenser.

(3)(a) The data shall be transmitted within sixteen (16) days of the date of dispensing unless the cabinet grants an extension.

(b) An extension may be granted if a dispenser suffers a mechanical or electronic failure, or cannot meet the deadline established by paragraph (a) of this subsection for other reasons beyond his control. A dispenser shall apply in writing for an extension. An application for an extension shall state the reason why an extension is required, and the period of time for which the extension is required.

(c) An extension shall be granted to all dispensers if the cabinet or its agent is unable to receive electronic reports. [to:

1. An individual dispenser upon written application stating the necessity for an extension and the period of time for which the extension is necessary; or

2. All dispensers, if the cabinet or its agent is unable to receive electronic reports.]

(4) Except as provided in subsection (7) of this section, the data shall be transmitted by:

- (a) An electronic device compatible with the receiving device of the cabinet or the cabinet's agent;
- (b) Double sided, high density micro floppy disk; or
- (c) One-half (1/2) inch nine (9) track 1600 or 6250 BPI magnetic tape.

(5) The data shall be transmitted in the format established [described] by the "ASAP Telecommunications Format for Controlled Substances" [May, 1995, published by the American Society for Automation in Pharmacy, 492 Norristown Road Suite 160, Blue Bell, PA 19422-2359].

(6) The cabinet shall provide a toll-free telephone number for transmitting electronic reports by modem.

(7)(a) A dispenser, who does not have an automated record-keeping system capable of producing an electronic report in the format established by "ASAP Telecommunications Format for Controlled Substances" [format], may request a waiver from electronic reporting. The request shall be made to the cabinet in writing.

(b) A dispenser shall be granted [who receives] a waiver, if he agrees in writing to [shall] report the data by submitting a completed "Pharmacy Universal Claim Form".

Section 3. Compliance. (1) ~~[For purposes of enforcing the requirements of Section 13(8) of HB 115 of the 1998 GA.]~~ A dispenser shall be deemed to be the person who is registered with the U.S. Drug Enforcement Administration.

(2) A dispenser may presume that the patient identification information provided by the patient or the patient's agent is correct.

Section 4. Request for Report. (1) A written request shall be filed with the cabinet prior to the release of a report.

(2) A request for a report shall be made on Request for KASPER Report, Form DCB-15 except for a subpoena issued by a grand jury.

[(3) Reports, other than statistical reports, shall be provided only to persons authorized by Section 13(6) of HB 115 of the 1998 GA.]

(4) The cabinet may provide reports, on its own initiative, to regulatory agencies or law enforcement agencies authorized by Section 13(6) of HB 115 of the 1998 GA.

(5) A statistical report may be provided to officials of state government upon written request.

(6) The cabinet may use a statistical report for educational purposes.

(7) The cabinet shall evaluate a report prior to release. At its discretion, the cabinet may provide a summary in lieu of the report.]

Section 5. Alternative Patient Identification Number. (1) If a [the] patient does not have a [has no] Social Security number, or refuses to provide a Social Security number, the patient's driver's license number shall be used.

(2) If a [the] patient does not have a [has no] Social Security number or a [and has no] driver's license number, the number 000-00-0000 shall be used.

(3) The number "999-99-9999" shall be used if a patient or a patient's agent refuses to provide a Social Security number or driver's license number.

(4) If a patient is a child who does not have a Social Security number, the Social Security number, driver's license number, or the number "000-00-0000", as applicable, of the parent or guardian shall be used. [If the patient is a child who has no Social Security number, the parent's or guardian's Social Security number or alternative patient identification number shall be used.]

(5) [(4)] If a [the] patient is an animal, the owner's Social Security number, or driver's license number, or the number "000-00-0000", as applicable [alternative patient identification number] shall be used.

(6) [(5)] If a [the] patient's Social Security number is not available, the Social Security number, or driver's license number, or the number "000-00-0000", as applicable, [alternative patient identification number] of the person obtaining the controlled substance on behalf of the patient shall be used.

(6) If the patient or the patient's agent refuses to provide a Social Security number or driver's license, the number 999-99-9999 shall be used.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "ASAP Telecommunications Format for Controlled Substances", American Society for Automation in Pharmacy, [dated] May, 1995;

(b) [A] "Pharmacy Universal Claim Form"; and

(c) "Request for KASPER Report, DCB-15, 9-98" [edition].

(2) This material may be inspected, copied, or obtained at the Department for Public Health, 275 E. Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

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CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, November 10, 1998)

902 KAR 55:115. Drug possession by hospice or home health agency.

RELATES TO: KRS 217.005 to 217.215, 217.992
 STATUTORY AUTHORITY: KRS 194A.050 [194.050], 211.090, 217.125, 315.300 [1998-GA HB-649]
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.300 [House Bill 649 of the 1998 General Assembly] authorizes the Cabinet for Health Services to promulgate administrative regulations that implement the possession of certain drugs by a hospice or home health agency. The purpose of this administrative regulation is to establish criteria that a pharmacy, hospice or home health agency must meet in order to insure that drugs belonging to a pharmacy, that are stored in a hospice or home health agency, are safe and effective for administration to patients.

Section 1. Authorized Employees. A pharmacy may place a legend drug listed in KRS 315.300 [Section 5 of House Bill 649 of the 1998 General Assembly] with an authorized employee of a hospice or a home health agency if the pharmacy maintains a record of the license that authorizes the employee to administer legend drugs.

Section 2. Written Agreement. Each party to a written agreement between a pharmacy and a home health agency or a pharmacy and a hospice shall maintain a copy of the written agreement.

Section 3. Protocol. (1) A [The] protocol required by KRS 315.300 may be included in the written agreement or may be a separate document.

(2) If the protocol is a separate document, a copy shall be maintained by the pharmacy and by the hospice or home health agency.

(3) The protocol shall be reviewed not less than annually and modified if necessary.

Section 4. Records. (1) The pharmacy record of a drug placed with authorized employees of a hospice or home health agency shall be retained for five (5) years.

(2) The record of a drug administered by authorized employees of a hospice or home health agency shall be retained by the pharmacy for five (5) years.

RICE C. LEACH, M.D., Commissioner
 JOHN H. MORSE, Secretary
 JOHN H. WALKER, Attorney

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CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, November 10, 1998)

904 KAR 3:025. Technical requirements.

RELATES TO: 7 CFR 273.4, 273.5, 273.7, 7 USC 2015(e), (o), 8 USC 1612(a), (b), 1613(b), 1622(b), 1641(b), PL 105-185, sec. 503 through 508 [104-208 sec. 510, PL 105-33, sec. 5302, 5306, 5562; 5563]

STATUTORY AUTHORITY: KRS 194B.050, 205.2005 [194.050(+)], 7 CFR 271.4[1998 Acts ch. 426, ch. 427], EO 98-731 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children has responsibility to administer a Food

Stamp Program. KRS 194B.050 [194.050(+)] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive food stamp benefits, is:

(a) An alien who is lawfully admitted for permanent residence pursuant to 8 USC 1101 et seq.;

(b) An alien who is granted asylum pursuant to 8 USC 1158;

(c) A refugee who is admitted to the United States pursuant to 8 USC 1157;

(d) An alien who is paroled into the United States pursuant to 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 USC 1253(h), as in effect prior to April 1, 1997; or

2. 8 USC 1231(b)(3);

(f) An alien who is granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522; [or]

(h) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101;

(i) An alien lawfully residing in the United States who is:

1. A veteran as defined pursuant to 38 USC 101, 107, 1101, or 1301 with an honorable discharge and not on account of alienage, who fulfills the minimum active-duty service requirements of 38 USC 5303A(d);

2. On active duty, other than active duty for training, in the Armed Forces of the United States; or

3. The spouse or unmarried dependent child of an individual described in subparagraphs 1 and 2 of this paragraph; or

4. The unremarried surviving spouse of an individual described in subparagraph 1 and 2 of this paragraph who is deceased if the marriage fulfills the requirements of 38 USC 1304;

(j) An alien lawfully residing in the United States on August 22, 1996, who is blind or has a disability pursuant to 42 USC 1382;

(k) An alien who is:

1. An American Indian born in Canada pursuant to 8 USC 1359;

or

2. A member of an Indian tribe pursuant to 25 USC 450;

(l) An alien lawfully residing in the United States on August 22, 1996, who was sixty-five (65) years of age or older;

(m) An alien lawfully residing in the United States on August 22, 1996, who is under eighteen (18) years of age; or

(n) An alien lawfully residing in the United States who was a member of a Hmong or Highland Laotian tribe and rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era pursuant to 38 USC 101; or

1. The spouse, or an unremarried dependent child, of an individual described in this paragraph; or

2. The unremarried surviving spouse of such an individual who is deceased, as described in this paragraph.

(3) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(4) "Student status" means any person who is between the ages of eighteen (18) and fifty (50) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Nutrition [Consumer] Service (FNS [FCS]), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply equally to all households and consist of:

(1) Residency. A household:

- (a) Shall live in the county in which they receive benefits; and
- (b) May apply for benefits in any county; [make application;]

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Except as provided in paragraph (c) of this subsection, Food Stamp Program benefits shall be provided to a citizen of the United States.

(b) A qualified alien, as defined in Section 1(2) of this administrative regulation, shall not be eligible to participate in the Food Stamp Program.

(c) The following exceptions shall apply to paragraph (b) of this subsection:

1. In accordance with 8 USC 1612(a)(2)(A), a qualified alien described in this subparagraph shall be eligible to participate in the Food Stamp Program until seven (7) [five (5)] years after the date:

a. He has entered the United States as a refugee pursuant to 8 USC 1157;

b. He is granted asylum pursuant to 8 USC 1158;

c. His deportation is withheld pursuant to:

(i) 8 USC 1253(h), as in effect prior to April 1, 1997; or

(ii) 8 USC 1231(b)(3);

d. He is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522; or

e. He is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

2. A qualified alien who is lawfully admitted to the United States for permanent residence pursuant to 8 USC 1101 et seq.; and

a. Has worked forty (40) qualifying quarters of coverage pursuant to 42 USC 413; or

b. Can be credited with forty (40) qualifying quarters pursuant to 8 USC 1645 [PL-104-193, sec. 435]; and

c. For the purpose of qualifying for food stamp benefits pursuant to clauses a and b of this subparagraph, a qualifying quarter shall not be creditable for a period beginning after December 31, 1996, during which the qualified alien or his spouse receives a federal means-tested public benefit; and

3. An alien who is lawfully residing in Kentucky and is:

a. A veteran, as defined pursuant to 38 USC 101, 107, 1101, or 1301 with:

(i) an honorable discharge and not on account of alienage, and

(ii) who fulfills the minimum active-duty service requirements of 38 USC 5303A(d);

b. On active duty, other than active duty for training, in the Armed Forces of the United States; or

c. The:

(i) spouse or unmarried dependent child of an individual described in clauses a and b of this subparagraph; or

d. The unmarried (ii) Unmarried surviving spouse of an individual described in clauses a and b of this subparagraph who is deceased if the marriage fulfills the requirements of 38 USC 1304.

4. An alien lawfully residing in the United States on August 22, 1996, who is blind or has a disability pursuant to 42 USC 1382;

5. An alien who is;

a. An American Indian born in Canada pursuant to 8 USC 1359;

b. A member of an Indian tribe pursuant to 25 USC 450;

6. An alien lawfully residing in the United States on August 22, 1996, who was sixty-five (65) years of age or older;

7. An alien lawfully residing in the United States on August 22, 1996, who is under eighteen (18) years of age; and

8. An alien lawfully residing in the United States who is a member of a Hmong or Highland Laotian tribe and rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era pursuant to 38 USC 101; or

a. The spouse, or an unmarried dependent child, of an individual described in this subparagraph; or

b. The unmarried surviving spouse of an individual described in this subparagraph.

(d) Pursuant to 8 USC 1612(a)(2)(D)(ii) [PL-104-208, sec. 510], an alien who was participating in the Food Stamp Program on August 22, 1996, shall not be determined ineligible based solely on the alien eligibility criteria of 8 USC 1612(a)(1) [PL-104-193, sec. 402(a)(1)], as described in paragraphs (b) and (c) of this subsection, until April 1, 1997.

(e) An individual whose status is questionable shall be ineligible to participate until verified;

(f) A single household member shall attest in writing to the citizenship or alien status of each household member by signing the Food Stamp Application Form, which is incorporated by reference at 904 KAR 3:030.

(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;

(5) Students. A person who meets the definition of student status pursuant to Section 1(4) of this administrative regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a state or federally financed work study program during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection; or

(e) Shall receive benefits from the Kentucky Transitional Assistance Program (K-TAP);

(f) Shall be assigned to or placed in an institution of higher learning through a program pursuant to:

1. 29 USC 1501;

2. 7 USC 2015; or

3. 19 USC 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 USC 681; or

(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(7) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, pursuant to 904 KAR 3:042, Food Stamp Employment and Training Program.

(8) Work requirement.

(a) An individual shall not be eligible to participate in the Food Stamp Program as a member of any household if, during the preceding thirty-six (36) month period, excluding any period prior to December 1, 1996, the individual received food stamp benefits in any state or territory of the United States, for not less than three (3) months, consecutive or otherwise, during which the individual did not:

1. Work twenty (20) hours or more per week, averaged monthly;

2. Participate in and comply with the requirements of the Employment and Training Program component pursuant to 7 USC 2015(d) for twenty (20) hours or more per week, other than:

a. A job search component; or

b. A job search training component;

3. For twenty (20) hours or more per week, participate in and comply with the requirements of a program pursuant to:

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a. 29 USC 1501 et seq.; or
b. 19 USC 2296; or
4. Pursuant to 904 KAR 3:042, participate in and comply with the requirements of the following workfare programs:

a. The Work Experience Program component of the Food Stamp Employment and Training Program; or
b. The Community Service Program.

5. Receive food stamp benefits pursuant to paragraph (b), (c) or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or over forty-nine (49) years of age;
2. Medically certified as physically or mentally unfit for employment;

3. A parent or other member of a household with responsibility for a dependent child under the age of eighteen (18);

4. Exempt from work registration pursuant to 904 KAR 3:042, Section 2; or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by the Food and Consumer Service, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or
2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility under paragraph (a) of this subsection shall regain eligibility to participate in the Food Stamp Program if, during a thirty (30) day period, the individual meets the conditions of paragraph (a)1, 2, 3, or 4 of this subsection.

2. An individual who regains eligibility pursuant to subparagraph (d)1 of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1 of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility under paragraph (d)1 of this subsection and who no longer meets the requirements of paragraph (a)1, 2, 3, or 4 of this subsection, through no fault of his own, shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1, 2, 3, or 4 of this subsection.

2. An individual shall not receive any benefits under subparagraph 1 of this paragraph for more than a single three (3) month period in any thirty-six (36) month period.

(f) Nothing in this section shall make an individual eligible for food stamp benefits if the individual does not meet all other technical and financial eligibility criteria pursuant to 7 USC 2011 et seq.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

(10) Drug felons. An individual convicted under federal or state law of an offense classified as a felony by the law of the jurisdiction involved and which has an element of possession, use or distribution of a controlled substance as defined in 21 USC 862(a), may remain eligible for food stamp benefits pursuant to KRS 205.2005 [1998 Ky. Acts ch. 427].

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 8, 1998

FILED WITH LRC: September 10, 1998 at 3 p.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, November 10, 1998)

904 KAR 3:042. Food Stamp Employment and Training Program.

RELATES TO: [KRS 194.050;] 7 CFR 273.7, 7 USC 2015(d)

STATUTORY AUTHORITY: KRS 194B.050 [194.050, 1998 Ky. Acts ch. 426], EO 98-731 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children is required to administer a Food Stamp Employment and Training Program. KRS 194B.050 [194.050] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Conciliation" means a fifteen (15) day period that is used to determine why noncompliance with food stamp employment and training requirements occurred.

(3) [(2)] "Exempt" means an individual who is excused by the agency from participation in the employment and training program.

(4) [(3)] "Voluntary quit" means the household member voluntarily and without good cause quits a job of twenty (20) hours or more a week.

(5) [(4)] "Voluntary reduction in work effort" means the:

(a) Household member reduces his work effort; and

(b) After the reduction, the individual is working less than thirty (30) hours per week.

Section 2. Work Registration. (1) Except those meeting exempt criteria in subsection (4) of this section, all household members shall be required to register for work:

(a) At the initial application for food stamps; and

(b) Every twelve (12) months following the initial application.

(2) Work registration shall be completed by:

(a) The member required to register; or

(b) The person making application for the household;

(3) Unless otherwise exempt, a person who is an excluded household member of the food stamp case, shall be required to register for work during periods of disqualification, including an:

(a) Ineligible alien;

(b) Individual disqualified for refusing to provide or apply for a Social Security number; and

(c) Individual disqualified for intentional program violation.

(4) The following shall be exempt from work registration requirements:

(a) A person:

1. Younger than sixteen (16) years of age; or

2. Sixty (60) years of age or older;

(b) A person age sixteen (16) or seventeen (17) who is:

1. Not a head of a household;

2. Attending school; or

3. Enrolled in an employment training program on at least a half-time basis;

(c) A person with a physical or mental disability;

(d) A household member subject to and complying with any work requirement in the Kentucky Transitional Assistance Program (K-TAP);

(e) A parent or other household member who is responsible for the care of:

1. A dependent child under age six (6); or

2. An incapacitated person;

(f) A person who:

1. Receives unemployment compensation; or

2. Has applied for, but not yet received, unemployment compensation, if he was required to register for work with the Department for Employment Services as a part of the unemployment compensation application process;

(g) A regular participant in a:

1. Substance abuse program; or

2. Alcohol treatment and rehabilitation program;

(h) A person who is employed or self-employed and:

1. Working a minimum of thirty (30) hours weekly; or

2. Receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours;

(i) A migrant or seasonal farm worker who:

1. Meets the criteria in paragraph (h) of this subsection; and

2. Is under contract or similar agreement with an employer or crew chief to begin employment within thirty (30) days; or

(j) A student enrolled at least half time in any recognized school, training program, or institution of higher education, if one (1) meeting student status has met the eligibility conditions in 904 KAR 3:025, Section 3.

(5) A household member who loses exemption status due to a change in circumstances that are subject to the reporting requirements of the Food Stamp Program shall work register:

(a) When the change is reported, if the change is:

1. A change in the source of income or in the amount of gross monthly income totaling more than twenty-five (25) dollars, unless the amount change is in a K-TAP grant;

2. Any change in household composition, including the addition or loss of a household member;

3. A change in residence and the resulting change in shelter costs;

4. The acquisition of a nonexempt licensed vehicle or loss of a vehicle exemption for a household member who has a physical disability;

5. A change in total resources that reach or exceed the allowable maximum; or

(b) At the household's next recertification if the change in circumstance involves a change not subject to reporting requirements in paragraph (a) of this subsection.

(6) All nonexempt household members shall be subject to the following work requirements:

(a) Keep the initial assessment interview;

(b) Provide requested verification by mail or in person by completing the FSET-145, "Employment and Training Program Work Experience Program Activity Report"; [following forms:

1. J/ET-108, "Job Search Contact Report"; or

2. ET-111, "Employment and Training Program Verification Form";]

(c) Participate in a Food Stamp Employment and Training Program if assigned;

(d) Respond to any request for additional information regarding employment status or availability for work;

(e) If potential employment is not unsuitable pursuant to [in accordance with] Section 8 of this administrative regulation, report to an employer referred to by the food stamp employment and training worker or designee; and

(f) Accept a bona fide offer of suitable employment at a wage not less than state or federal minimum wage.

(7) [A household member who is exempt or completing the work registration requirements may volunteer to participate in the Food Stamp Employment and Training Program.

(8) The food stamp employment and training worker shall explain to the food stamp applicant:

(a) The work requirements for each nonexempt household member;

(b) The rights and responsibilities of the work registered household members; and

(c) The consequences of failing to comply.

(8) [(9)] Each household member required to register shall be provided a FSET-101, "Food Stamp Employment and Training Program Fact Sheet". [an ET-101, "Food Stamp Employment and Training Program Fact Sheet".]

Section 3. Employment and Training Participation. (1) An individual who is [A work registrant who resides in a county offering a Food Stamp Employment and Training Program shall participate in the program based upon a priority status.

(2) Priority status shall be determined from whether a work registrant:

(a) Has:

1. A high school diploma;

2. A general equivalency diploma (GED); or

3. Not had employment in the last twelve (12) months;

(b) Is:

1. A veteran; or

2. Subject to the work requirement pursuant to 904 KAR 3:025, Section 3(8) shall be required to participate in the Food Stamp Employment and Training Program.

(2) [(9)] A food stamp employment and training participant shall:

(a) Be placed in:

1. Vocational Education Skills Training (VEST) Program; or

2. Education;

2. Skills training;

3. Job search activities; or

4. Workfare;

(b) If otherwise eligible, shall receive a [be reimbursed for:

1. Miscellaneous expenses incurred while participating up to twenty-five (25) dollar [dollars] per month reimbursement for miscellaneous expenses incurred while participating; and

[2. Dependent care expenses, in accordance with subsection (4) of this section; and]

(c) Complete and file with the cabinet the FSET-145, "Employment and Training Program Work Experience Program Activity Report" [department an ET-111, "Employment and Training Program Verification Form"] to be reimbursed pursuant to paragraph (b) of this subsection.

[(4)] The child care maximum payments as specified in 904 KAR 2:017, shall not exceed:

(a) \$200 per month, per child under two (2) years of age; or

(b) \$175 per month, per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994.

(5) A participant who does not meet the criteria in subsection (2) of this section shall not be selected to participate in a food stamp employment and training component unless they insist upon participating.]

(3) [(6)] If a participant withdraws or is terminated, voluntarily or involuntarily from the program, he shall:

(a) Be provided with a FSET-119 "Employment and Training Program Notification of Termination" [one (1) of the following forms:

1. ET-102 Supplement A, "Employment and Training Program Noncompliance/Good Cause Reimbursement Verification" form;

2. ET-114, "Notice of Termination from the Employment and Training Program"; or

3. ET-116, "Notice of Voluntary Participant Termination from the Food Stamp Employment and Training Program"; and

(b) Complete and file the applicable form with the cabinet [department] to be reimbursed in accordance with subsection (2) [(3)](b) of this section.

Section 4. Components. (1) A county offering the Employment and Training Program shall offer the following services and activities:

(a) VEST Program; [Educational components including:

1. Literacy programs;

2. Adult basic education (ABE);

3. General equivalency diploma (GED); and

4. Community college.

(b) Skills training components including:]

1. Vocational school;

2. On-the-job training; and

3. Kentucky Domestic Violence Association (KDVA).

[(c) Job search components including:

1. Job seeking skills training;

2. Group job search;

3. Individual job search;]

(b) [(d)] A workfare component titled the Work Experience Program (WEP).

(2) An individual participating in WEP [the job search components of subsection (1)(c) of this section] shall complete and file with the cabinet the FSET-145, "Employment and Training Program Work Experience Program Activity Report". [department the following forms:

(a) J/ET-108, "Job Search Contact Report"; and

(b) ET-111, "Employment and Training Program Verification Form".]

(3) An individual who selects to participate [participates] in the:

(a) WEP component, pursuant to subsection (1)(b) [(d)] of this section, shall be considered to have satisfied the work requirement

pursuant to 904 KAR 3:025, Section 3(8), by:

1. ~~[(a)]~~ Accepting the offer of a work site placement ~~[established by the Department for Employment Services]; and~~
2. ~~[(b)]~~ Working at the assigned work site placement for the minimum monthly number of required hours pursuant to subsection ~~[(3)-or]~~ (4) or (5) of this section.

~~(b) VEST Program twenty (20) hours per week.~~

(4) The minimum number of hours that a WEP participant shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program table that is incorporated into this administrative regulation by reference.

(5) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through WEP, the minimum monthly number of work hours that each individual is required to perform shall be determined by:

- (a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and
- (b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program table.

Section 5. Conciliation. (1) If a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program:

(a) ~~He shall be sent a FSET-102 "Conciliation Contact and Request for Information" [complete and file with the department an ET-102, "Conciliation Contact and Request for Information"] form; and~~

(b) A conciliation period shall be initiated.

(2) Conciliation shall be used to:

- (a) Determine the reason for the noncompliance; and
- (b) Allow the participant the opportunity to resolve the problem in order to continue participation.

(3) Conciliation shall last for fifteen (15) days and in that time the food stamp employment and training worker shall:

- (a) Determine good cause for noncompliance; or
- (b) Encourage the participant to resume food stamp employment and training activity; or
- (c) Recommend disqualification for failure to comply with program requirements.

(4) If the participant resumes food stamp employment and training activity, application of a sanction shall not be required.

(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where:

(a) The work registrant has failed to comply with:

1. Work registration requirements pursuant to Section 2 of this administrative regulation;
2. Employment and training requirements pursuant to Section 3 of this administrative regulation; or

(b) Pursuant to Sections 1 and 9 of this administrative regulation, the household member has voluntarily and without good cause:

1. Quit a job; or
2. Reduced his work effort.

(2) Good cause for an individual described in subsection (1) of this section shall take into consideration the circumstances beyond the control of the individual, including:

- (a) Illness;
- (b) Illness of another household member requiring the presence of the registrant;
- (c) A household emergency; and
- (d) Unavailability of transportation; and
- ~~(e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).~~

Section 7. Disqualification. (1) Disqualifications shall be imposed on a household member who is:

(a) A mandatory participant who fails to comply with the food stamp employment and training requirements, including work registration; or

(b) Determined to have voluntarily and without good cause quit a job or reduced the work effort pursuant to Sections 1 and 9 of this administrative regulation.

(2) An individual disqualified from participation in the Food Stamp Program, pursuant to subsection (1) of this section, shall be ineligible to receive food stamp benefits until the latter of:

- (a) The date the individual complies; or
- (b) The following:
 1. Two (2) months for the first violation;
 2. Four (4) months for the second violation; or
 3. Six (6) months for the third or subsequent violation.

(3) Following the minimum period of ineligibility, pursuant to subsection (2) of this section, a disqualified member shall contact the cabinet and indicate he wishes to initiate the compliance process. [:

~~(a) Make reapplication for food stamps; or~~

~~(b) Request that he be added to an active food stamp case to initiate a cure for his noncompliance.]~~

(4) Ineligibility pursuant to subsection (2) of this section shall continue until the ineligible member:

- (a) Becomes exempt from the work registration; or
- (b) Serves the disqualification period pursuant to subsection (2) of this section; and

(c) Complies with the requirements of:

1. Work registration; or
2. The Employment and Training Program.

(5) A disqualified household member who joins a new household shall be treated as follows:

- (a) He shall remain ineligible for the remainder of the disqualification period pursuant to subsection (2) of this section; and
- (b) His income and resources shall be counted with the income and resources of the new household; and
- (c) He shall not be included in the household size when determining the food stamp allotment.

Section 8. Unsuitable Employment. Employment shall be considered unsuitable by the agency if:

(1) The wage offered is less than the highest of the following:

(a) The applicable:

1. Federal minimum wage; or
2. State minimum wage; or

(b) Eighty (80) percent of the federal minimum wage if the federal or state minimum wage is not applicable.

(2) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably expect to earn is less than the applicable hourly wage specified in subsection (1) of this section.

(3) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(4) The work offered is at a site subject to a strike or lockout at the time of the offer, unless the strike has been enjoined under 29 USC 178 and 45 USC 152.

(5) The household member or worker involved can demonstrate that:

- (a) The degree of risk to health and safety is unreasonable;
- (b) He is physically or mentally unsuited to perform the employment as documented by:

1. Medical evidence; or
2. Reliable information from another source;

(c) The employment offered within the first thirty (30) calendar days of registration is not in the member's major field of experience;

(d) Daily commuting time exceeds two (2) hours per day, not including transportation of a child to and from a child care facility;

(e) The distance to the place of employment:

1. Prohibits walking; and
2. Public and private transportation to the job site is unavailable;

(f) The working hours or nature of the employment interferes with the member's religious:

1. Observances;
2. Convictions; or
3. Beliefs.

Section 9. Voluntary Quit. (1) An individual shall not be eligible to

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participate in the program if:

(a) He meets the definition of:

1. Voluntary quit, pursuant to Section 1(4) [(3)] of this administrative regulation; or

2. Voluntary reduction in work effort, pursuant to Section 1(5) [(4)] of this administrative regulation; and

(b) The voluntary quit or reduction in work effort is done:

1. Without good cause; and

2. Within sixty (60) days of food stamp application.

(2) The disqualification period for an individual described in subsection (1) of this section shall be imposed pursuant to Section 7 of this administrative regulation.

(3) Good cause for leaving employment shall include criteria in Section 6 of this administrative regulation and the following:

(a) Discrimination by the employer based on:

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious beliefs;

7. National origin; or

8. Political beliefs;

(b) Work demands or conditions that render continued employment unreasonable, as in working without being paid on time;

(c) Acceptance of employment by the individual, or enrollment of at least half time in any recognized school, training program or institution of higher education, that requires the individual to leave employment;

(d) Acceptance of employment by any other household member or enrollment at least half time in any recognized school, training program or institution of higher education in another county or similar political subdivision which requires the individual to leave employment;

(e) Resignation of a person under age sixty (60) which are recognized by the employer as retirement;

(f) Employment which becomes unsuitable by not meeting criteria in Section 8 after the acceptance of the employment;

(g) Acceptance of a bona fide offer of employment:

1. Of:

a. More than twenty (20) hours a week; or

b. In which the weekly earnings are equivalent to the federal minimum wage multiplied by twenty (20) hours; and

2. That, because of circumstances beyond the control of the household member:

a. Does not materialize; or

b. Results in employment of less than that listed in subparagraph 1 of this paragraph.

(h) Leaving a job in connection with patterns of employment in which workers frequently move from one (1) employer to another as in migrant farm labor or construction work.

(4) Good cause for voluntary quit or reduction in work effort shall be verified if questionable.

Section 10. Curing Disqualification for Voluntary Quit or Reduction in Work Effort. (1) An individual may begin participation in the Food Stamp Program following the voluntary quit disqualification period, pursuant to Section 7(2) of this administrative regulation, if he applies again and is determined eligible.

(2) Following the minimum period of disqualification imposed pursuant to Section 7(2) of this administrative regulation, eligibility and participation may be reestablished by:

(a) Securing new employment comparable to the job quit in terms of:

1. Salary; or

2. Hours; and

(b) Increasing the number of hours worked, to the amount worked prior to the work effort reduction and disqualification.

(3) If an individual becomes exempt from work registration, the disqualification period imposed pursuant to Section 7(2) of this administrative regulation shall end and the individual shall be eligible to apply to participate in the Food Stamp Program.

Section 11. Hearing Process. If aggrieved by an action that affects

participation, a work registrant may request a hearing in accordance with 904 KAR 3:070.

Section 12. To have a reimbursement check for employment or training replaced after loss or theft, a person shall complete and file with the cabinet a PAFS-60, "Affidavit" [department an ET-112, "Affidavit"] form.

Section 13. The Community Service Program (CSP). (1) An individual who participates in CSP shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025, Section 3(8), by:

(a) Establishing a work placement with a public or private nonprofit community service agency;

(b) Working, at a minimum, for the community service agency the required number of hours pursuant to subsections (2) or (3) of this section;

(c) Providing verification from the community service provider of:

1. The number of hours of community service that the individual intends to perform each month; and

2. At each subsequent recertification or change in household composition, the number of community service hours that the individual actually performed during the certification period.

(2) The number of hours of community service that an individual shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Work Experience Program [Community Service Program] table that is incorporated into this administrative regulation by reference.

(3) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP, the monthly number of community service hours that each individual shall perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the Work Experience Program [Community Service Program] table.

(4) Choosing to satisfy the work requirement pursuant to 904 KAR 3:025, Section 3(8), through CSP shall be:

(a) Voluntary; and

(b) Self-initiated.

Section 14. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) FSET-101, "Food Stamp Employment and Training Program Fact Sheet", edition 09/98, Cabinet for Families and Children;

(b) FSET-102, "Conciliation Contact and Request for Information", edition 09/98, Cabinet for Families and Children;

(c) FSET-119, "Food Stamp Employment and Training Program Notification of Termination", edition 09/98, Cabinet for Families and Children;

(d) FSET-145, "Food Stamp Employment and Training Program Work Experience Program Activity Report", edition 09/98, Cabinet for Families and Children;

(e) PAFS-60, "Affidavit", edition 09/98, Cabinet for Families and Children; ["Food Stamp Employment and Training Program Fact Sheet" ET-101, (7/93 edition), Department for Employment Services;

(f) "Conciliation Contact and Request for Information" ET-102, (8/93 edition), Department for Employment Services;

(g) "Employment and Training Program Noncompliance/Good Cause Reimbursement Verification" ET-102 Supplement A, (7/95 edition), Department for Employment Services;

(h) "Job Search Contact Report" J/ET-108, (7/95 edition), Department for Employment Services;

(i) "Employment and Training Program Verification Form" ET-111, (7/93 edition), Department for Employment Services;

(j) "Affidavit" ET-112, (10/90 edition), Department for Employment Services;

(k) "Notice of Termination from the Employment and Training Program" ET-114, (7/95 edition), Department for Employment Services;

(l) "Notice of Voluntary Participant Termination from the Food

~~Stamp Employment and Training Program" ET-116, (7/95 edition); Department for Employment Services;~~

~~(i) "The Community Service Program Table", (2/97 edition); Department for Employment Services;~~

~~(f) [(f)] "The Work Experience Program Table", (3/97 edition), Cabinet for Families and Children [Department for Employment Services].~~

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 10, 1998 at 3 p.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, November 10, 1998)

905 KAR 2:141. Repeal of 905 KAR 2:140.

RELATES TO: KRS 199.892-896, 45 CFR 98, 256, 257, **7 USC 2015(d), 42 USC 601 et seq.** [PL 99-457 Part H, 94-142-2.]

STATUTORY AUTHORITY: KRS **194B.050** [194-050], 199.892, 199.894, 45 CFR 98.41[-1998 Ky. Acts ch. 426], EO 98-731 [PL 104-193]

NECESSITY, FUNCTION, AND CONFORMITY: KRS **194B.050** [194-050] and 199.894 authorize the Cabinet for Families and Children to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs and to provide uniform administration of child day care funds. This administrative regulation acts specifically to repeal 905 KAR 2:140, Child day care programs, which is no longer needed because child day care assistance is now regulated by 905 KAR 2:160E, filed with the Legislative Research Commission on April 20, 1998.

Section 1. 905 KAR 2:140, Child day care programs, is hereby repealed.

DIETRA PARRIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: July 31, 1998

FILED WITH LRC: August 5, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, November 10, 1998)

905 KAR 2:160. Child day care assistance program.

RELATES TO: KRS 199.892-896, 45 CFR 98, **256, 257, 7 USC 2015(d), 42 USC 601 et seq.**, **1998 Ky. Acts ch. 615**

STATUTORY AUTHORITY: KRS **194B.050** [194-050(+)], 199.892, 199.894, [-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 199.894 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.

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(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.

(b) An individual who fails to cooperate in paying the required copayments may, subject to notices and hearing requirements, lose eligibility for the period of time back copayments are owed, unless satisfactory arrangements are made to make full payment.

(c) In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

(7) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3 through 6 of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;

2. National origin;

3. Ethnic background;

4. Sex;

5. Religious affiliation; or

6. Disability.

(b) Limit parental rights as governed by Section 5 or 6(4) of this administrative regulation.

(8) Families shall not be eligible for child care assistance if care is provided by:

(a) Parents or stepparents;

(b) Legal guardians;

(c) Members of the K-TAP or food stamp assistance unit or persons living in a home, which includes the child in need of care;

(d) Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and

(e) Alternative programs such as Head Start, state preschool and kindergarten which are available and accessible for the hours child care is needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The Department for Community Based Services case record shall:

- (a) Substantiate child abuse, neglect, dependency or exploitation; or
- (b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.
- (c) Provide case-by-case documentation if the copayment is waived.
- (3) Working parents may be eligible if:
 - (a) Child care needs exist in order to allow the parent to work;
 - (b) The family is income eligible as specified in Section 2(2) of this administrative regulation; and
 - (c) CCDF funds are obligated.

Section 4. Technical Eligibility for Dependent Care Pursuant to the Food Stamp Employment and Training Program (FSETP).

(1) A dependent individual of a FSETP participant shall be eligible for services if he:

- (a) Is under the age of thirteen (13); or
- (b) Regardless of his age, is physically or mentally incapable of caring for himself as verified by the written determination of:
 - 1. A physician;
 - 2. A licensed or certified psychologist;
 - 3. A qualified mental health professional as defined in KRS 202A.011;
- 4. A Department for Community Based Services worker indicating that the dependent qualifies as a special needs child;
- 5. A collateral agency (schools, comprehensive care center); or
- (c) Is disabled pursuant to 904 KAR 3:010, Section 1(9); or
- (d) Is under court supervision; and
- (e) Resides with an adult household member who:
 - 1. Is responsible for his care; and
 - 2. Is subject to and complying with FSETP, pursuant to 904 KAR 3:042.
- (2) Families shall not be eligible for FSETP child care assistance if child care is provided by:
 - (a) A member of the food stamp household;
 - (b) A food stamp household member who has been exempted from participation in FSETP because he is responsible for the care of a household member who is under six (6) years of age; or
 - (c) The food stamp household resides in a Kentucky Domestic Violence Center (KDVC) shelter and child care is provided onsite; or
 - (d) The FSETP participant is a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) Unless alternative programs such as Head Start, state preschool and kindergarten are available and accessible for the hours care is needed, a parent of an eligible child who receives or is offered child care services subject to the availability of state and federal funds shall be offered a choice:

- (a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or
- (b) To receive a child care certificate, the DSS-76, Child Day Care Services Agreement and Child Care Certificate, which shall:
 - 1. Be issued to the parent;
 - 2. Be of value commensurate with the value of child care services provided in Section 5(1)(b) of this administrative regulation;
 - 3. If chosen by the parent, be used for child care services provided by a sectarian or nonsectarian organization or agency;
 - 4. Not be considered a contract or grant to the provider but assistance to the parent;
 - 5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:
 - a. Licensed child care providers;
 - b. Certified family child care providers (CFCCP); and
 - c. Unregulated child care providers enrolled with the Department for Community Based Services; or

d. Relative providers as defined in Section 1 of this administrative regulation; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Community Based Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet or designee shall:

- (a) Maintain a record of substantiated parental complaints; and
- (b) Make information regarding parental complaints available to the public upon request.
- (4) The cabinet or designee shall make available through brochures, handouts, and information shared by the service delivery agents, to the parents and general public, consumer education about parental options relating to child care services including:

- (a) The full range of child care providers available;
- (b) Licensing and regulatory requirements;
- (c) Information and criteria regarding the TANF exception for a single custodial parent who has demonstrated inability to obtain needed child care services for a child under six (6) years of age and information regarding the counting of time exempted toward the time limit on federal benefits; and
- (d) Complaint procedures.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDF, SSBG, FSETP and other local, state, federal funds under the child day care assistance program:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:100, 905 KAR 2:110, 905 KAR 2:120; and

(b) With the exception of these providers who are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:100, 905 KAR 2:110, 905 KAR 2:120 and are not relative providers. They shall be enrolled with the cabinet to meet minimum health and safety standards. Providers requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Selfassessment, and meet the following requirements:

- 1. The provider shall be at least eighteen (18) years of age;
- 2. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;
- 3. The provider shall submit to a criminal records check conducted within the past year by the Kentucky State Police;
- 4. The provider shall not be found by the cabinet or court to have abused or neglected an adult or child.
- 5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care; and
- 6. The provider shall complete the enrollment process every three (3) years.
- 7. The provider shall have at least one (1) telephone in working order.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Community Based Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Quality Assurance Section of the Office of Performance Enhancement, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, a hearing officer shall be

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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, Mont-

gomery, 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 of 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 1 Child	With 2 or More	With 1 Child	With 2 or More	With 1 Child	With 2 or More
0-399	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
400-499	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
500-599	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
600-699	\$ 0.00	\$-	\$-	\$-	\$-	\$-	\$-
700-799	\$ 1.75	\$1.75	\$2.25	\$1.75	\$2.25	\$1.75	\$2.25
800-899	\$ 2.00	\$2.00	\$2.50	\$2.00	\$2.50	\$2.00	\$2.50
900-999	\$ 2.50	\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75
1,000-1,099	\$ 3.25	\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00
1,100-1,199	\$ 4.25	\$4.00	\$4.50	\$3.25	\$3.75	\$2.75	\$3.25
1,200-1,299	\$ 5.25	\$5.00	\$5.50	\$4.00	\$4.50	\$3.00	\$3.50
1,300-1,399	\$ 5.25	\$6.00	\$6.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400-1,499	\$ 6.00	\$7.00	\$7.50	\$6.00	\$6.75	\$4.25	\$4.75
1,500-1,599	\$ 6.75	\$7.75	\$8.50	\$7.00	\$7.75	\$5.00	\$5.75
1,600-1,699	\$ 7.50	\$7.75	\$8.50	\$8.00	\$8.75	\$6.00	\$6.75
1,700-1,799	\$ 8.00	\$7.75	\$8.50	\$8.50	\$9.25	\$7.00	\$8.00
1,800-1,899	\$ 8.25	\$8.25	\$9.00	\$9.25	\$10.25	\$8.00	\$8.75
1,900-1,999	\$ 8.75	\$8.75	\$9.75	\$9.25	\$10.25	\$9.00	\$10.00
2,000-2,099	\$ 9.25	\$9.25	\$10.25	\$9.25	\$10.25	\$9.75	\$10.75
2,100-2,199	\$ 9.75	\$9.75	\$10.75	\$9.75	\$10.75	\$10.75	\$11.75
2,200-2,299		\$10.25	\$11.25	\$10.25	\$11.25	\$10.75	\$11.75
2,300-2,399		\$10.75	\$11.75	\$10.75	\$11.75	\$10.75	\$11.75
2,400-2,499		\$11.00	\$12.25	\$11.00	\$12.25	\$10.75	\$11.75
2,500-2,599		\$11.50	\$12.75	\$11.50	\$12.75	\$11.50	\$12.75
2,600-2,699		\$12.00	\$13.25	\$12.00	\$13.25	\$12.00	\$13.25
2,700-2,799		\$-	\$-	\$12.50	\$13.75	\$12.50	\$13.75
2,800-2,899				\$13.00	\$14.25	\$13.00	\$14.25
2,900-2,999				\$13.25	\$14.75	\$13.25	\$14.75
3,000-3,099				\$13.75	\$15.25	\$13.75	\$15.25

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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

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 1, 1998

FILED WITH LRC: October 5, 1998 at 8 a.m.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (As Amended at ARRS, November 10, 1998)

907 KAR 1:026. Dental services.

RELATES TO: KRS 205.520, 42 USC 1396a-d

STATUTORY AUTHORITY: KRS [Chapter 13A,] 194.050, 194A.030, 42 USC 1396a-d[, 1998 GA HB 132] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to dental services for which payment shall be made by the Medicaid Program on [in] behalf of both the categorically needy and the medically needy.

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

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Medicaid Services or its designee.

(2) "Participating" is defined in 907 KAR 1:002.

(3) "Providers" is defined in 907 KAR 1:002.

Section 2. Out-of-hospital Services. Payment for out-of-hospital services shall be limited to those procedures listed in the Dental Manual in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Orthodontics;
- (6) Prosthetics;
- (7) Operative; or
- (8) Other services.

Section 3. Inpatient Hospital Services. (1) Payment shall be made for hospital inpatient covered services rendered by an oral surgeon subject to the general physician limitations established in 907 KAR 3:005[-Physicians-services].

(2) Payment shall be provided for covered services rendered by a general dentist for hospital inpatient care for a patient termed to be "medically [a] high risk," defined as:

- (a) Heart disease;
- (b) Respiratory disease;
- (c) Chronic bleeder;
- (d) Uncontrollable patient, i.e., a person with a mental or emotional disorder; or
- (e) Other, e.g., car accident, high temperature, massive infection.

Section 4. Incorporation by Reference. (1) "Dental Manual", August 1998 [December 1996] Edition, Department for Medicaid Services, is incorporated by reference.

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

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, November 10, 1998)

907 KAR 1:034. Early and periodic screening, diagnosis and treatment services and early and periodic screening, diagnosis, and treatment special services.

RELATES TO: KRS 205.520, 605.115, 42 CFR 441.50 through 441.62, 42 USC 1396d

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 205.520, 1998 GA HB 132 [42 USC 1396d, 441.50 through 441.62, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medicaid to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to the early and periodic screening, diagnosis and treatment service and early and periodic screening, diagnosis and treatment special services for which payment shall be made by the Medicaid Program on behalf of both categorically needy and medically needy children under age twenty-one (21).

Section 1. Definition. (1) "By report" [~~service or item~~] means a service or item [any service] for which a maximum allowance has not been established because the item is rarely billed to the Kentucky Medicaid Program or because the service is unusual, variable, or new.

(2) "Department" means the Department for Medicaid Services or its designated agency.

(3) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(4) "Periodicity" means the frequency with which an individual may be screened or rescreened.

(5) "Recipient" means a Medicaid eligible child under the age of twenty-one (21), including [and may include] the month in which the child becomes twenty-one (21).

(6) "Screening" means the review of the health and health-related conditions of a recipient by a health care professional to determine if [any] further diagnosis or treatment is needed.

(7) "Service [Services]" means health care, treatment, a procedure, supply, item [procedures, supplies, items], or equipment.

Section 2. Screening Provider Participation Requirements. A [Any] health care provider meeting the requirements established [set forth] in this section shall [below may] be eligible to participate in the Medicaid Program as a screening provider:

(1) A physician shall be licensed in the state of Kentucky;

(2) An [Any] early and periodic screening clinic or other organization qualified to provide a screening service [screening services], including a local health department [departments], shall be under the direction of a licensed physician, pediatric [and] advanced registered nurse practitioner, or registered professional nurse currently licensed by the state of Kentucky who shall be responsible for assuring that the requirements of participation are met and that the procedure established by the Medicaid Program are carried out;

(3) A screening clinic [Screening-clinics] conducted under the direction of a registered professional nurse or an advanced registered nurse practitioner shall have a licensed physician acting as medical consultant; and

(4) A screening examination or test [Screening-examinations and tests] performed by licensed professional staff, or supportive staff under the direct supervision of the licensed professional, shall be in accordance with the professional practice standards for the profession.

Section 3. Screening. An EPSDT screening service [services] shall be directed toward the early detection of a disease or abnormality. The service [diseases and abnormalities. The services] shall be appropriate for the age and health history of the recipient and shall include, as applicable: [-These services include:]

(1) An initial, periodic, or additional health assessment of a recipient provided in accordance with Sections 2 and 5 of this administrative regulation which includes the following:

- (a) Health and development history;
- (b) Unclothed physical examination;
- (c) Development assessment and mental health screening;
- (d) Assessment and provision of immunizations as appropriate for age and health history;
- (e) Assessment of nutritional status;
- (f) Vision testing;
- (g) Hearing testing;
- (h) Laboratory procedures appropriate for age and population groups, including lead screening and testing as appropriate;

(i) Director referral for a dental service [dental services] for diagnosis and treatment for a child [children] two (2) [three-(3)] years of age and over; or [and]

(j) Anticipatory guidance and health education; or

(2) A health assessment examination, or evaluation of a recipient by a licensed or certified health care professional acting within his scope of practice, at intervals other than those specified in Section 5 of this administrative regulation indicated by medical necessity, to determine the existence of a defect, physical or mental illness, or condition [defects, physical or mental illnesses, or conditions]; or

(3) Any other recipient encounter with a licensed or certified health care professional that results in the determination of the existence of a suspected:

- (a) Defect;
- (b) Illness;
- (c) Medical condition; or
- (d) A change or complication in a medical condition.

Section 4. Immunizations. Each screening provider participating in accordance with Section 2(1), (2), and (3) of this administrative regulation shall be required to make available, at the time of screening, immunizations appropriate for age and health history of the recipient being screened.

Section 5. Periodicity Schedule. The periodicity schedule, which is established in the manual incorporated by reference in this administrative regulation, shall define the age appropriate services and time frames for screenings. The periodicity schedule shall be recommended by the Department for Public Health and approved by the Department for Medicaid Services. An additional medical or dental assessment [and dental assessments] shall be provided if [when] medically indicated. The periodicity schedule is incorporated by reference in the "Early and Periodic Screening, Diagnosis, and Treatment Services Manual".

Section 6. Diagnosis and Treatment. If referral for additional service is indicated, further diagnosis and medical treatment services shall be covered if the service or diagnosis:

- (1) Is otherwise covered by the Medicaid Program; or
- (2)(a) Is not otherwise covered by the Medicaid Program; and
- (b) Meets the requirements for EPSDT special services as provided for in Section 7 of this administrative regulation. [as a result of a screening or any other encounter with a licensed or certified health care professional acting within the scope of his practice, further diagnosis and medical treatment services shall be covered if they are:
 - (1) Otherwise covered by the Medicaid Program; and
 - (a) Limited to persons under the age of twenty-one (21); or
 - (b) Not limited with regard to the age of the recipient; [or]
 - (2) Otherwise covered by the Medicaid Program, meet the standard for prior authorization and medical necessity as specified in Section 9 of this administrative regulation; and
 - (a) Limited to persons twenty-one (21) years of age or older; or
 - (b) Limited in ways unrelated to age; or
 - (3) Not otherwise covered by the Medicaid Program and meet the requirements for EPSDT special services as provided for in Section 7 of this administrative regulation.]

Section 7. EPSDT Special Services. EPSDT special services shall include [are] other health care, diagnostic services, preventive services, rehabilitative services, treatment, or [and] other measures described in 42 USC [Section] 1396d(a), that are not otherwise covered under the Kentucky Medicaid Program and that are medically necessary, as defined in Section 9 of this administrative regulation, to correct or ameliorate a defect, physical or mental illness, or condition of a recipient [defects and physical and mental illnesses and conditions of recipients].

Section 8. EPSDT Diagnostic and Treatment Provider and EPSDT Special Services Provider Participation Requirements. (1) An EPSDT diagnostic [diagnosis] or [and] treatment provider shall meet the requirements for participation in the Kentucky Medicaid Program as specified in Title 907 KAR for the particular diagnostic [diagnosis] or [and] treatment service [services] rendered.

(2) Except as otherwise specified in Title 907 KAR, a provider seeking to provide an EPSDT special service [services], as established [defined] in Section 7 of this administrative regulation, shall first contact the department in writing or by telephone to apply for enrollment to become an EPSDT special services provider. In order to be enrolled, the provider shall supply documentation or other evidence which establishes that all of the following conditions are met:

- (a) The provider shall:
 - 1. Be [is] licensed, [or] certified, or authorized state law [under state laws] to provide the service; and
 - 2. Not be suspended or otherwise disqualified. [services, or; if the license or certification is not available under such state laws, is otherwise authorized under state laws to provide the service, and is

not suspended or otherwise disqualified.]

- (b) If the provider is out of state, the provider shall meet comparable requirements in the state in which he does business.

Section 9. Prior Authorization for EPSDT Diagnosis and Treatment Services and EPSDT Special Services. Except as otherwise provided for in this section or in 907 KAR Chapter 1 or [Chapters 1 and] 3, an [those] EPSDT diagnosis or treatment service or an EPSDT special service which is [and treatment services and EPSDT special services which are] not otherwise covered by the Kentucky Medicaid Program shall be covered subject to prior authorization if the requirements of subsections (1) and (2) of this section are met. The department shall review a request for a service [requests for services] to determine medical necessity without regard to whether the screen was performed by a Kentucky Medicaid provider or a non-Medicaid provider.

(1) A request [Requests] for prior authorization for an EPSDT service [services] established [set forth] in Section 6(1) or (2) [and (3)] of this administrative regulation shall state that the request is for an EPSDT service [services], and shall be accompanied by the following information:

- (a) The primary diagnosis and significant associated diagnoses;
 - (b) Prognosis;
 - (c) Date of onset of the illness or condition, and etiology if known;
 - (d) Clinical significance or functional impairment caused by the illness or condition;
 - (e) Specific types of services to be rendered by each discipline with physician's prescription if [where] applicable;
 - (f) Therapeutic goals to be achieved by each discipline and anticipated time for achievement of goals if applicable;
 - (g) The extent to which health care services have been previously provided to address the defect, illness, or condition, and results demonstrated by prior care if [where] applicable; and
 - (h) [Any] Other documentation necessary to justify the medical necessity of the requested service.
- (2) Except as otherwise provided for in 907 KAR Chapter 1 or 3 [Chapters 1 and 3], a request [requests] for approval of a service [services] shall meet the standard of medical necessity for EPSDT if the following applicable criteria [where applicable,] are met:
- (a) The service shall be to correct or ameliorate a defect, physical or mental illness, or condition; [The services shall be to correct or ameliorate defects and physical and mental illnesses and conditions;]

- (b) The service [services] to be provided shall be medical or remedial in nature;
- (c) The service [services] shall be individualized and consistent with the recipient's medical needs;
- (d) The service [services] shall not be requested primarily for the convenience of the beneficiary, family, physician or another provider of services;

- (e) The service [services] shall not be unsafe or experimental;
- (f) If an alternative medically accepted mode [modes] of treatment exists [exist], the service [services] shall be the most cost-effective and appropriate service for the child [available];

(g) A request for a diagnosis or treatment service in a community-based setting:

1. May not be approved if the costs would exceed those of equivalent services at the appropriate institutional level of care; and

2. Shall be individually assessed for appropriateness in keeping with the standards of medical necessity and the best interest of the child, [The requests for diagnostic and treatment services in community-based settings shall not be approved if the costs would exceed those of equivalent services at the appropriate institutional level of care [as appropriate];]

- (h) The service [services] to be provided shall be:
 - 1. Generally recognized by the appropriate medical profession as an accepted modality of medical practice or treatment;
 - 2. Within the authorized scope of practice of the provider; and
 - 3. An appropriate mode of treatment for the medical condition of the recipient;

- (i) Scientific evidence, if available, shall be submitted consisting of:
 - 1. Well designed and well conducted investigations published in

peer-review journals, demonstrating that the service is intended to [may] produce measurable physiological outcomes;

2. In the case of psychological or psychiatric services, measurable psychological outcomes, concerning the short and long-term effects of the proposed service on health outcomes;

3. Opinions and evaluations published by national medical organizations, consensus panels and other technology evaluation bodies supporting provision of the benefit, shall also be considered if [when] available;

(i) The predicted beneficial outcome of the service shall outweigh [services outweighs] potential harmful effects;

(k) The services improve the overall health outcomes as much as, or more than, established alternatives.

(3) If reimbursement is being sought on a "by report" basis, a description of the service, the proposed unit of service, and the requested dollar amount shall be included with the request for authorization.

(4) A prior authorization request for an [requests for] EPSDT service [services] shall be reviewed for medical necessity without regard to the source of the referral to the service.

(5) A school-based health service [services] provided in accordance with 907 KAR 1:715 which is [are] included in an authorized Individual Education Program (IEP) shall be considered to be medically necessary and shall not be subject to further Medicaid prior authorization requirements. [requirement. In accordance with the provisions of KRS 605.115, this subsection of this administrative regulation shall be applicable for services provided on and after January 1, 1995.]

Section 10. Appeal Rights. A recipient shall have the right [Recipients have rights] of appeal as established in 907 KAR 1:563.

Section 11. Incorporation [Material Incorporated] by Reference. (1) [The] "Early and Periodic Screening, Diagnosis, and Treatment Screening Services and Early and Periodic Screening, Diagnosis, and Treatment Special Services Manual", Department for Medicaid Services, May 1998 Edition, is [of August 1996 shall be] incorporated by reference [in this administrative regulation].

(2) This material may be inspected, copied, or obtained at the [manual shall be on file in the Office of the Commissioner,] Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, [Third Floor East,] Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [40601].

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating in-state provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61-872.

Section 11. Appeal Rights. Recipients have rights of appeal as specified in 907 KAR 1:560.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 15, 1998 at noon

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, November 10, 1998)

907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

RELATES TO: KRS 205.520, 605.115, 42 CFR 440.40(b), 447, Subpart B, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 205.520[-1998 GA HB 132] [42 CFR 440.40(b), 447 Subpart B, 42 USC 1396a, b, d, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of Medicaid to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the Department for Medicaid Services for early and periodic screening diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agency.

(2) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(3) "Recipient" means a Medicaid eligible individual under the age of twenty-one (21), and may include the month in which the child becomes twenty-one (21).

(4) "Usual and customary charge" is [means as] defined in 907 KAR 1:002.

Section 2. A physician or primary care center [Physicians and primary care centers] shall be reimbursed for screening services in accordance with the payment provisions established [set forth] in [by administrative regulations] 907 KAR 3:010 and 907 KAR 1:055 for the service provider [those service providers].

Section 3. Reimbursement of Enrolled Screening Providers. The department shall reimburse a participating enrolled screening provider [providers] on the basis of a preestablished fee which shall be:

(1) Related to the cost of service. The preestablished fees payable shall be in accordance with the following:

(a)1. [(1)(a)] For a complete screening which shall include [includes] all items or procedures listed in [Section 3,] 907 KAR 1:034, Section 3, appropriate to the age and health history of the recipient, except the fifth year (kindergarten examination) and 12th year (sixth grade examination), the fee shall be seventy (70) [twenty (20)] dollars per recipient screened;

2. [and

(b)1. For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;

(b) [(2)] For a partial screening, which shall include at least a health history and unclothed physical examination, [with some but not all items listed in Section 3, 907 KAR 1:034 completed, but at no fault of the screening clinic or agency,] the fee shall be thirty (30) [twelve (12)] dollars per recipient screened; and

(c) [(3)] For completion of a partial screening with some items or procedures appropriate to the age and health history of the recipient provided as a follow-up to a partial screening as established in subsection (2) of this section, [(whether the partial screening is provided by a physician, primary care center, or screening clinic or agency,)] the fee shall be forty (40) [eight (8)] dollars per recipient screened; and

(d) [(4)] For an interperiodic screen, which shall be [is] medically necessary to determine the existence of a suspected physical or mental illness and in addition to the regular periodicity schedule screenings, the fee shall be thirty (30) dollars per recipient screened; and

(2) [(5)] A fee paid in accordance with subsection (1) to (4) [(3)] of this section shall Not exceed the usual and customary charge of the provider for the service.

Section 4. Reimbursement of EPSDT Diagnostic and Treatment Providers. The department shall reimburse an EPSDT diagnostic [diagnosis] or [and] treatment provider [providers] participating in compliance with Section 8(1) of 907 KAR 1:034 as specified in 907 KAR Chapters 1 and 3 for [applicable to] reimbursement for the par-

ticular diagnosis or [and] treatment service [services] rendered.

Section 5. Reimbursement of EPSDT Special Services Providers. Except as specified in Section 6 of this administrative regulation, the department shall reimburse an EPSDT special service provider [providers] a percentage of the usual and customary charges or a fee negotiated by the department adequate to obtain the service. The percentage of charges or negotiated fee shall not exceed 100 percent of the usual and customary charges. If the item is covered under Medicare, the payment amount shall not exceed the amount that would be paid using the Medicare payment methodology and upper limits.

Section 6. Reimbursement of School-based Health Services Providers. The department shall reimburse a school-based health service provider for a service [services-providers-for-services] included in an individual education program which is [are] provided to a Medicaid eligible recipient [recipients] based on a fee-for-service system designed to approximate cost for all participating providers in the aggregate without settlement to exact cost. Payment rates for a service [services] provided on or after January 1, 1995, shall be established using the following methodology:

(1) Interim payment rates for a service [services] provided from January 1, 1995, through June 30, 1996, shall be based on a reasonable sample of providers statewide. Payments for services shall be adjusted up or down as appropriate when final rates are established.

(2) Interim payment rates for a service [services] provided after June 30, 1996, and annually thereafter shall be based on cost data in accordance with subsection (3) of this section for the previous state fiscal year and shall be adjusted up or down as appropriate when final payment rates are established.

(3) Final rates shall be set based on the following:

(a) Except as specified in paragraphs (d) and (e) of this subsection, a payment rate for a particular service shall be based on the lower of the mean or median of the participating providers' cost of providing the service.

1. The statewide mean and median cost for a service shall be based on the contracted hourly service cost and the cost associated with publicly employed professionals;

2. The mean and median hourly cost shall be calculated, for each class of qualified professionals, from an array of hourly cost data falling within one (1) standard deviation of the mean.

(b) Cost for publicly employed professionals shall be computed in the following manner:

1. Salary, fringe benefits, and indirect overhead shall be included.

2. Annual professional salaries (including full time equivalent employees) shall be converted to hourly wages using 185 work days per year and six (6) work hours per day.

3. The applicable fringe benefit cost based on the actual percentage rate for classified and certified employees shall be added to the hourly salary wage.

4. An indirect overhead cost consisting of seven (7) percent of the hourly wage shall be added to the hourly salary wage.

(c) Payments for a professional service [services] shall be based on units of service which are fifteen (15) minute increments.

(d) Payments for medical transportation provided in accordance with 907 KAR 1:715, Section 5, shall be based on the average cost per mile of pupil transportation as calculated by the Department of Education.

(e) Payments for assistive technology and medical equipment provided in accordance with 907 KAR 1:715, Section 6, shall be based on actual invoiced cost including cost of shipping and handling, for the authorized equipment included in an individual education program.

(f) [Except as provided for in paragraph (g) of this subsection:] The due date for the required cost data shall be [is] July 31 following the end of the state fiscal year (June 30 of each year).

(g) [The due date for the required cost data for the 1995 fiscal year is November 1, 1996.]

(h) A one (1) month grace period shall exist for the submittal of the cost data. If the cost data is not submitted either timely or within the specified grace period, the school-based health services provider shall be terminated from the program.

(h) [(i)] For rate years ending June 30, 1997 and thereafter, the

final rates for prior years shall be set using cost data available as of September 1 of the current rate year. [For the rate year ending June 30, 1996, the final rates for the rate year shall be set using cost data available as of December 1, 1996.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 10, 1998

FILED WITH LRC: September 15, 1998 at noon

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, November 10, 1998)

907 KAR 1:626. Reimbursement of dental services.

RELATES TO: KRS 205.520, 42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d

STATUTORY AUTHORITY: KRS 194A.030, [Chapter 13A,] 194.050, 205.520, [1998 GA HB 132] [42 CFR 441.30, 447 Subpart B, 42 USC 1396a-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance]. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining the amount [amounts] payable by the cabinet for each dental service [services].

Section 1. Definitions. [For purposes of determination of payment, the following definitions shall apply:]

(1) "[Usual and customary charge]" means [refers to] the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

(2) "Medically high risk" means [patient is defined as] a patient in one (1) of the following classifications:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient i.e., a person with a mental or emotional disorder [(retardate, emotionally disturbed)]; or

(e) Other e.g., [(car accident, high temperature, massive infection, etc.)];

(2) "Usual and customary charge" means the uniform amount which the individual dentist charges in the majority of cases for a specific dental procedure or service.

Section 2. Reimbursement. (1) Except as specified in subsections (2) or (3) of this section or in Section 4 of this administrative regulation, the cabinet shall reimburse a participating dentist [dentists] for a covered service provided [services-rendered] to an eligible Medicaid recipient [medical-assistance-recipients] at the dentist's usual and customary actual billed charge up to the fixed upper limit per procedure established by the cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges.

(2) If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

(3) A fixed upper limit [Fixed upper limits] not determined in accordance with the method [principle] established [shown] in subsection (1) or [and] (2) of this section [this subsection of the administrative regulation (if any)] due to consideration of other factors, [(such as recipient access, {})] shall be determined in accordance with [specified in] Section 4 of this [the] administrative regulation.

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Section 3. Hospital Inpatient Care. (1) Hospitalized inpatient care [which] shall be paid in the same manner as established [shown] in Section 2 of this administrative regulation, for a service provided to an inpatient.

(a) ~~[refers to those services provided inpatients:]~~ It shall not include:

1. A dental service [services] provided in the outpatient extended care; or

2. A home health unit [units] of a hospital [hospitals].

(b) A [Any] dentist submitting a claim for a hospital inpatient care benefit [benefits] shall [must] agree to accept payment in full for a service [services] rendered that patient during that admission.

(2) A general dentist may submit a claim for a hospital inpatient service [services] for the patient termed "medically [a] high risk."

Section 4. Reimbursement Exceptions. The following reimbursement procedure exception [procedures] shall be paid at the lower of the provider's usual and customary actual billed charge or the fixed upper limit [as shown with preauthorization required for all procedures except for orthodontic consultation:]

(1) A [All] comprehensive orthodontic procedure [procedures] shall require prior authorization. As referenced in Section 2 of this administrative regulation, the following comprehensive orthodontic services shall pay at a fixed fee:

(a) Orthodontic consultation, eighty-four (84) dollars and seventy (70) cents [seventy-seven (77) dollars], except that the fixed fee shall be forty-two (42) dollars and thirty-five (35) cents, [thirty-eight (38) dollars and fifty (50) cents] if:

1. The provider is referring the recipient to a specialist;

2. [or] The prior authorization for orthodontic [preauthorization for orthodontia] services is not approved; or

3. A request for prior authorization of orthodontic [preauthorization of orthodontia] services is not made;

(b) [(2) Preauthorized] Early phase [orthodontic services] for moderately severe or severe disabling [handicapping] malocclusion, \$1,030 for an orthodontist [orthodontists] and \$930 for a general dentist [dentists];

(c) [(3) Preauthorized orthodontic] Services for moderately severe disabling [handicapping] malocclusions, \$1,375 for an orthodontist [orthodontists] and \$1,250 for a general dentist [dentists]; and

(d) [(4) Preauthorized orthodontic] Services for severe disabling [handicapping] malocclusions, \$2,075 for an orthodontist [orthodontists] and \$1,850 for a general dentist [dentists].

(2) The upper limit for the following procedures shall be the fixed upper limit derived utilizing the methodology described in Section 2 of this administrative regulation increased by the following fixed percentages:

Procedures	Percentage Of Increase
Initial Oral Exam	25%
Prophylaxis	20%
Amalgam	10%
Resin	7%
Prefabricated Stainless Steel Crown	5%
Prefabricated Resin Crown	5%
Pin Retention	10%
Pulp Cap (Direct)	10%
Pulpotomy (Therapeutic)	10%
Root Canal	10%
Simple Extraction	5%

Section 5. An oral surgeon [Oral surgeons] shall be treated in the same manner as a physician [physicians] for reimbursement purposes, and shall be subject to the terms and conditions of payment shown in 907 KAR 3:010 [1:010; Payments for physicians' services].

Section 6. Third-party Liability. Medicaid shall be the payor of last resort. [Policy-related to] Nonduplication of payments and third-party liability shall be governed by [is in accordance with] [shown in] 907 KAR 1:005[; Nonduplication of payments].

[Section 7. Implementation Date. The provisions of this adminis-

trative regulation shall be applicable for services provided on or after June 1, 1994.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services (As Amended at ARRS, November 10, 1998)

908 KAR 1:340. Narcotic treatment programs.

RELATES TO: KRS Chapter 222, 21 CFR Parts 291, 1301

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 194A.056; 222.231, 21 CFR Parts 291, 1301[; 1998 GA HB 132] [EO 95-79]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 [House Bill 132 of 1998 General Assembly] [KRS 194.050] and 222.231 authorize the Cabinet for Health Services to establish guidelines and provide for the systematic evaluation of effectiveness of narcotic treatment programs. [Executive Order 95-79 effective 12-28-95 reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services.] This administrative regulation establishes the State Narcotic Authority with the Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services, and establishes licensure and operations requirements for narcotic treatment programs.

Section 1. Definitions. (1) "Administrative detoxification" means the detoxification from the approved controlled substance for the safety and well being of the client, other clients, and staff of the narcotic treatment program.

(2) "Approved controlled substance" means the drugs methadone (powdered methadone is not an approved controlled substance) or ORLAAM (brand of levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) used in the treatment of narcotic addiction.

(3) "CHS or cabinet" means the Cabinet For Health Services.

(4) "Client" means any individual who receives a controlled substance for the purpose of maintenance or detoxification in an NTP.

(5) "DEA" means the Drug Enforcement Administration.

(6) "Dose" means a one (1) day quantity of an approved controlled substance, administered on site, in not less than one (1) fluid ounce of an oral solution, formulated to minimize misuse by injection.

(7) "Drug screening" means the process by which a program determines the presence or the absence of drugs in the body fluids.

(8) "FDA" means the Food and Drug Administration.

(9) "Main program" means the location where all administrative and medical information related to the narcotic treatment program is retained for the purpose of on-site reviews by federal agencies or the state narcotic authority.

(10) "Medication station" means any dosing location that obtains its drug supply from the main program site and retains all records (except dosing, urine screens) at the main location.

(11) "Narcotic detoxification program" means a program using approved controlled substances in continually reducing dosages over a period of time for the purpose of relieving or reducing withdrawal symptoms.

(12) "Narcotic maintenance" means a treatment procedure using an approved controlled substance over a period of time to relieve withdrawal symptoms, reduce narcotic craving, and permit normal functioning so that, in combination with rehabilitation services, clients can develop a productive lifestyle.

(13) "Narcotic treatment program" or "NTP" means a substance abuse program using approved controlled substances and offering a range of treatment procedures and services for the rehabilitation of persons dependent on opium, morphine, heroin or any derivative or

synthetic drug of that group.

(14) "Phase treatment" means the client's progress through treatment in a graduated sequence system.

(15) "Program sponsor" means a person or representative of an individual or entity who assumes responsibilities for the operation of a narcotic treatment program as well as being responsible for the on-site conduct of all employees, and other persons providing services, and ensures that the program is operated in compliance with this administrative regulation.

(16) "Proposed program" means an individual or entity in the process of seeking a narcotic treatment license.

(17) "Public health director" means the director of the local public health department.

(18) "SNA" means the State Narcotic Authority.

(19) "Take-home dose" means a quantity of an approved controlled substance which the client is eligible to take off site.

(20) "Voluntary detoxification" means a client requested, physician supervised withdrawal from the approved controlled substance.

Section 2. State Narcotic Authority. The SNA shall be the Director, Division of Substance Abuse, within the Department for Mental Health and Mental Retardation Services.

Section 3. Alternative Distribution System. The SNA shall establish an alternative distribution system regarding the direct shipment of methadone and ORLAAM to approved treatment programs using narcotic drugs. An approved NTP shall submit a list of personnel, with a copy of the powers of attorney that authorizes them to sign order forms and receive shipments of controlled substances, pursuant to 21 CFR 1305.03, 1305.04, 1305.07, to the Hazelwood Center. The program sponsor shall [Programs may] not designate staff other than a physician, registered nurse, licensed practical nurse, or pharmacist to sign for or receive shipments of controlled substances. The program sponsor [Programs] shall submit a completed federal form 222 to Hazelwood Center, 1800 Bluegrass Avenue, Louisville, Kentucky 40202 to obtain methadone or ORLAAM.

Section 4. Application to Operate a NTP. (1) A proposed program desiring to operate a NTP shall meet the requirements of this administrative regulation, and shall be licensed in accordance with 908 KAR 1:150 through 1:260 prior to application.

(2) The proposed program shall submit each staff member's, including the program sponsor, administrator, and all other personnel, profile and resume of educational and professional experience, including Social Security numbers and date of birth.

(a) If the program is a corporation or partnership, the application shall list all partners' and members' [officers'] names, addresses, dates of birth, and Social Security numbers.

(b) Failure to provide this information shall disqualify the application for further review.

(3) The proposed program shall submit or cause to be submitted on its behalf to the SNA a written protocol which shall serve as an application for licensure by the SNA. This protocol shall include the following:

(a) A plan of operation;

(b) A description of the geographic area to be served by the program;

(c) Population and area to be served;

(d) The estimated number of persons, in the described area, addicted to heroin or other morphine-like drugs and an explanation of the basis of the estimate;

(e) The estimated number of persons in the described area addicted to heroin or other morphine-like drugs presently under treatment in methadone and other treatment programs;

(f) The number of patients in narcotic [regular] treatment, projected rate of intake, and factors controlling projected intake;

(g) Program goal;

(h) Plan for evaluation;

(i) Memoranda of agreement which reflect supportive services from the administrative head of the following agencies:

1. Hospitals;

2. Local law enforcement including jails;

3. Community mental health and mental retardation agencies;

4. Private, for-profit alcohol and drug services and publicly funded alcohol and drug services;

5. Department of Vocational Rehabilitation Services; and

6. Private, for-profit mental health counseling services;

(j) Client identification system;

(k) System to prevent client's multiple program registration;

(l) Organizational chart which includes the persons responsible for the program;

(m) First year budget, which list available, pending, or projected funds;

(n) Copies of letters verifying funding;

(o) Schedule of the amount of the client fees;

(p) Duties and responsibilities of each staff member and the relationship between the staffing pattern and the treatment goals;

(q) Duties and responsibilities of the medical director;

(r) Plan for delegation of the medical director's duties, if appropriate;

(s) Training and experience of counselors and therapists;

(t) Counselor and therapist caseload;

(u) Procedures and criteria for client selection;

(v) Program rules and instructions;

(w) Facility description;

(x) Initial dosage levels;

(y) Daily dosage levels;

(z) Operational procedures including the procedures to be used in inventory maintenance and daily dosing schedules;

(aa) Procedures, or documented efforts made, which provide for cooperation with local jails and hospitals for either withdrawal or maintenance while in custody or hospitalized in the event of client incarceration or hospitalization;

(bb) Procedures in the event of state or national or manmade emergency or disaster.

(cc) Urinalysis procedures which utilize random selection or unannounced collection;

(dd) Procedures for scheduled termination, voluntary termination, and involuntary termination for cause, including reasons for termination for cause;

(ee) Fair hearing procedures for client grievances;

(ff) Copies of all forms developed and to be used by the proposed NTP;

(gg) Facility address and dimensions;

(hh) Amount of space devoted to methadone treatment, including waiting, counseling, dispensing, and storage areas;

(ii) Days and hours of dispensing;

(jj) Days and hours of other program services;

(kk) Type of services provided and the hours of use, if the facility is also used for purposes other than narcotic treatment; and

(ll) Diagram of the facility housing the NTP and an accompanying narrative which describes client flow. The diagram and narrative shall specify:

1. Waiting areas;

2. Office space;

3. Dispensing area;

4. Urine collection locations;

5. Record storage area;

6. Parking or transportation access; and

7. The relation of the services to the [total] facility diagram.

(4) A protocol proposing a new program or a complete revision of the protocol of an approved program shall be submitted to the SNA.

(5) The proposed program shall submit written policies and procedures in accordance with Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16 of this administrative regulation.

Section 5. SNA Application Review Process. (1) The SNA shall review the application materials within thirty (30) working days for the following:

(a) Criminal convictions by all individuals or entities involved with the proposed program within the past five (5) years, including violations of controlled substance laws and administrative regulations;

(b) Suspension or revocation of any FDA, DEA, state narcotic licenses, or professional licenses in the past five (5) years of any staff member including the medical director, registered nurses, licensed practical nurses and registered pharmacist; and

(c) The written monitoring reports and compliance reports of other NTPs currently operated by the applicant or by any corporation or partnership with whom the applicant has been associated in the past five (5) years. These reports shall be obtained from the DEA and FDA agents, medical licensing boards, pharmacy licensing boards, nursing licensing boards, and from other SNAs.

(2) The SNA shall not grant an application to operate a NTP to any applicant that has employed staff or, if applicant is a corporation or partnership, any officer of the corporation or member of the partnership who was convicted of a misdemeanor related to controlled substances laws or any felony within the last five (5) years.

(3) The SNA shall work in collaboration with the DEA and FDA in reviewing the proposed application. Before any narcotic license shall be issued to the proposed program, the SNA, the DEA office, and the FDA office shall all agree.

(4) The SNA shall conduct an on-site inspection to review the proposed program and interview the medical director, program sponsor and dosing staff.

(5) The SNA shall not approve any application for a NTP to any entity that poses a risk to the health and safety of the public based on a history of noncompliance with state and federal regulations as verified by the DEA or FDA or state licensure agencies in states in which the entity currently legally operates.

(6) The SNA shall respond in writing, within ten (10) working days, to the proposed program upon receipt of all reports and documents from the applicant and all agencies involved.

(7) If the application to operate the NTP is approved the SNA shall, within thirty (30) working days of the completion of the review process:

(a) Issue a letter, pending receipt of federal approval, which shall indicate the approval to operate a NTP in Kentucky and shall include, the DEA license number, the FDA license number, and the expiration date of the license to operate; and

(b) Assign a facility responsible for the distribution of the approved controlled substances to be used in the NTP.

(8) If the application to operate a NTP is not approved within thirty (30) working days, the SNA shall respond in writing citing the deficiencies, the requirements and time frames for taking corrective actions to make the program licensable.

(9) The proposed program shall provide a plan of correction for deficiencies cited within fifteen (15) working days from date of receipt of the written deficiencies.

Section 6. Organization and Administration Policies. (1) NTPs shall develop policies and procedures that include:

(a) Waiting list criteria;

(b) Criteria for the use of ORLAAM (levomethadyl acetate hydrochloride; levo-alpha-acetylmethadol hydrochloride) for clients needing or desiring take-home doses, but who do not meet eligibility requirements for take-home doses;

(c) Policies pertaining to the preparation and labeling of client doses which shall include:

1. The quantity of approved controlled substances that is indicated on the client's narcotic sheet within the medical record;

2. Assurance that doses shall be labeled with the exact quantity of narcotic drug ordered;

3. Take-home doses shall be formulated in such a manner that shall reduce the likelihood of injecting the dose;

4. Policies that permit clients to know their dose level; and

5. Policies that shall provide for the packaging of take-home doses of the approved controlled substances in containers that meet the requirements of 15 USC 1471. The label of the doses shall include the name of the program, address and telephone number of the program, name of the controlled substance, name of the client, the name of the physician ordering the substance, and the quantity of the controlled substance, unless the client has requested in writing that the quantity of the substance not be revealed to them.

(2) The program policies shall indicate that the medical director or program physician at the individual NTP is in charge of all dose adjustments.

(3) The program policies shall indicate that dosing personnel do not alter client doses without the medical director or program physician's order.

(4) Verbal dosing orders shall be signed by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(5) The medical record shall indicate any reason for dose changes and shall be signed by the medical director or program physician.

(6) Detoxification policies for voluntary and administrative detoxification shall be in compliance with 21 CFR 291.505(d)(8) and (9), i.e.: short-term (thirty (30) days or less), or long-term (more than thirty (30) days and as much as 180 days).

(7) Urine collection policies for drug screening purposes shall be developed to assure absence of falsification. Each sample shall be analyzed for the following drugs:

(a) Methadone;

(b) Cocaine;

(c) Opiates;

(d) Amphetamines;

(e) Barbiturates;

(f) Tetrahydrocannabinol;

(g) Benzodiazepines; and

(h) Any other drug(s) that has been determined by the NTP or the SNA to be abused in that program's locality or any other drugs that may have been abused by the client.

(8) NTPs shall have policies that prohibit procedures for offering a bounty, monetary or equipment or merchandise reward, or free services for individuals in exchange for recruitment of new clients into the program.

(9) NTPs shall assure compliance with the system of treatment phases outlined in Section 11 of this administrative regulation.

(10) NTPs shall develop quality assurance policies to assure that services provided are achieving beneficial effects for the clients using the services.

(11) Urine drug screens shall be reviewed by the treatment team monthly to determine client's reduction in the use of unauthorized medications.

(12) Controlled substance medications shall be considered unapproved usage if they are being used by the client without a valid prescription.

(13) A valid urine drug screen negative for the approved controlled substances, with the exception of ORLAAM, allowed to be used in the NTP shall be considered positive for unauthorized drug use.

(14) The NTP shall assure that urine drug screens are not used as the sole criteria for dismissing clients from the program.

(15) NTPs shall develop quality assurance procedures to determine the adequacy of the NTP's organization and service delivery. The assessment shall:

(a) Examine the content of the NTP's organizational and administrative structure and shall assess the following:

1. Availability of [~~services to include~~] counseling services;

2. Availability of physical health services to clients;

3. Vocational training available to clients;

4. Legal assistance or referral, if indicated for the client;

5. Americans With Disabilities Act (ADA) defined accessibility in the on-site programs to the clients;

6. Quality assurance of the program services [~~structure~~]; and

7. Continuity of services and care.

(b) Be reviewed [~~conducted~~] semiannually by the clinical supervisor, medical director, program sponsor, and the dosing nurse supervisor;

(c) Evaluate the following:

1. Appropriateness of the services delivered;

2. Completeness of documentation in client records;

3. Quality of and participation in staff training programs; and

4. Status of licenses and certification documents.

(16) All NTPs shall be open for dosing services seven (7) days a week with the optional exception of the following holidays:

(a) New Years Day, January 1;

(b) Presidents Day;

(c) Martin Luther King Day;

(d) Easter Sunday;

(e) Memorial Day, last Monday in May;

(f) [~~(e)~~] Independence Day, July 4;

(g) [~~(f)~~] Labor Day, first Monday in September;

(h) [~~(g)~~] Thanksgiving Day, fourth Thursday in November; and

(i) [~~(h)~~] Christmas Day, December 25.

Section 7. Personnel Policies. (1) The NTP shall have a program sponsor who shall:

(a) Assume that KRS 222.231, 908 KAR 1:150 through 1:260, 21 CFR 291.505(g), 1301.76, KRS Chapter 218A, 902 KAR 55:010 to 55:095 and this administrative regulation, are followed by the NTP;

(b) Have two (2) years documented experience in the treatment of addictions. The program sponsor shall be [a] certified [chemical-dependency counselor-recognized] by the [Kentucky-Credentialing] Board of Certification of Alcohol and Drug Counselors, or a physician, nurse, physician assistant, pharmacist, or nurse practitioner certified by the respective licensing subspecialty, or shall have a minimum of a masters degree in the field of addictions or related field; and

(c) Assume that clients:

1. Receive and sign written information describing all facets of the program in a manner that the client understands;

2. Have had the contents of the "Consent to Treatment with an Approved Narcotic Drug", Form FDA 2635 (7/93), communicated to them and voluntarily sign the consent to treatment;

3. Under eighteen (18) years of age, have parents or legal guardians of nonemancipated minors sign the consent to treatment;

4. Receive information on communicable diseases at admission, readmission, and at six (6) month intervals for the first two (2) years of treatment, and as indicated clinically after two (2) years. Communicable diseases shall include tuberculosis, hepatitis, sexually transmitted diseases, and HIV/AIDS; and

5. Receive HIV/AIDS pretest, posttest counseling, and provide for voluntary HIV testing at admission or when clinically indicated thereafter.

(2) The program sponsor shall assure:

(a) That professional staff in the NTP shall maintain current credentials and that professional skills pertinent to their job descriptions shall be updated annually;

(b) That the laboratory performing the testing required under this administrative regulation is approved by the SNA, is certified by the Health Care Financing Administration as a CLIA (Clinical Laboratory Improvement Act-1988) certified laboratory, has a protocol in place that assures the integrity of the chain of custody for all urine drug tests, and an assurance that the initial test and confirmatory tests for drugs tested on behalf of the program meets the following standards;

1. Marijuana metabolites - initial screen 50ng/ml, confirmation test 15ng/ml;

2. Cocaine metabolites - initial screen 300ng/ml, confirmation test 150ng/ml;

3. Opiates metabolites - initial screen 300ng/ml, confirmation test 300ng/ml;

4. Amphetamines - initial screen 1000ng/ml, confirmation test of amphetamine 500ng/ml, and methamphetamine confirmation test 500ng/ml;

5. Barbiturates - initial screen 300ng/ml, confirmation test 300ng/ml; and

6. Benzodiazepines - initial screen 300ng/ml, confirmation test 300ng/ml.

(c) That drug test results shall not be used as the sole criteria for administratively detoxifying a client from the NTP;

(d) That when drug testing results are used, presumptive laboratory results shall be distinguished from results that are definitive;

(e) That urine samples used for drug screening purposes shall be handled [coded] in a manner that ensures client confidentiality;

(f) That client attendance shall not be revealed to any person or agency without the specific written authorization of the client, or a valid court order.

(3) NTPs shall have a medical director who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(4) NTPs may have a program physician who shall:

(a) Be licensed by the Commonwealth of Kentucky to practice medicine within the Commonwealth and function autonomously within the NTP free from any protocol imposed by any NTP, sponsor, or any other entity but under the guidelines imposed by 21 CFR Part 291 and this administrative regulation; and

(b) Be a board eligible psychiatrist licensed to practice in Kentucky and have three (3) years documented experience in the provision of services to persons who are addicted to alcohol or other drugs; or

(c) Be a physician licensed to practice in Kentucky and certified as an addictionologist by the American Society of Addiction Medicine; and

(d) Be responsible for dosing staff in the NTP and shall be responsible for the NTPs adherence to 21 CFR 291.505(g), KRS Chapter 218A, 902 KAR 55:010 to 55:095, 908 KAR 1:150 through 1:260 and this administrative regulation.

(5) The medical director may be the program physician.

(6) There shall be one (1) medical director or program physician on staff for every 300 clients, or fraction thereof, enrolled in a NTP.

(7) The responsibilities of the medical director or program physician(s) shall include:

(a) Assuring there is evidence of physiologic dependence on narcotics for all clients admitted to the NTP;

(b) Assuring a history of addiction, or that any exceptions to admissions criteria are approved by the SNA and documented in the client's record before the first dose is administered;

(c) Assuring that appropriate medical histories and physical examinations have been performed before the first dose shall be administered;

(d) Assuring that appropriate laboratory studies have been performed and have a documented review by the medical director or program physician;

(e) Documenting, signing, or countersigning all medical orders, within forty-eight (48) hours, that include the first dose of narcotic drug or other approved medications;

(f) Documenting, signing, or countersigning all subsequent medication orders within forty-eight (48) hours, including dose increases and decreases, changes in frequency of take-home doses, emergency situations, or special circumstances;

(g) Assuring that information on all communicable diseases is communicated to all clients as required; and

(h) Assuring that a review and cosignatures of all telephone or other verbal orders are documented within forty-eight (48) hours of the order.

(8) The medical director or program physician at the NTP shall:

(a) Supervise clinical staff responsible for preparation and administering of the approved controlled substances; and

(b) Assure compliance with program procedures and administrative regulations;

(9) The medical director or program physician shall order all doses, [and] all increases or decreases of doses of medications or other approved drugs for the client, through the licensed NTP.

(10) Any verbal orders shall be given to nursing or pharmacy staff and shall be cosigned by the medical director or program physician within forty-eight (48) hours of the order's receipt.

(11) The medical director or program physician shall review all laboratory testing results required by the FDA, SNA, and testing indicated by the client's clinical record. Any specific additional laboratory testing shall be ordered by the medical director or program physician.

(12) The medical director or program physician, in determining the client's take-home medications, shall take into consideration the items addressed in 21 CFR 291.505(d)(6)(C)(iv)(B) and shall comply with Sections 10, 11, 12, 13 and 16 of this administrative regulation.

(13) NTPs shall provide dosing staff in sufficient numbers to meet the needs of the clients during dosing hours. Dosing staff shall:

(a) Hold a license as a registered nurse, licensed practical nurse, or pharmacist; and

(b) Not be dually assigned as [primary-client] counselors.

(14) Programs shall provide counselors who shall have, at a

minimum, a bachelors degree in a human services related field and an alcohol and drug [a-chemical-dependency] counselor certification from the Kentucky [Certification] Board of Alcohol and Drug Counselors [Chemical-Dependency-Professionals, Inc.] or be actively engaged in the certification process.

(15) There shall be one (1) counselor for every forty (40) clients in the program.

Section 8. Physical Plant. (1) The building used for the NTP shall meet requirements in 21 CFR 1301.74(j) and shall have space for the following operations:

(a) The waiting area shall be large enough to accommodate the clients arriving for services.

(b) The waiting area shall be separated from the dosing area to permit each client privacy and confidentiality at the time of dosing.

(c) The dosing area shall be clean and sanitary, shall accommodate the dosing staff, and shall contain the following:

1. A stainless steel sink;
2. Hot and cold running water;
3. A refrigerator for dosing supplies; and
4. Pill-counting trays if tablets are being used.

(2) Security and floor plan of the dosing area may be unique to each program, but shall conform to the requirements in 21 CFR 1301.72.

(3) The NTP shall make arrangements for the facility to have two (2) restrooms which shall be handicapped accessible.

(4) The NTP shall assure that restrooms available to clients to provide urine specimens are secure, private, clean, and sanitary.

(5) The physical plant shall meet building, fire, safety, and health standards specified by state and local government laws and regulations.

(6) The physical plant shall be secured by a local security company approved by the DEA and the SNA.

(7) There shall be a minimum of two (2) panic buttons or similar devices for each NTP, one (1) in the reception area, and one (1) in the dosing area.

(8) There shall be a telephone with an outside line accessible in the dosing area.

(9) Internal security may be unique to each NTP and shall meet the requirements of 21 CFR 1301.74(b), (h), (i), (j), (k); 1301.91; 1301.92 and shall be installed only after consultation with the DEA Office and the SNA.

(10) Parking space at the clinic site shall be adequate to accommodate the maximum number of clients expected to be at the clinic site at one (1) time or have specific appointment schedules to prevent the influx of clients that would be disruptive or unsafe to the surrounding community.

(11) The NTP shall comply with all local zoning and ordinance laws and requirements.

Section 9. Security and Control. (1) The security and control segment of the NTP's assessment procedure shall be conducted quarterly by the program sponsor and dosing nurse supervisor or pharmacist who shall assure that the requirements of 21 CFR 1304.28 are met. Other items to be evaluated shall include:

(a) Security of the narcotic safe and the building perimeter shall be checked with the contracted [a] security company at the facility location, quarterly. The security company may choose to test the system by telephone.

(b) The safe shall be locked at all times while staff are not obtaining or restocking controlled substances.

(c) Inventory reconciliation shall be conducted, at a minimum of quarterly, and all reconciliation documents shall be retained by the program for five (5) years.

(d) Five (5) percent or more of any inventory discrepancies shall be reported to the SNA and the DEA offices within forty-eight (48) hours of reconciliation.

(e) Dosing personnel shall count all new bottles of narcotic tablets before removing any for client doses.

[(f)] Any discrepancies shall be reported to the SNA, to the DEA and FDA, and the Department for Health Services' Office of Drug Control, using the DEA 1305.12 (12/85) "Report of Theft or Loss of Controlled Substances" form, within forty-eight (48) hours of the event.

[(f)] [(g)] A system shall be devised to assure the NTP completes the DEA biennial inventory of narcotic drugs on hand.

[(g)] [(h)] Order forms for controlled substances, the dosing records, and inventory reconciliation records shall conform to 21 CFR 1304.28 and shall be maintained in a locked, secured area separate from the storage site of the controlled substances.

(2) Utilization and effectiveness of delivered services shall be reviewed by the program sponsor and medical director annually for the following:

(a) Treatment slot utilization and cost per slot;

(b) Staff-to-client ratio;

(c) Cost per counseling session; and

(d) Cost per client for other program services.

(3) NTPs shall maintain written policies to assure the confidentiality of all client records.

(4) Quarterly, the program sponsor shall review a ten (10) percent random sample of client records for the following information and assurances:

(a) Client signed the "Consent to Treatment with an Approved Narcotic Drug," Form FDA 2635 (7/93);

(b) Client signed a release of information form, developed by the NTP, which shall include:

1. Specific type of confidential information to be obtained or released; and

2. Specific dates that the release is to cover.

(c) When the program sponsor serves as a counselor then the medical director shall review ten (10) percent of the program sponsor's client records for the same information and assurances as cited above in paragraphs (a), (b)1 and 2 of this subsection.

(5) The NTP shall retain a copy of internal assessment documents on file, which shall be available for review by regulatory agencies for five (5) years.

(6) The NTP shall participate in the data collection system as addressed in 908 KAR 1:300.

Section 10. Admission and Readmission Policies. (1) The admitting physician for the NTP shall comply with the admission requirements of 21 CFR 291.505(d)(1).

(2)[(a)] Exceptions to the admission requirements shall be those cited in 21 CFR 291.505(d)(1)(C)(iii). Programs shall adhere to the following for pregnant clients: In order for a NTP to admit or continue to treat a client who is pregnant [(b) A program shall not admit as a client any person who is pregnant, nor shall any program continue to treat any client who becomes pregnant, unless and until] the medical director or program physician shall first determine and document [determines and documents] in the client's record the following:

[(a) [1-] The client is medically able to participate in the program.

[(b) If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the medical director or program physician shall refer the client to a primary care physician who practices obstetrics or an obstetrician and shall inform the attending physician of the client's participation in the NTP.

[2- The client shall be in the care of a qualified physician for her pregnancy and the physician is informed of the client's participation in the program. For the purpose of this subsection, "qualified physician" means a physician trained in the field of obstetrics.

3- If the medical director or program physician does not accept the responsibility for providing prenatal care for the term of the client's pregnancy, the program physician shall refer any applicant who is pregnant or any admitted client who becomes pregnant to another physician for care during pregnancy and shall verify that she is actually under care of the physician to whom she was referred or another qualified physician.]

[(c) [4-] In the case of a pregnant client, the medical director or program physician shall ensure that appropriate arrangements have been made for the addiction-related medical care of both the client and the child following the birth of the child.

[(d) [5-] Maintenance treatment dosage levels of pregnant clients shall be maintained at the lowest possible dosage level.

[(e) [6-] The program shall ensure that the following services are available for pregnant addicts and are a part of the treatment plan:

1. The medical director or program physician shall notify the preg-

nant client's primary care physician of any changes in the client's treatment; [a. Periodic physician consultation at least monthly;]

2. [b.] Nutritional counseling;
3. [c.] Parenting training including newborn care, handling, health, and safety; and

4. [d.] Weekly full drug screen urinalysis;

(3) When a client applies for admission to a NTP the client shall be required to sign a release of information that authorizes a program to release or solicit information regarding the client's status in any other substance abuse program [the NTP to another NTP].

(4) A client who has received treatment and later voluntarily detoxified may be readmitted to a NTP without evidence to support findings of current physiologic dependence, up to two (2) years after discharge if the NTP attended is able to document prior treatment of six (6) months or more, and the admitting medical director or program physician finds readmission to the NTP to be medically justified.

(5) If a [Any] client seeks [seeking] readmission to a NTP after being administratively detoxified and the medical director or program physician finds readmission to the NTP medically justified, the medical director or program physician shall document such justification in the client's medical record. [shall wait thirty (30) days prior to applying for readmission.]

~~(a) If a client has been administratively detoxified two (2) times during a twelve (12) month period the client shall wait sixty (60) days before applying for readmission.~~

~~(b) The medical director or program physician shall find readmission to the NTP medically justified.]~~

Section 11. Treatment Protocol. NTPs shall comply with the following treatment phase system to achieve the goals of reduced health problems, reduced criminal activity, increased productivity, stabilization of family life and eventual drug free living.

(1) Entry phase. The first ninety (90) days of treatment all clients shall adhere to the following:

(a) Clients shall be dosed with methadone seven (7) days at the clinic site.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) Clients shall be provided HIV/AIDS education and provided or referred for HIV pretest counseling and voluntary HIV testing.

(d) Clients shall be oriented to appropriate twelve (12) step programs such as narcotics anonymous or alcoholics anonymous.

(e) During the entry phase the client shall provide an observed urine sample one (1) time per week on a random basis.

(f) There shall be documentation in the client record that treatment plans shall be reviewed and updated a minimum of every thirty (30) days for three (3) months, every ninety (90) days thereafter.

(g) The medical director or program physician shall sign the treatment plan.

(2) Phase one (1). In order for a client to enter phase one (1) the client shall not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for ninety (90) consecutive days.

(a) Once the client enters phase one (1) the client shall attend clinic six (6) times each week for observed ingestion of methadone and shall be eligible to receive a one (1) day take-home dose of methadone.

(b) Clients shall be provided weekly counseling sessions to support the implementation of their treatment plan.

(c) The client shall provide an observed urine sample on a random basis at least weekly.

(d) Clients shall be encouraged to attend an appropriate twelve (12) step program.

(e) There shall be documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to his treatment plan.

(f) The medical director or program physician shall sign the treatment plan.

(3) Phase two (2). In order for the client to enter phase two (2) the client shall:

(a) Not have committed any program infractions (dirty urine

screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 180 consecutive days;

(b) Be pursuing gainful employment or vocational training or attending school or be engaged in volunteer work, or be attending parenting classes if they are a parent at home with children. Clients with disabilities or other circumstances which might prohibit this requirement may submit a written waiver request to the SNA justifying specific reasons for the request;

(c) Have a treatment plan to meet any special needs, including disabilities;

(d) Attend clinic five (5) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(e) Provide an observed urine sample randomly on a monthly basis, or more frequently if their treatment plan requires;

(f) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(g) Be encouraged to attend appropriate self-help programs outside the clinic;

(h) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to the treatment plan; and

(i) Have their treatment plan signed by the medical director or program physician.

(4) Phase three (3). In order for the client to enter phase three (3) the client shall:

(a) Not have committed any program infractions (dirty urine screens, disruptive behavior at the clinic site, threats to staff or other clients, failure to attend scheduled dosing or counseling appointments) for 270 consecutive days;

(b) Have met the same entry criteria requirements as noted in phase two (2);

(c) Attend clinic three (3) times each week for observed ingestion of methadone and be eligible to receive up to two (2) days of take-home doses of methadone;

(d) Provide an observed urine sample on a random basis, monthly, or more frequently if their treatment plan requires;

(e) Be provided monthly counseling sessions, or more frequently if their treatment plan requires;

(f) Be encouraged to attend appropriate self-help groups outside clinic;

(g) Have documentation in the client record that treatment plans shall be reviewed and updated every ninety (90) days. This documentation shall include a report on the client's progress in relation to their treatment plan; and

(h) Have their treatment plan signed by the medical director or program physician.

(5) Phase four (4). In order for the client to enter phase four (4), the client shall have successfully completed phase three (3) and adhered to the requirements of the maintenance treatment program for two (2) consecutive years.

(a) Clients shall be dosed at the clinic site two (2) days per week for observed ingestion of methadone and be eligible for up to three (3) take-home doses of methadone.

(b) The number of counseling sessions provided during this phase shall be based on the clinical judgement of the program physician and program staff.

(c) Requirements in the area of urine sample schedules, and treatment plan reviews remain the same as in subsection (4) of this section.

(d) Prior to successful completion of phase four (4), a plan shall be developed which shall assist the client toward a drug free treatment regimen for continued support.

(e) The medical director or program physician shall sign the treatment plan.

Section 12. Client Program Compliance. In order for a client to remain in a NTP and to successfully move through the treatment phases, clients shall be actively involved in the NTP by remaining in good standing at the clinic or risk being administratively detoxified. In those instances where clients have not complied with program poli-

cies:

(1) The client may be placed on a behavioral contract for a minimum of sixty (60) days during any individual program phase and shall lose all take-home dose privileges for sixty (60) days.

(2) If a client commits three (3) infractions, the medical director or program physician and staff may choose to move the client back in phases as part of the behavioral contract. The client shall lose all take-home privileges during the contract period.

(3) Following the commitment of any program infraction, the counseling staff shall assist the client in correcting the problem behavior and document this effort in the client's treatment plan.

(4) If the client continues to experience problems and breaks the behavioral contract, the client may be administratively detoxified based on the recommendation of the program physician and the program staff.

Section 13. Client Transfers. NTPs shall accept clients transferring from another program within the state, if:

(1) The NTP accepting a client voluntarily transferring from another NTP shall provide documentation that the client's medical record and reason for the transfer was sought from the client's previous NTP; and

(2) The client is in compliance with readmission policies for clients who have been administratively detoxified.

(3) In order for the client to transfer to another NTP, the following requirement shall be met:

(a) The NTP that client is leaving shall forward all relevant client records to the program where the client is transferring.

(b) The NTP shall provide documentation that the client's medical record and reason for the transfer was sought from the client's previous NTP and shall meet the admission criteria of this administrative regulation.

(c) Clients who are Kentucky residents and wish to transfer to another Kentucky-based program shall be reviewed by the new program's admission program physician or medical director on an individual basis to determine their placement on the receiving program's client listing. The review shall determine the client's need, program placement availability, and the circumstances for the transfer request.

(d) Clients who are not Kentucky residents shall transfer to a Kentucky program as a new admission or "Entry Phase" as noted in this administrative regulation, Section 11(1) of this administrative regulation, unless other phase levels are approved by the SNA.

Section 14. Client Appeal Procedures. Decisions regarding a client's treatment by staff shall be subject to appeal by the client. Each NTP shall:

(1) Develop an appeal procedure that shall be approved by the SNA; and

(2) Have procedures that include a provision that a central file of all client appeals be maintained at the NTP for review by the SNA.

Section 15. Program Waiver Process. A NTP may make an application to the SNA in order to seek waivers from any requirement of this administrative regulation.

(1) This application for a waiver shall:

(a) Be in the form of a letter to the SNA;

(b) Identify the specific sections of this administrative regulation for which a waiver is being sought; and

(c) Give the rationale for such a request.

(2) A copy of the waiver request and response shall become part of the client's permanent record, if applicable.

(3) Applications for waiver requests shall be mailed to: Kentucky State Narcotic Authority, Division of Substance Abuse, 275 East Main Street, Frankfort, Kentucky 40621.

(4) The SNA shall respond, in writing, to the waiver request within fifteen (15) working days. The SNA shall provide written justification for any waiver request that has been denied.

Section 16. Take-home Doses. (1) Under emergency conditions a program may issue fourteen (14) consecutive days of take-home doses without notification of FDA. The NTP shall notify the SNA and request, in writing, an exception to dosing procedures prior to administration of the first emergency dose. This request shall include:

(a) The number of take-home doses requested;

(b) The reason for the request; and

(c) The client's standing in program phases, adherence to program policies, and the total length of time the client has been enrolled at the NTP.

(2) The medical director or program physician may grant an exception to the criteria for take-home dosages for any of the following reasons subject to the limitations in this administrative regulation and written approval from the SNA which shall be filed in the client record:

(a) The client has a serious physical disability which would prevent frequent visits to the program facility.

(b) The client is subject to an exceptional circumstance such as acute illness, family crisis, or necessary travel, where hardship would result from requiring exact compliance with the step level schedule as noted in this administrative regulation. When a client must travel out of the program area, the medical director or program physician shall attempt to arrange for the client to receive his/her daily dosage at another program in lieu of increasing take-home dosages.

(c) The medical director or program physician shall not grant any exceptions during a calendar month which exceed three (3) exceptions or ten (10) percent of the number of patients enrolled in the program on the last day of the previous month, whichever is greater.

(d) The medical director or program physician shall document in the client's record the granting of any exception and the facts justifying the exception. Each program shall also maintain a separate record for all exceptions granted.

(e) The SNA shall not grant additional exceptions, except in cases of medical emergency or natural disaster, such as fire, flood, or earthquake.

(3) A NTP shall restrict a client's take-home dosage privileges by moving the client back at least one (1) step level on the schedule for take-home dosages if the client's urinalysis results disclose the unauthorized presence of methadone, cocaine, opiates, amphetamines, barbiturates, tetrahydrocannabinol, benzodiazepines, and any other drug(s) that has been determined by the NTP or SNA to be abused in that NTP's locality or any other drug(s) that may have been abused by the client twice or more in a sixty (60) day period.

(4) A NTP shall restrict a client's take-home dosage partially, by moving the client back on the take-home dosage schedule, if the medical director or program physician [NTP] concludes that the client is no longer a suitable candidate or risk for take-home privileges as presently scheduled.

(5) A NTP shall revoke a client's take-home privileges for not less than thirty (30) days [~~three (3) months~~] and shall require the client to ingest each dosage at the facility for any of the following reasons:

(a) The client's urinalysis discloses an absence of methadone, or methadone metabolite, and the medical director confirms the accuracy of such analysis. This shall not be applicable to clients whose daily dosage is twenty-five (25) [~~ten (10)~~] milligrams or less.

(b) The client is discovered to be misusing methadone, as defined in paragraph (e)3 of this subsection.

(c) The client attempts to register in another NTP.

(d) The client alters or attempts to alter a urinalysis.

(e) The client is not satisfactorily adhering to the requirements of the NTP by the following:

1. The client has not complied with all the rules of the NTP.

2. There is indication that the client has repeatedly used drugs improperly.

3. There is indication, including appropriate urinalysis results, that the client is misusing methadone. Misuse of methadone includes sharing, giving away, selling, or trading one's methadone dosage, or not ingesting it in accordance with methadone maintenance treatment program rules.

4. There is indication that the client is selling, distributing, or otherwise involved with illicit drugs and their use.

5. The client is not participating in an educational, vocational, or home-making activity.

(6) A client whose take-home privileges were revoked or restricted may regain take-home privileges according to the following schedule:

(a) Phase one (1) by satisfactory adherence for at least thirty (30) days.

(b) Phase two (2) by satisfactory adherence for at least thirty (30) days after regaining phase one (1) privileges.

(c) Phase three (3) by satisfactory adherence for at least thirty (30) days after regaining phase two (2) privileges.

(d) Phase four (4) by satisfactory adherence for at least thirty (30) days after regaining phase three (3) privileges.

(e) This section shall not be used to circumvent the requirements of this administrative regulation. No client shall be advanced to a phase level pursuant to this section unless he has previously been at that phase level after having satisfied the requirements of this administrative regulation.

(7) If ~~a~~ [When the] NTP fails to comply with the requirements in Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation, the SNA may order ~~the~~ [a] NTP to suspend all or part of the take-home privileges ~~[dosage program]~~ for a period of thirty (30) days. The SNA shall notify the NTP in writing, prior to any suspension, indicating the reasons for the suspension ~~[outlining the reasons for the suspension prior to any suspension as follows]~~:

(a) The NTP shall submit a plan of correction to the SNA within ten (10) days of receipt of the SNA notification.

(b) If the NTP does not make the corrections in the time specified, ~~[due to circumstances approved by the SNA;]~~ but ~~[the NTP]~~ has responded within the ten (10) day time period indicating circumstances which the SNA has approved, the SNA may extend the suspension for up to a second thirty (30) day period.

(c) If the NTP does not make the necessary corrections or does not submit an acceptable plan of correction with the SNA within the time frame specified in paragraph (a) of this subsection, the SNA shall suspend the NTP's take-home program until the necessary corrections have been made.

(d) If the NTP is determined by the SNA to not comply with Sections 6, 7, 8, 9, 10, 11, 12, 13 or 16 of this administrative regulation and is serving clients who meet the requirements in Sections 10 and 11 of this administrative regulation, the SNA may restrict the NTP's take-home procedures to the provision of emergency take-homes according to the requirements of Section 16 of this administrative regulation. This restriction shall be in effect on a client-by-client basis until the NTP has taken corrective actions that bring the program into compliance with Sections 6, 7, 8, 9, 10, 11, 12, 13 and 16 of this administrative regulation.

(8) Maintenance treatment shall be discontinued within two (2) continuous years after the treatment is begun unless, based upon the clinical judgement of the medical director or program physician and staff which shall be recorded in the client's record by the medical director or program physician, the client's status indicates that the treatment should be continued for a longer period of time because discontinuance from treatment would lead to a return to illicit opiate abuse or dependence ~~[opiate dependency]~~.

(9) Client status relative to continued maintenance treatment shall be reevaluated at least annually after two (2) continuous years of maintenance treatment and documented in the client's record by the medical director or program physician or maintenance treatment shall be terminated.

(10) Documentation of the justification for continued maintenance treatment required by this administrative regulation shall indicate the client's progress, or lack thereof, and future expectations as required by this administrative regulation.

(11) Each NTP shall submit ~~[in its protocol]~~ a specific plan for a client's scheduled ~~[schedule]~~ termination of maintenance treatment indicating a ~~[an average]~~ period of maintenance before the scheduled termination.

(12) The termination plan shall include dosage schedules, information on counseling, and any other patient support which will be provided during withdrawal.

(13) Scheduled withdrawal shall be under the immediate direction of the medical director or program physician and shall be individualized.

(14) A client may voluntarily terminate participation in a NTP even though termination may be against the advice of the NTP.

(15) If the medical director or program physician determines that the client's continued participation in the program creates a physically threatening situation for the staff or other clients, the client's participation may be terminated immediately.

(16) A client's participation in a NTP may be involuntarily terminated for cause.

(17) If a NTP utilizes disciplinary proceedings which include involuntary termination for cause, the program shall include in its protocol reasons and procedures for involuntarily terminating a client's participation in the program. The procedures shall provide for:

(a) Explanation to the client of when participation may be terminated for cause;

(b) Client notification of termination;

(c) Client's right to hearing; and

(d) Client's right to representation.

(18) If the NTP elects not to terminate for cause, the protocol shall state that clients shall not be involuntarily terminated for cause except as provided in subsection (15) of this section.

(19) Except as noted in subsection (15) of this section, either voluntary or involuntary termination shall take place over a period of time not less than fifteen (15) days, unless:

(a) The medical director or program physician deems it clinically necessary to terminate participation sooner and documents why in the client's record; or

(b) The client requests in writing a shorter termination period.

Section 17. Client Rights. In addition to the client rights cited in 908 KAR 1:200, Section 1, the following shall apply:

(1) Clients shall have the right to voluntary detoxification from the NTP.

(2) The client rights shall be posted in conspicuous places in the facility.

(3) The client rights shall be signed by the individual client attesting the client rights have been explained in such a manner that they are understood. This signed copy shall be maintained in the client's permanent medical record.

(4) Decisions regarding a client's treatment by staff may be subject to appeal by the client.

(5) Each NTP shall develop an appeal procedure that shall be approved by the SNA and shall include the following:

(a) Each appeal procedure shall contain a detailed description of the NTP's pretermination fair hearing procedure. The appeal procedure shall provide that a client has a right to a pretermination fair hearing in all cases of involuntary termination from the program for cause where continued participation in the program does not create a physically threatening situation for staff or other clients. The procedure shall require:

1. Identification of reasons for termination, as stated in the program rules, which may include:

a. Polydrug abuse;

b. Diversion of methadone;

c. Violence or threat of violence to program staff or other clients in the program; or

d. Multiple registration.

2. Written notification to the client of pending termination, containing:

a. Reasons for termination; and

b. Explanation of right to pretermination fair hearing, which shall explain to the client that rights shall be exercised within forty-eight (48) hours of written notice.

3. Provision for continuance of client's treatment status pending decision upon hearing;

4. Explanation of the client's rights during the hearing to:

a. Be represented at the hearing by a person or attorney of their choice;

b. Call witnesses on their behalf, who need not be under oath; and

c. Examine witnesses presented by the NTP.

5. Release of medical information in the client's file to the client or the client's representative at least forty-eight (48) hours prior to the hearing;

a. Medical information requests by the client shall be in the form of a signed consent to release of information.

b. Medical information to be released to the client or client's representative shall be provided by the physician in charge of the client.

(b) The appeal procedure shall state whether the client is entitled to a hearing before a panel or before a single hearing officer. If the procedure states that the client is entitled to a hearing before a panel, a single hearing officer may not be substituted for the panel without the consent of the client. In the case of a hearing before a panel, a

majority vote of the panel shall be necessary to terminate a person from the NTP.

(c) The NTP shall select the hearing officer or panel from impartial persons not directly involved with the client's care.

(d) A hearing shall be scheduled within seven (7) working days from the time the client requests a hearing.

(e) Unless the program procedures require a higher standard of proof, a client's participation in a program shall be terminated for cause only after the hearing officer or panel finds by a preponderance of the evidence presented that the reason stated in the notice justifies termination.

(f) The hearing officer or panel shall render a decision not later than the first working day following the hearing. The NTP shall keep a permanent record of the proceeding. The permanent record of the proceedings may be a tape recording. The decision shall be made in writing and shall be based solely on the evidence presented at the hearing. The decision shall include a summary of the proceedings and the formal findings and conclusions of the hearing officer or panel.

1. A copy of the hearing decision shall be provided to the client.

2. Copies of all written materials, including all evidence introduced at the hearing, shall be retained for one (1) year.

(g) A client may appeal an adverse action of a hearing officer or panel by the following:

1. The client may appeal the decision by filing an appeal with the Office of the Secretary, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 within thirty (30) working days of the decision.

2. The hearing shall be conducted in accordance with the requirements of KRS Chapter 13B.

(6) All client appeals shall be maintained at the NTP for review by the SNA for two (2) years.

Section 18. Protocol for the Change of a NTP Location and the Protocol for Establishment of a Medication Station. The protocol shall be current, detailed, specific, and complete to permit evaluation by the SNA and to provide a basis for compliance inspections or surveys.

(1) If a NTP voluntarily decides to change its location or establish a medication station, the program shall notify, in writing, the DEA, FDA, the SNA and the Division of Licensing and Regulation within the cabinet within ninety (90) days of the proposed relocation. The written request to relocate shall include the following information:

(a) The reason for the relocation;

(b) The relocation site;

(c) The proposed date of the relocation;

(d) Indicate any program changes that may occur with the relocation; and

(e) If the NTP is within ninety (90) miles of the original site, the NTP shall provide the following:

1. Any dosing procedural changes; and

2. Any drug distribution problems which may occur due to the relocation.

(f) A medication station may be opened no closer than forty-five (45) miles and no further than ninety (90) miles to the main NTP.

1. The medication station shall obtain its supply of approved controlled substance from the stocks of the main NTP.

2. The medication station shall provide the following services:

a. Dosing; and

b. Urine screen collection.

3. The program sponsor shall develop a system to prevent clients from dosing at the main NTP and the medication station.

4. Any services provided at the medication station other than those listed above shall have prior approval by the FDA and SNA.

(2) The FDA, the DEA, and the SNA shall agree that the NTP may establish a medication station or relocate to the proposed relocation site. Written approval shall be forwarded to the NTP.

(3) If a NTP voluntarily decides to close its operation, it shall notify the SNA, the DEA, FDA and the Division of Licensing and Regulation within ninety (90) days before the planned closure of the program.

Section 19. Monitoring of NTPs. (1) The SNA shall monitor NTPs to assure the health and safety of program clients and the protection of the community at large. Monitoring visits shall be conducted annually, or more frequently if indicated. The SNA may:

(a) Discontinue all take-home doses of any approved controlled substance used in any NTP ~~[narcotic treatment and detoxification, on a statewide or program basis];~~ or

(b) Discontinue the utilization of any drug approved for use in narcotic treatment programs.

(2) Focused, unannounced monitoring visits may be conducted more frequently and may occur in conjunction with the FDA and the DEA.

(3) Monitoring shall include:

(a) Inspection of the NTP licensing status;

(b) Inspection of the status of all applicable staff licenses and certificates;

(c) Inspection of the status of the NTP's FDA, DEA, and state licenses;

(d) Inspection of the NTP's security which shall include:

1. Building security, perimeter and internal; and

2. Security of staff procedures in receipt of narcotic drug, storage of narcotic drug, and handling of the drug in preparation and dosing functions;

(e) Inspection of the records maintenance, the inventory control procedures, and the internal inventory reconciliation procedures;

(f) Inspection of the procedures the program has in place to reduce the likelihood of drug diversion by program clients and staff; and

(g) A random sample of doses prepared for administration may be pulled for quantitative analysis and the SNA shall submit to the program sponsor a receipt for any doses taken for analysis.

(4) Client records shall be reviewed for the following:

(a) Client signed consent to treatment with a controlled substance before the first dose was administered;

(b) Conformity with 21 CFR 291.505(d)(3)(i) requirements for minimum medical evaluations;

(c) Conformity with 21 CFR 291.505(d)(2)(ii), Sections 6(7) and 11(1)(e), (2)(c), (3)(e), (4)(d) of this administrative regulation for urine drug screening requirements;

(d) Conformity with client record that when the urine drug screen is positive for use of unapproved drugs, or is negative for the approved controlled substance, the client is counseled and suitable therapeutic action is taken by the treatment team, and the client's take-home doses have been discontinued for thirty (30) ~~[sixty (60)]~~ days. However, the urine drug screen shall not be used as the sole or primary reason for dismissing the client from the NTP; and

(e) Treatment plans have been developed and have been signed by the medical director or program physician in accordance with this administrative regulation;

(f) All physician orders for medications, doses, and dose changes and other treatments have been signed by the medical director or program physician within forty-eight (48) hours of the order's receipt;

(g) No medications are administered without the physician's orders;

(h) The SNA shall monitor for all other FDA, DEA, or SNA administrative regulations; and

(i) Records shall be reviewed for compliance with all treatment phases and waiver requests and approvals.

Section 20. Penalties. Penalties may be issued by the SNA to NTPs that have violated FDA and DEA requirements, and this administrative regulation as follows:

(1) When a monitoring visit reveals regulatory violations, the SNA shall, within ten (10) working days issue a written report, which also shall be submitted to the FDA and DEA, with a time frame of thirty (30) days for the NTP to submit a plan of corrective action.

(2) If a plan of corrective action has been submitted within the thirty (30) days and is acceptable, the SNA shall notify the NTP in writing.

(3) A follow-up visit to verify that corrective action has been made may be performed by the SNA.

(4) If the NTP has not filed a plan of corrective action within thirty (30) days after receipt of the report, the NTP shall be notified that its license shall be suspended for a period not to exceed six (6) months or revoked.

(5) Upon notification of suspension or revocation, the NTP may appeal the suspension or revocation in accordance with Section 21 of this administrative regulation.

(6) The SNA shall immediately suspend or revoke any narcotic treatment license in cases of emergencies affecting the health and safety of the client population or the community as a whole.

(7) The grounds which justify the immediate suspension or revocation of a license shall be as follows:

(a) Take-home doses that fall outside this administrative regulation without specific FDA, DEA, or SNA approval prior to issuance of the take-home dose;

(b) The allowable difference between the labeled dosage of the approved controlled substance and the actual dosage as determined by a drug assay shall be the United States Pharmacopeia error rate;

(c) More than five (5) percent of the medical and dosing records reviewed are out of compliance with the administrative regulations;

(d) Discrepancies in the inventory reconciliation greater than five (5) percent;

(e) Continued dosing of clients prior to completion of the intake procedures, including physical exam, except under SNA approved [the most unusual emergency] circumstances [which shall be recorded in the client's permanent record];

(f) Evidence in the client's record that the physician is not in control of the client's treatment;

(g) Consistent dosing of clients before the consent to treatment with controlled substances has been signed by the client;

(h) Consistent failure to conduct the required urine drug screening procedures on all drugs listed in Section 6(7) of this administrative regulation;

(i) Failure to comply with Section 8(5) of this administrative regulation; and

(j) Revocation of licensure pursuant to 908 KAR 1:150 through 1:260.

(8) The SNA shall notify the FDA monitor, DEA, and the Department for Health Services Office of Drug Control at the time revocation or suspension is taken in accordance with subsection (4) of this section.

(9) Except in cases of emergencies affecting the health and safety of the client population or the community as a whole, an appeal shall stay any decision to suspend or revoke a license to operate pending final decision of the secretary.

Section 21. Appeals. If the SNA takes action to deny, suspend, or revoke a NTP license, the SNA shall notify the NTP in writing stating the reasons for the adverse actions and the NTP's right to appeal.

(1) If the NTP believes an action by the SNA is unfair, without reason, or unwarranted, the NTP may appeal the action in writing to the Secretary, Cabinet for Health Services, Fourth (4th) Floor, 275 East Main Street, Frankfort, Kentucky 40621, within fifteen (15) days after receipt of notice of action from the SNA.

(2) Upon receipt of the appeal, the secretary, or his designee, shall notify the NTP in writing within fifteen (15) days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(3) The hearing officer shall have authority to issue subpoenas to compel the attendance of witnesses and the production of documents to be used as evidence in hearings held pursuant to this section.

(4) Based upon the record and upon the information obtained at the hearing, the hearing officer shall affirm or overturn the initial decision of the negative action. The decision of the hearing officer shall be final. The NTP shall be notified in writing of the decision of the hearing officer.

(5) If a NTP, whose license has been suspended or revoked pursuant to Section 20(6) and (7) of this administrative regulation, requests a hearing, the cabinet shall conduct the hearing within five (5) working days of receipt of the request from the NTP. The hearing may be continued at the request of the NTP.

(a) The sole issue of the hearing shall be whether one (1) or more grounds for suspension or revocation create an immediate danger to the client population or the community as a whole.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, the NTP shall have its license returned and be allowed to operate pending action on other regulatory violations, if any.

(c) If the hearing officer decides within five (5) working days of the

close of the hearing that one (1) or more of the grounds for suspension or revocation create an immediate danger to the client population or the community as a whole, the license of the NTP shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

(6) If suspension or revocation of the license is upheld, the secretary's, or his designee's, notification shall specify the date by which the NTP shall close.

(7) A NTP that continues to operate after the closing date established by the secretary shall be subject to legal action by the cabinet as provided by law.

Section 22. [Material Incorporated by Reference. (1) "Consent to Treatment with an Approved Narcotic Drug" form FDA 2635 (7/93); "Report of Theft or Loss of Controlled Substances" form DEA 1305.12 (12/85); U.S. Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

Section 23.] Compliance for Currently Operating NTPs. NTPs currently operating at the time this administrative regulation becomes effective shall have ninety (90) days to come into compliance with this administrative regulation.

Section 23. Material Incorporated by Reference. (1) The following material is hereby incorporate by reference:

(a) Consent to Treatment with an Approved Narcotic Drug form FDA 2635 (7/93);

(b) Report of Theft or Loss of Controlled Substances form DEA 1305.12 (12/85); US Official Order Forms-Schedules I & II DEA form 222 (10/92) are hereby incorporated by reference.

(2) Copies of the incorporated material may be inspected, copied or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601, 8 a.m. through 4:30 p.m., Monday through Friday.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 1, 1998

FILED WITH LRC: September 15, 1998 at noon

CABINET FOR HEALTH SERVICES **Department for Mental Health/Mental Retardation Services** **(As Amended at ARRS, November 10, 1998)**

908 KAR 2:210. Domestic violence offender treatment certification standards.

RELATES TO: KRS 403.715 to 403.785
STATUTORY AUTHORITY: KRS 194A.030, 403.7505
NECESSITY, FUNCTION, AND CONFORMITY: KRS 403.7505 authorizes the Cabinet for **Health Services** [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 training in domestic violence including:

1. Characteristics and dynamics of domestic violence;

2. Clinical profiling of domestic violence offenders;

3. Risk assessment and lethality of domestic violence offenders;

4. Treatment of offenders;

5. Effective services for victims and child witnesses of domestic violence;

6. Safety planning for victims; and

7. Criminal sanctions for domestic violence and legal remedies for victims.

(c) Four (4) years of full-time postbachelors degree work experience totaling at least 8000 hours that may include general clinical experience and direct-case experience related to domestic violence;

(d) Being a party to a written agreement to receive the supervision required by Section 5(2) of this administrative regulation; and

(e) Written recommendations for certification from representatives of two (2) victims advocate agencies.

(2) The qualifications of an autonomous provider are:

(a) An advanced degree from an accredited university or college in a mental health discipline that is regulated by licensure or certification under the statutes of the Commonwealth of Kentucky; and

(b) Possession of a certificate or license to practice under the laws of the Commonwealth of Kentucky in one (1) of the following disciplines:

1. Psychology;

2. Social work;

3. Medicine if board eligible in psychiatry and neurology;

4. Psychiatric nursing;

5. Marriage and family therapy;

6. Professional counseling; or

7. Art therapy; and

(c) 150 hours of clinical experience providing domestic violence services under the direct supervision of one (1) of the licensed or certified professionals specified in paragraph (b) of this subsection of which eighty (80) percent of the time shall have been with offenders and twenty (20) percent with victims; and

(d) Completion of the training specified in subsection (1)(b) of this section; and

(e) A written recommendation for certification from the professional that provided the supervision required by paragraph (c) of this subsection; and

(f) Written recommendations for certification from representatives of two (2) victims advocate agencies.

Section 5. Scope of Practice and Supervision Requirements. (1) An associate provider may under the supervision of an autonomous provider:

(a) Screen, assess, plan and provide treatment services under the supervision of an autonomous provider to offenders and clients of a program; and

(b) Consult with the courts, prosecutors, law enforcement, other agencies, mental health providers and others regarding the assessment or treatment needs of clients; and

(c) Have contact with the victims of offenders who are clients of the program.

(2) An associate provider that provides the services specified in subsection (1) of this section shall participate in at least one (1) hour per week of face-to-face supervision including case discussion, review of reading assignments, skill building, and review of audio or video tapes of actual clinical practice provided by the associate provider.

(3) A certified autonomous provider may provide screening, assessment, treatment and consultation services independently and supervise associate providers if he has:

(a) Participated in a three (3) hour training program in clinical supervision that has been approved by a mental health licensing board or by the cabinet; and

(b) Been in the practice of domestic violence offender treatment for a period of at least one (1) year.

(4) A certified autonomous provider who supervises associate providers shall:

(a) Provide supervisees the supervision required by subsection (2) of this section; and

(b) Directly observe the supervisees' practice in person or through video or audio tapes of the supervisees' clinical practice; and

(c) Assure that supervisees provide services in accordance with all the provisions of this administrative regulation.

(5) A supervisor shall not supervise more than six (6) associate providers concurrently.

Section 6. General Service Standards. (1) Services provided to offenders referred by a court for domestic violence services shall be based on the following premises regarding violent conduct, the roles of offenders, and the effects of domestic violence on victims:

(a) Domestic violence constitutes a health hazard to victims who may experience short and long-term effects from the abuse. Immediate and long-term cessation of the domestic violence is the priority purpose for treatment.

(b) Domestic violence in its various forms is criminal behavior.

(c) Services shall be designed to enhance and promote the safety of identified and identifiable victims including spouses, live-in partners, children and other family members.

(d) Victims are not responsible for the violent behavior of offenders and services shall not promote the concept of mutual responsibility in explaining domestic violence.

(e) The offender is accountable for domestic violence, which is the product of individual choice and learned traits. The offender's psychopathology, substance abuse, other disorders, or cultural background are not explanatory causes of the offenses but can influence the offender's behavior.

(f) Cooperation and service coordination between law enforcement, the courts, probation and parole agencies, the Department for Social Services, spouse abuse centers and other victim advocates,

chemical dependency professionals, and other mental health professionals is necessary to assure effective treatment and the safety of victims and potential victims.

(2) A provider shall give each offender or client a written document that explains the complaint process of the program.

(3) A provider shall treat offenders with respect and dignity at all times and shall not discriminate against an offender based on race, ethnicity, gender, age, religion or disability.

(4) An offender shall have the right to complain verbally or in writing to the provider, the referring court, or the cabinet and a provider shall not take any adverse action against an offender that makes a complaint.

(5) A provider shall adjust fees based upon the client's ability to pay. If a court has made a finding prior to making a referral for treatment that a client is indigent, a court may order a client to perform community service in lieu of payment of a fee.

(6) A provider shall comply with any and all federal laws pertaining to research with human subjects and shall protect the privacy of any clients who give consent to participate in any provider sponsored research activities.

(7) The provider shall provide clean and comfortable facilities for client services that meet applicable fire safety codes and handicapped accessibility codes.

(8) The provider shall comply with all federal and state laws applicable to the confidentiality of client records.

Section 7. Contact with Victims. (1) If an offender consents to a victim's participation in assessment or treatment services a provider shall:

(a) Attempt to contact the victim within five (5) days of the offender's admission to the program; and

(b) Offer the victim an opportunity to participate in the assessment or treatment of the offender by disclosing information about the offender and the circumstances of the violence; and

(c) Interview victims who consent to participate in an assessment of the offender; and

(d) Provide the victim information about the program, its possible benefits, the limitations of services, and the degree to which the offender's participation may or may not result in increased safety for the victim; and

(e) Educate the victim about community services, which are available to assist in meeting current or future protection needs of the victim and family members.

(2) Providers shall document their efforts to contact victims.

(3) Victim interviews shall not be conducted in the presence of the offender.

(4) If a victim does not consent to participate, or withdraws consent to participate, or refuses to participate or provide information, a provider shall not attempt to coerce or persuade the victim to participate.

Section 8. Screening Procedures. (1) A provider shall establish:

(a) Eligibility criteria which may include an offender's admission of responsibility for a domestic violence related offense and may not be based solely on an offender's inability to pay for services; and

(b) Procedures for acceptance of referrals of offenders from a court following charges of a domestic violence related offense or as a condition of a protective order issued pursuant to KRS Chapter 403; and

(c) Notification of the referring court if an offender is determined not to be eligible for a provider's services including the reasons therefore and any referrals made in accordance with Section 9(2) of this administrative regulation no later than five (5) days after the decision.

(2) An offender shall be provided with all of the following information prior to receiving assessment or treatment services:

(a) The limitations on confidentiality including the duties of providers to warn and protect intended victims of threats to harm under the provisions of KRS 202A.400, 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 includ-

ing 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~~

~~(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

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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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(Amended After Hearing)

11 KAR 8:030. Teacher scholarships.

RELATES TO: KRS 164.744(2), 164.753(3), 164.769[(5), (6)(f)]

STATUTORY AUTHORITY: KRS 164.748(4), 164.753(3), 164.769(5), (6)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) requires the Kentucky Higher Education Assistance Authority to promulgate administrative regulations pertaining to [prescribes certain] standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarships, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation establishes [delineates] selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the program. ~~[This amendment is necessary to reflect changes in the program made by SB 152 enacted in the 1996 Regular Session of the General Assembly.]~~

Section 1. Definitions. ~~[As used in this administrative regulation, the terms listed below shall have the following meanings:]~~ (1) "Authority" is defined in KRS 164.740(1).

(2) ~~[The definition of]~~ "Critical shortage area" is defined in ~~[governed by]~~ KRS 164.769(2)(a).

(3) ~~[(2) The definition of]~~ "Eligible program of study" is defined in ~~[governed by]~~ KRS 164.769(2)(b).

(4) ~~[(3) The definition of]~~ "Expected family contribution" is defined in ~~[governed by]~~ KRS 164.769(2)(c).

(5) ~~[(4) The definition of]~~ "Participating institution" is defined in ~~[governed by]~~ KRS 164.769(2)(d).

(6) ~~[(5)]~~ "Public school" means the common schools of the Commonwealth providing preschool, elementary, middle school, and secondary instruction.

(7) ~~[(6) The definition of]~~ "Qualified teaching service" is defined in ~~[governed by]~~ KRS 164.769(2)(e).

(8) ~~[(7) The definition of]~~ "Semester" is defined in ~~[governed by]~~ KRS 164.769(2)(f).

(9) ~~[(8) The definition of]~~ "Summer term" is defined in ~~[governed by]~~ KRS 164.769(2)(g).

(10) ~~[(9)]~~ "Teaching" means performing classroom instruction in a position for which teacher certification is a prerequisite to perform such instruction.

Section 2. Eligibility of Renewal Applicants and Selection Process.

(1) Eligibility of renewal applicants. A person [Persons] who previously received a loan or scholarship [loans or scholarships] pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 prior to July 15, 1996 shall be eligible to apply for and be awarded a renewal teacher scholarship without consideration of expected family contribution if, at the time of application and disbursement, the renewal applicant has made satisfactory progress toward completion of the eligible program of study in accordance with standards prescribed by the participating institution.

(2) After awards are made to qualified renewal applicants, applicants shall be considered and teacher scholarships shall be awarded to recipients in the following order until funds are depleted:

(a) Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been unconditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.

~~(b) [Initial applicants who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 and have been conditionally admitted to a teacher education program shall be ranked in ascending order by expected family contribution.]~~

~~(c) [Initial applicants who have not yet been admitted to a teacher education program but who meet the standards and requirements established by the Education Professional Standards Board pursuant to KRS 161.028 for admission to a teacher education program shall be ranked in ascending order by expected family contribution.]~~

~~(c) [(d)]~~ Otherwise eligible initial applicants seeking admission to a teacher education program shall be ranked in ascending order by expected family contribution.

Section 3. Award Maximums. (1) The maximum teacher scholarship award for a student classified as a junior, senior, postbaccalaureate, or graduate shall be \$1,250 for a summer session, \$2,500 for a semester, and \$5,000 for an academic year (exclusive of a summer session).

(2) The maximum teacher scholarship award for a student classified as a freshman or sophomore student shall be \$325 for a summer session, \$625 for a semester, and \$1,250 for an academic year (exclusive of a summer session).

(3) The maximum award [Awards] to an eligible student [students] enrolled less than full time in the semester or summer term in which the eligible program of study will be completed shall be:

(a) [a maximum of] \$210 per credit [semester] hour if the student is enrolled during a regular semester; or

(b) \$105 per credit hour if the student is enrolled in a summer term.

Section 4. Disbursements. Disbursement of a teacher scholarship [scholarships] shall be made at the beginning of each semester or summer session and each disbursement shall be evidenced by a promissory note, prescribed by the authority, in which the scholarship recipient shall agree to repay the scholarship funds or render qualified teaching service in lieu thereof.

Section 5. Cancellation. (1) A recipient rendering qualified teaching service in a designated critical shortage area shall remain eligible for the critical shortage credit provided by KRS 164.769(6)(c) if:

(a) The authority determines that an area is no longer a critical shortage area; and

(b) The recipient continues to render qualified teaching service in the area.

(2) A recipient who received a teacher scholarship prior to July 15, 1996, in return for agreeing to obtain the appropriate recertification and to teach in a critical shortage area upon completion of the recertification program shall receive cancellation of the repayment obligation if the recipient renders qualified teaching service in that area or in another critical shortage area.

(3) If a recipient has received loans or scholarships from more than one (1) program administered by the authority, which require a period of qualified teaching service for repayment or cancellation, the teaching requirements shall not be fulfilled concurrently. Unless the authority determines otherwise for cause, loans or scholarships from more than one (1) program shall be repaid or cancelled by qualified teaching service in the same order in which they were received. If a recipient has received a loan or scholarship pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 during the same semester as receiving a scholarship pursuant to KRS 161.165, the loan or scholarship received pursuant to KRS 156.611, 156.613, 164.768, 164.769 or 164.770 shall be repaid or cancelled by qualified teaching service prior to the scholarship received pursuant to KRS 161.165.

(4) Verification of qualified teaching service shall be submitted to the authority in writing, signed by the local school district superintendent or building principal.

Section 6. Repayment. (1) A recipient [Recipients] failing to attain certification after completion of the eligible program of study or to commence rendering qualified teaching service within the six (6) month period following completion of the eligible program of study shall immediately become liable to the authority to pay the sum of all promissory notes and accrued interest thereon, unless the authority[; in its sole discretion,] grants a deferment for cause.

(2) The interest rate applicable to repayment of a teacher scholarship under this section shall be twelve (12) percent per annum.

Section 7. Notifications. A recipient [Recipients] shall notify the authority within thirty (30) days of:

- (1) Change in enrollment status;
- (2) Cessation of full-time enrollment in an eligible program of study;
- (3) Employment in a qualified teaching service position; or
- (4) Change of name or address.

Section 8. Repayment Schedule. Written notification of demand for repayment shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing. The authority may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule established by the authority. Payments shall first be applied to interest and then to principal on the earliest unpaid promissory note.

Section 9. Records. A participating institution shall maintain complete and accurate records pertaining to the eligibility, enrollment and progress of each student [students] receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The institution's records shall be maintained for at least five (5) years after the student ceases to be enrolled at the institution.

Section 10. Refunds. A participating institution shall refund to the authority, within forty (40) days of a recipient's last date of attendance, any amount attributable to this program which is determined to be due under the institution's published refund policy.

Section 11. Information Dissemination and Recruitment. The authority shall disseminate information through high school principals, counselors, and school superintendents about this program to potential recipients. The participating institution [institutions] shall provide assurances that program information will be disseminated to students enrolled at the institution [their institutions]. The participating institution [institutions] shall actively recruit students from minority population groups for participation in this program.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: November 5, 1998 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This administrative regulation delineates selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to scholarships provided under the Teacher Scholarship Program. During FY 1998 a total of 114 initial scholarships and 236 renewal scholarships were awarded to applicants under the Teacher Scholarship Program for a total dollar amount of \$1,608,000.00. It is anticipated that during FY 1999 there will be 358 initial and 130 renewal scholarships awarded under this program, for a total dollar amount of \$1,671,100.00.

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

(a) Cost of Living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be minimal savings to the public. This administrative regulation only delineates selection criteria, disbursement procedures, cancellation of repayment procedures and repayment obligations related to

scholarships provided under the Teacher Scholarship Program. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend participating institutions of postsecondary education and plan to teach in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The proposed amendment to this administrative regulation will have no effect on the cost of doing business for any entity.

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

1. First year following implementation: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. The proposed amendment will not affect the compliance, reporting and paperwork requirements for the public, the institutions of higher learning or the authority.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. It is anticipated that there will be no indirect or direct costs or savings to the authority, because there is no change in the aggregate maximum that a student may receive for the entire program of study and there are no changes in the compliance, reporting and paperwork requirements.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The proposed amendment to this administrative regulation will have no effect on the reporting and paperwork requirements of the public, the institutions of higher learning, or the authority.

(4) Assessment of anticipated effect on state and local revenues: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. There is no change in the aggregate maximum that a student may receive for the entire program of study. There will be no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The revenue for the implementation and enforcement of this administrative regulation is provided by three sources: the General Fund, Special Deposit Trust Fund, consisting of money collected from previous recipients, and net lottery proceeds transferred from a Student Financial Aid and Advancement Fund.

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

(a) Geographical area in which administrative regulation will be implemented: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. It is anticipated that there will be no economic impact as the result of the proposed amendment to this administrative regulation.

(b) Kentucky: The proposed amendment to this administrative regulation only sets forth the maximum scholarship award for an academic year based on the student's classification. It is anticipated that there will be no economic impact as the result of the proposed amendment to this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the maximum scholarship award for an academic year were considered. The proposed amendment to this administrative regulation is necessary since the aggregate maximum scholarship award for undergraduates is \$12,500.00 and freshmen and sophomores would exhaust funding before completing the teacher education program if allowed to borrow up to \$5,000.00 each year.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

There is no effect on public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect on public health and environmental welfare.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: Based upon public comment it has been determined that Section 2(2)(b) of the administrative regulation, which relates to a category of teacher scholarship applicants that have been conditionally admitted to teacher education programs, is in conflict with the Education Professional Standards Board's (EPSB's) regulation 704 KAR 20:700, Standards for admission to teacher education. Conditional admission is no longer an option for students and participating educational institutions.

(a) Necessity of proposed regulation if in conflict: Section 2(2)(b) of the administrative regulation, which relates to a category of teacher scholarship applicants that have been conditionally admitted to teacher education programs, has been determined to be unnecessary and is being deleted.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Section 2(2)(b) of the administrative regulation, which relates to a category of teacher scholarship applicants that have been conditionally admitted to teacher education programs, has been determined to be unnecessary. Accordingly, the administrative regulation has been changed as follows: Section 2(2)(b) is deleted and paragraphs (c) and (d) of that subsection are renumbered as paragraphs (b) and (c) respectively.

(10) Any additional information or comments: The proposed amendment to Section 3(1) of this administrative regulation will retain maximum scholarship awards of \$5,000 (exclusive of a summer session) for an academic year, \$2,500 for a semester and \$1,250 for a summer session for students classified as a junior, senior, post-baccalaureate, or graduate student and will establish separate limits of \$1,250 (exclusive of a summer session) for an academic year, \$625 for a semester, and \$325 for a summer session for students classified as a freshman or sophomore. This amendment is a necessary change since the aggregate maximum for undergraduate is \$12,500 and freshman and sophomores would exhaust funding before completing the teacher education program if allowed to borrow up to \$5,000 each year.

(11) Tiering: Was tiering applied? No. This administrative regulation prescribes uniform procedures for administration of the Teacher Scholarship program. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the authority. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance
(Amended After Hearing)

806 KAR 17:180. Standard health benefit plan and comparison format.

RELATES TO: 1998 Ky. Acts ch. 496, secs. 2 -7, 18, 49

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 496, secs. 7(1), 7(a)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 496, sec. 7(1) mandates the commissioner to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets after June 30, 1998. 1998 Ky. Acts ch. 496, sec. 7(7)(a) requires the commissioner to prescribe a standard format for comparison of the standard plan benefits to other offered comparable plans. 1998 Ky. Acts ch. 496, sec. 7(7)(a) requires that the benefit comparison format include style, arrangement, overall appearance, and content of the benefit comparisons.

Section 1. Definitions. (1) "FFS" means a fee-for-service product type.

(2) "HMO" means a health maintenance organization product type.

(3) "POS" means a point-of-service product type.

(4) "PPO" means a preferred provider organization product type.

(5) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders established by the Department of Insurance and the Health Insurance Advisory Council in accordance with 1998 Ky. Acts ch. 496, sec. 7 and any other health insurance benefit established by the General Assembly.

Section 2. Standard Benefits Comparison Format. (1) At the time of initial solicitation of health insurance coverage in the individual or nonemployer small group markets, the person soliciting the product shall complete and deliver a benefit comparison form applicable to the product being solicited as follows:

(a) A FFS health benefit plan shall be compared to the FFS standard benefit plan by using the Fee-for-Service Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(b) A HMO health benefit plan shall be compared to the HMO standard benefit plan by using the HMO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(c) A POS health benefit plan shall be compared to the POS standard benefit plan by using the POS Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(d) A PPO health benefit plan shall be compared to the PPO standard benefit plan by using the PPO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(2) An insurer shall produce each form required by subsection (1) of this section and supply each form to each person who solicits health insurance coverage for the insurer in the individual and non-employer small group markets.

(3) In lieu of using a form required by subsection (1) of this section, an insurer may use a form that is substantially similar to a comparison form incorporated by reference into this administrative regulation. An insurer may modify a benefit comparison form required by subsection (1) of this section in a manner that will:

(a) Provide additional comparative information;

(b) Compare multiple health benefit plans; or

(c) Disclose that a sample premium comparison is shown on the benefit comparison form and inform the prospective applicant that a specific premium [comparison] will be provided upon receipt of the information necessary to generate an accurate comparison.

(4)(a) For each product type listed in subsection (1) of this section, the person soliciting health insurance coverage shall compare the standard health benefit plan exclusions to the exclusions in the health benefit plan being solicited by using the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions", which is incorporated by reference into this administrative regulation. In lieu of using the exclusion comparison form incorporated by reference, the insurer may use a form that is substantially similar to the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions."

(b) With respect to the exclusions comparison form required pursuant to subsection (4) [(+)](a) of this section, the person soliciting health insurance coverage shall:

1. Witness the signature of the prospective applicant on the exclusions comparison form;

2. Sign the exclusions comparison form;

3. Date the exclusions comparison form as of the date of solicitation; and

4. Attach the exclusions comparison form to the applicable product comparison form completed pursuant to subsection (1) of this section.

(c) The person soliciting health insurance coverage shall deliver a copy of each completed benefit comparison form, together with a copy of the completed and signed exclusions comparison form, to the prospective applicant and to the insurer whose product is being

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solicited.

(d) Paragraph (b) of this subsection shall not apply to a direct response solicitation. The exclusions comparison form for a direct response solicitation shall be presented to the prospective applicant in accordance with 1998 Ky. Acts ch. 496, sec. 7(7)(a)3.

(5) A benefit comparison form shall not be required if an insurer is marketing only the standard health benefit plan.

Section 3. Modification Process. (1) The standard health benefit plan and each comparison form shall remain in effect until July 15, 1999, and thereafter until such time as the plan or any form is modified in accordance with the procedures established by this section.

(2) The standard health benefit plan and each comparison form may be modified each successive year after July 15, 1999. Each modification shall apply to each policy or certificate issued or renewed on or after July 15 of each year.

(3) Any interested person wishing to make a recommendation for modification of the standard plan shall:

(a) Submit their recommendation, in writing, to the Kentucky Department of Insurance, Division of Life and Health, by November 30 of the year preceding the year in which each modification is recommended for implementation.

(b) Explain the need for each recommended modification.

(c) Provide a statement regarding the cost effect of each recommended modification.

(4) Within a reasonable time after November 30 of each year:

(a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration; and

(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with 1998 Ky. Acts ch. 496, sec. 49;

(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a health benefit plan shall:

(a) Implement each modification to the standard health benefit plan and each benefit comparison form prescribed by the department; and

(b) Amend each policy form and rate filing to include every modification to the standard health benefit plan and each benefit comparison form.

(c) Complete and attach Form LH-35, "Health Benefit Plan Summary Sheet - Form Filings" to each health benefit plan filed with the department.

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

(a) "Fee-for-Service Health Benefit Plan Comparison Form (1998 Edition)";

(b) "HMO Health Benefit Plan Comparison (1998 Edition)";

(c) "POS Health Benefit Plan Comparison Form (1998 Edition)";

(d) "PPO Health Benefit Plan Comparison Form (1998 Edition)";

(e) "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions (1998 Edition)";

(f) Form LH-35, "Health Benefit Plan Summary Sheet - Form Filings (1998 Edition)."

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: November 4, 1998

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This administrative regulation will also affect those who solicit health insurance coverage in the individual and small group markets. Currently, there are approximately 29,000 agents who are authorized to solicit health insurance coverage in the state of Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: According to those who offered comments at the public hearing, it would be costly for insurers to present two premium comparisons to each prospective applicant. The department responded by amending the administrative regulation to eliminate the necessity of presenting a premium comparison when the proper premium amount has been finally determined. Instead, the insurer need only to inform the prospective applicant of the proper premium amount. No second premium comparison will be required. This will result in a cost savings to insurers.

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

1. First year following implementation: This administrative regulation will require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Lastly, insurers will be required complete and attach Form LH-35 to each health benefit plan filed with the department.

2. Second and subsequent years: The paperwork requirements for the first year following implementation of this administrative regulation will continue for the second and subsequent years. In addition, insurers may be required to amend policy forms and rate filings to comply with any modifications to the standard health benefit plan and the benefit comparison forms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will require the department to collect and review recommendations for additions, deletions, or corrections to the standard health benefit plan and the benefits comparison format. The department will be required to either accept or decline the recommended modifications to the plan and comparison forms. The department anticipates that the cost of this review will be minimal.

2. Continuing costs or savings: The department will be required to review recommended modifications to the standard plan and comparison forms on an annual basis.

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: The department currently receives and reviews health benefit plan form filings submitted by insurers. Form LH-35, which is required by this administrative regulation, will assist the department in this review. Also, beginning in the year 1999 and every year thereafter, the standard health benefit plan may be modified. With the assistance of the Health Insurance Advisory Council, the department will review recommendations for modification of the standard health benefit plan and either accept or decline to implement the recommendations in writing.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 Ky. Acts ch. 496 requires the department to promulgate an administrative regulation that establishes the standard health benefit plan and the format for the comparison of health plan benefits. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will assure that consumers of health insurance coverage in the state of Kentucky are informed about the benefits contained in the standard health benefit plan as opposed to the benefits in other comparable plans offered by insurers. In addition, this administrative regulation provides a process for modifying the standard health benefit plan and the format for the comparison of benefits and exclusions.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect of public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented there would be no uniform comparison benefit form that the consumers of health insurance coverage could utilize to compare the standard health benefit plan and other health benefit plans being offered. As a result, there would be fewer informed decisions with regards to the purchase of health insurance coverage in the state of Kentucky. Also, if this administrative regulation were not implemented there would be no procedures specified for modifying the standard health benefit plan.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that issue, deliver, or renew health benefit plans in Kentucky. Neither is tiering applied with respect to persons soliciting health insurance coverage since this administrative regulation applies to all persons soliciting health insurance coverage to individuals or non-employer small groups in Kentucky.

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(Amended After Hearing)

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

RELATES TO: KRS 100.324(1), (5), 100.985, 100.987, 278.020, 278.650, 278.665, 278.660 [1998 Ky. Acts ch. 231]

STATUTORY AUTHORITY: KRS 278.020(1), 278.040(3), 278.280(1), 278.650, 278.665 [1998 Ky. Acts ch. 231 sec. 4]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.665 [1998 Ky. Acts ch. 231, sec. 4] requires the commission to promulgate administrative regulations to establish the contents of a

uniform application to construct an antenna tower for cellular communications services or personal communications services in a jurisdiction that has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, except for a county that contains a city of the first class. KRS 278.280(1) authorizes the commission to establish proper practices to be observed in regard to the facilities of a utility. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.650 prescribes procedures to be followed for a proposal to construct an antenna tower for cellular telecommunications services or personal communications services in a county containing a city of the first class which differ from those to be followed for a proposal to construct an antenna tower for cellular telecommunications services or personal communications services outside a county containing a city of the first class. This administrative regulation prescribes filing requirements and procedures to be followed in applying for a certificate of public convenience and necessity to construct a telecommunications antenna tower for cellular telecommunications services or personal communications services.

Section 1. (1) To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in an area which is not within a county containing [a county which does not contain] a city of the first class and which is not within a jurisdiction that has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100, shall file with the Public Service Commission the following information:

(a) All documents and information required by 807 KAR 5:001, Section[s] 8, except that the applicant shall file with the commission the original and five (5) copies of the application, and 807 KAR 5:001, Section 9(2)(a), (b), (c), (d) and (g);

(b) A copy of the utility's applications to the Federal Aviation Administration and Kentucky Airport Zoning Commission and written authorizations from these agencies as soon as they are available;

(c) A copy of the utility's application to, and authorization from, the Federal Communications Commission, if applicable;

(d) A geotechnical investigation report, signed and sealed by a professional engineer registered in Kentucky, that includes boring logs, foundation design recommendations, and a finding as to the proximity of the proposed site to flood hazard areas except that the utility may file findings prepared by a land surveyor as to the proximity of the proposed site to flood hazard areas;

(e) Clear directions from the county seat to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions;

(f) The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, utility may file a copy of the agreement as recorded by the county clerk and, if applicable, the portion of the agreement demonstrating compliance with KRS 100.987(2)(b);

(g) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower;

(h) A site development plan or survey, signed and sealed by a professional engineer registered in Kentucky, that shows the proposed location of the tower and all easements and existing structures within 500 feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within 200 feet of the access drive, including the intersection with the public street system;

(i) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas;

(j) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed and sealed by a professional engineer registered in Kentucky;

(k) A map, drawn to a scale no less than one (1) inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower;

(l) A statement that every person who, according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower has been:

1. Notified by certified mail, return receipt requested, of the pro-

posed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of his right to request intervention;

(m) A list of the property owners who received the notice, together with copies of the certified letters sent to listed property owners;

(n) A statement that the [local planning unit or, if none, the] county judge executive[;] has been:

1. Notified by certified mail, return receipt requested, of the proposed construction;

2. Given the commission docket number under which the application will be processed; and

3. Informed of [its; or] his[;] right to request intervention;

(o) A copy of the notice sent to the [local planning unit or, if none, to the] county judge executive;

(p) A statement that:

1. Two (2) written notices meeting the requirements of subsection (2) of this section have been posted, one (1) in a visible location on the proposed site and one (1) on the nearest public road; and

2. The notices shall remain posted for at least two (2) weeks after the application has been filed;

(q) A statement that notice of the location of the proposed construction has been published in a newspaper of general circulation in the county in which the construction is proposed.

(r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the [zoning classification and] existing land use for the specific property involved; [and]

(s) A statement that the utility has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to colocate, including documentation of attempts to colocate, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the utility attempted to colocate on towers designed to host multiple wireless service providers' facilities or existing structures, such as a telecommunications tower, or another suitable structure capable of supporting the utility's facilities; and

(t) A map of the area in which the tower is proposed to be located, that is drawn to scale and that clearly depicts the necessary search area within which a site should, pursuant to radio frequency requirements, be located.

(2)(a) The notices required by subsection (1)(p) of this section shall:

1. Be, at least two (2) feet by four (4) feet in size; and

2. Except as provided by paragraph (b) of this subsection, state: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") on this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(b) The notice posted on the nearest public road shall state: "(Name of utility) proposes to construct a telecommunications ("tower" or "monopole") near this site. If you have questions, please contact (name and address of utility) or the Executive Director, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602. Please refer to (assigned docket number) in your correspondence."

(c) In both posted notices, the word "tower" or "monopole" shall be printed in letters at least four (4) inches high.

Section 2. To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in a county containing a city of the first class shall file with the Public Service Commission the following information:

(1) All documents and information required by Section 1(1)(a) through (m), (p), and (q) of this administrative regulation, except that in public notices required by Section 1(1)(l), (p), and (q), the utility shall include the following sentence: "The Public Service Commission in its review of the proposed construction shall not consider the character of the general area concerned or the likely effects of the installation on

nearby land uses and values, as these matters are decided by the local planning unit";

(2) A statement that the proposal has been submitted to the planning commission of the affected planning unit, the date upon which the proposal was submitted, and a copy of all documents submitted to the planning commission;

(3)(a) If the planning commission has made its decision regarding the proposal, a copy of the final decision of the planning commission; or

(b) If the planning commission has not made its decision and sixty (60) days have passed since the submission of the proposal, a statement that:

1. Sixty (60) days have passed since submission of the proposal to the planning commission; and

2. The planning commission has not taken final action in regard to the proposal;

(4) A statement that a copy of the statement submitted pursuant to subsection (3)(b) of this subsection has been sent to the affected planning commission.

Section 3. If the planning commission rejects a proposal to construct a telecommunications antenna tower in a county containing a city of the first class, and the utility wishes to request the commission to override the decision of the planning commission, the utility shall file a statement that there is no acceptable alternative site, together with supporting evidence that includes an affidavit or other documentation regarding attempts by the utility to secure an alternative site to provide service to the area. A copy of the statement with supporting documentation shall also be sent to the affected planning commission and to those persons who, according to the records of the affected planning commission, submitted testimony to the planning commission during its review of the proposed facility.

Section 4. To apply for a certificate of public convenience and necessity, a utility proposing to construct a telecommunications antenna tower in a jurisdiction which is not within a county containing a city of the first class and which has adopted planning and zoning administrative regulations in accordance with KRS Chapter 100 shall file with the Public Service Commission the following information:

(1) All documents and information required by Section 1(1)(a) through (m) and (p) through (t) of this administrative regulation, except that:

(a) In public notices required by Section 1(1)(p) and (q), the utility shall include the following sentences: "You may also contact your local planning commission. The Public Service Commission in its review of the proposed construction shall not consider the character of the general area concerned or the likely effects of the installation on nearby land uses and values if the local planning commission conducts a review of the proposed construction."; and

(b) No copies in addition to the original application shall be filed.

(2) All documents and information required by 1998 Ky. Acts ch. 231, sec. 2(2);

(3) A statement that:

(a) The planning commission in whose jurisdiction the construction is proposed has not officially registered a resolution to plan for and regulate the siting of antenna towers and has been sent notice as prescribed in Section 1(1)(n) of this administrative regulation; or

(b) The planning commission in whose jurisdiction the construction is proposed has officially registered its resolution to plan for and regulate the siting of antenna towers, and a copy of the completed uniform application shall be submitted to the planning commission of the affected planning unit no later than five (5) days after the date the application is submitted to the Public Service Commission.

Section 5. (1) An application or an update to an application filed under Section 4 of this administrative regulation shall be entitled "Uniform Application: Confidential and Proprietary", and the title shall be printed beneath the case caption on the first page of the document in bold face type that is at least as large as any other type appearing on the document.

(2) The initial filing of a uniform application shall include an original and five (5) copies of an additional page which is labeled, in

bold face type, "For the Public Record", and which contains the case caption and states the specific location of the proposed construction.

Section 6. A utility planning to colocate its antennas on an existing structure or to augment an existing structure to enable it to place its antennas on that structure shall file with the Executive Director and the Engineering Division of the Public Service Commission written notices of its intent to do so, including the name and address of the utility filing the notice, the name of the owner of the structure, the latitude and longitude of the structure, and a description of the plan to augment or co-locate, rather than an application, if:

(1) The proposed augmentation, if any, of the existing structure shall not increase the height of the structure more than fifty (50) percent; and

(2) The proposed augmentation, if any, of the existing structure will not result in altering lighting requirements for a structure on which lighting is not currently required. [currently applicable to the structure.]

B.J. HELTON, Chairman

LAURA DOUGLAS, Secretary

DEBORAH T. EVERSOLE, Attorney

APPROVED BY AGENCY: November 12, 1998

FILED WITH LRC: November 12, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

(1) Type and number of entities affected: 26 facilities-based cellular and personal communications utilities currently operate in Kentucky and will be affected by the proposed regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this issue were received. However, no impact of this nature is expected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impact of this nature is expected beyond that which is necessitated by the new statutory requirement of additional proceedings before planning commissions.

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

1. First year following implementation: Little, if any, increase in the cost of compliance, reporting, and paperwork requirements is expected beyond that necessitated by the new statutory requirement that utilities proposing to construct wireless telecommunications facilities file with planning commissions as well as with the Public Service Commission.

2. Second and subsequent years: See answer to (2)(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings to the commission are expected. Regulation of tower siting will continue to be handled in the ordinary course of business.

2. Continuing costs or savings: See answer to (3)(a)(1) above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required to enforce or implement this regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No economic effect on any geographical area is expected.

(b) Kentucky: No public comments were received. However, no

economic effect on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of fulfilling the commission's statutory mandate that have been proposed include, on the one hand, additional filing requirements and procedures which would constitute additional burdens on applicants that do not appear to be justified. On the other hand, some commenters stated they believe no additional requirements at all should be added to the current administrative regulation. The commission concluded that the amendments it will propose are the fewest and least burdensome possible to fulfill statutory requirements and to enable the affected planning commissions, as well as the commission, to review in a timely manner relevant issues, particularly co-location and assessment of potential alternative sites. The commission has rejected the suggestion that it require only notice, rather than an application, when a utility plans to dismantle an existing tower and construct a new one in its place, or when a utility proposed to add new lighting to a previously unlit tower. The applicable statutes require the commission to conduct a review of "construction" of a tower, and contain no exception for situations where construction would follow dismantling of a tower currently on the same site. In addition, experience in conducting proceedings on tower applications demonstrates that nearby property owners may object to a lit tower, considering unlit towers much less obtrusive. Similarly, the commission has rejected the suggestion that it should not hold a hearing if a planning commission has approved a site. While the commission is concerned only with service and safety issues after planning commission approval, persons aggrieved by a planning commission decision have a statutory right to intervene in commission proceedings following the planning commission's decision. Accordingly, the law requires that these people be heard within appropriate parameters of review. The commission has rejected the suggestion that it impose, by regulation, a time limit on its own review. It is not always possible to predict the time necessary adequately to review an application of this nature. The number of applications on file at the commission at any given time is unpredictable, and the facts relevant to each application are very different. They must be considered on a case-by-case basis. The commission will, however, deal with each case as expeditiously as possible.

(8) Assessment of expected benefits: Information and documents submitted pursuant to the proposed regulation will assist the Public Service Commission and affected planning commissions in determining whether construction on a proposed site is appropriate and necessary. The additional information regarding the search area and documentation of co-location attempts, if any, will be particularly helpful. In addition, the notice only procedures for co-location on, or augmentation of, existing towers will encourage utilities to co-locate rather than construct new towers. Other changes will clarify necessary requirements and procedures.

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict, overlap, or duplication exists.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering has not been used because the size of the utility constructing a tower is not relevant to the considerations involved in determining whether construction at a proposed site is appropriate.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(Amended After Hearing)

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

RELATES TO: 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050 [194.050(+)],
 205.200(2), 42 USC 601 et seq., [1998 Ky. Acts ch. 426:] EO 98-
 731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive Kentucky Transitional Assistance Program (K-TAP) money grants be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare to Work Grant Program in accordance with 20 CFR Part 645.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Characteristics associated with long-term welfare dependence" means the following traits as defined in this section:

- (a) School dropout;
- (b) Teen parent [pregnancy];
- (c) Poor work history; or
- (d) Requires substance abuse treatment for employment.

(3) "Community service" means a work assignment with a public or private nonprofit agency, which provides a public service, and assists a participant to move promptly into regular public or private employment.

(4) "Has not completed secondary school" means an individual who has not graduated from high school or obtained a certificate of general equivalency, and has skills in reading or mathematics at the 8.9 grade level or below.

(5) "Job creation through wage subsidies" means the establishment of new jobs through the expansion of an existing industry, the introduction of a new industry, or the establishment of self-employment opportunities in a community, in which the wages of the participant who is placed in a newly created job are subsidized for a specific period of time.

(6) "Job placement" means placement of an individual into unsubsidized employment or into transitional employment opportunities which lead to lasting unsubsidized employment and self-sufficiency.

(7) "Job readiness" means preemployment preparation that familiarizes individuals with general work place expectations and appropriate work behavior. Preparation includes:

- (a) Self-assessment;
- (b) Motivation;
- (c) Communication;
- (d) Attitudes;
- (e) Conflict resolution;
- (f) Interviewing techniques;
- (g) Completion of employment application or resume;
- (h) Personal hygiene; and
- (i) Life skills.

(8) "Job retention" means services to assist individuals in retaining newly obtained employment. Job retention services may include:

- (a) Secondary support providers;
- (b) Life skills;
- (c) Parenting services;
- (d) Substance abuse treatment;
- (e) Support groups;
- (f) Assistance in locating and arranging:
 - 1. Child care; and
 - 2. Transportation services; and
- (g) Advocacy and mediation in client and employer conflicts.

(9) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR

2:006, Section 1;

(10) "Labor market deficiencies" means the following traits as defined in this section:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment; or
- (c) Poor work history.

(11) "Long-term recipient" means a recipient of K-TAP, or its predecessor Aid to Families with Dependent Children, for thirty (30) or more months or whose K-TAP benefits will terminate within twelve (12) months due to the twenty-four (24) month or sixty (60) month limit on receipt pursuant to 904 KAR 2:006, Section 19.

(12) "Medical substance abuse treatment" means hospital-based substance abuse treatments and methadone maintenance.

(13) "Noncustodial parent" means the mother or father of a dependent child not residing in the home with the child. In order to participate:

(a) The custodial parent or the minor child shall be a long-term recipient whose noncustodial parent has two (2) of three (3) labor market deficiencies; or

(b) The noncustodial parent personally possesses at least one (1) characteristic associated with long-term welfare dependence.

(14) "Nonmedical substance abuse treatment" means all treatments other than hospital based substance abuse treatments and methadone maintenance.

(15) "On-the-job training" means a participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(16) "Other services" means services deemed necessary by the case manager and not available from any other source in order for the Welfare to Work Grant Program participant:

- (a) To participate in a work activity; or
- (b) To obtain or retain employment.

(17) "Poor work history" means the individual has worked full time (thirty (30) hours or more per week) no more than three (3) consecutive months in the past twelve (12) calendar months.

(18) "Postemployment services" means services provided after a Welfare to Work Grant Program participant is placed in an employment activity or any other subsidized or unsubsidized job that include:

- (a) Basic educational training;
- (b) Occupational training;
- (c) English as a second language;
- (d) Referral to vocational rehabilitation; and
- (e) Mentoring.

(19) "Private Industry Council (PIC)" means a council established under 29 USC 1512.

(20) "Regular employee" means an unsubsidized employee of an employer who employs a Welfare to Work Grant Program participant.

(21) "Requires substance abuse treatment for employment" means a person for whom a community mental health center professional has performed a formal substance abuse assessment and recommended a treatment plan.

(22) "School dropout" means a person who is at least seventeen (17) years of age, has not achieved high school graduation or equivalency, and is not enrolled or has quit attending high school or equivalent training (other than a regular holiday or school break period).

(23) "Supportive services" means services that enable an individual to participate in a job readiness activity, an employment activity or to obtain and retain employment. Services include:

- (a) Child care;
- (b) Transportation;
- (c) Substance abuse treatment;
- (d) Emergency or short-term housing assistance;
- (e) Supplies or uniforms;
- (f) Items needed to participate in work activities; and
- (g) Referrals to other agencies for provision of services that

include:

- 1. Life skills;
- 2. Parenting;
- 3. Family counseling; and
- 4. Family stability.

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(24) "Teen parent [pregnancy]" means a person less than age twenty (20) who is currently pregnant or a person of any age who became a parent [gave birth] prior to age twenty (20).

(25) "Welfare to work" means a program which assists long-term welfare recipients with labor market deficiencies, welfare recipients who have characteristics associated with long-term welfare dependence, or noncustodial parents of welfare recipient children who are hard to employ become self-sufficient.

(26) "Work experience" means a work assignment with a public or private employing entity for a participant who needs assistance in becoming accustomed to basic work requirements and is designed to promote the development of good work habits and basic work skills for those who have never worked or who have been out of the labor force for an extended period of time.

Section 2. Program Participation. The Welfare to Work Grant Program shall target:

(1) A long-term welfare recipient with at least two (2) of three (3) labor market deficiencies which include:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment, or
- (c) Has a poor work history;

(2) A welfare recipient who has characteristics associated with long-term welfare dependence as defined in Section 1(2) of this administrative regulation.

(3) A noncustodial parent as defined in Section 1(13) of this administrative regulation. For a child born out-of-wedlock, the following is required in order for the noncustodial father to receive Welfare to Work Grant Program services:

- (a) Legal paternity; or
- (b) Administrative establishment of paternity pursuant to 904 KAR 2:006, Section 11.

Section 3. Allowable Activities. (1) Welfare to Work Grant Program funds may be used for the following activities:

- (a) Job readiness activities with public or private providers.
- (b) Employment activities which consist of any of the following:
 1. Community service;
 2. Work experience;
 3. Job creation through wage subsidies; and
 4. On-the-job training.

(c) Job placement services with public or private providers.

(d) Postemployment services which are provided after an individual is placed in one (1) of the employment activities listed in paragraph (b) of this subsection, or in any other subsidized or unsubsidized job. Postemployment services shall include:

1. Basic educational skills training;
2. Occupational skills training;
3. English as a second language training; and
4. Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, in one (1) of the employment activities, or in any other subsidized or unsubsidized job. These services may be provided with Welfare to Work Grant Program funds only if they are not otherwise available to the participant. Job retention and support services include:

1. Transportation assistance;
2. Substance abuse treatment (except Welfare to Work Grant Program funds may not be used to provide medical treatment);
3. Child care assistance;
4. Emergency or short-term housing assistance; and
5. Other supportive services necessary to assure success in employment.

(f) Individual development accounts which are established in accordance with 42 USC 604(h).

(2) The following may be incorporated in the design of any of the allowable activities listed in subsection (1) of this section:

- (a) Intake;
- (b) Assessment;
- (c) Eligibility determination;
- (d) Development of an individualized service strategy; and
- (e) Case management.

(3) The following are designed to meet the K-TAP participation

requirements in accordance with 904 KAR 2:370:

- (a) Welfare to Work Grant Program job readiness;
- (b) Job placement; and
- (c) Employment activities.

Section 4. Duration of Service. A participant in the Welfare to Work Grant Program shall remain eligible for Welfare to Work services until the conclusion of the service period if the participant becomes ineligible for K-TAP benefits during participation, provided that participation requirements are met pursuant to Section 3(3) of this administrative regulation.

Section 5. Safeguards. (1) A participant in the Welfare to Work Grant Program:

(a) Shall not be discriminated against because of:

1. Race;
2. Color;
3. Religion;
4. National origin;
5. Age;
6. Disability;
7. Political belief or affiliation; or
8. Gender

(b) Shall be subject to the same gender, health and safety standards established under state and federal law which are applicable to a regular employee;

(c) May fill an established position vacancy unless:

1. An individual is on layoff from the same or any substantially equivalent job within the same organizational unit;
2. The employer has terminated the employment of a regular employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy created with the Welfare to Work Grant Program participant; or

3. The employer has caused an involuntary reduction to less than full time in hours, wages or employment benefits of a regular employee in the same or substantially equivalent job within the same organizational unit; or

(d) Shall not infringe upon the promotional opportunities of a regular employee in an employment activity.

(2) An employment activity operated with Welfare to Work Grant funds shall not violate existing contracts for services or collective bargaining agreements unless the appropriate labor organization and employer shall provide written concurrence before the employment activity is undertaken.

Section 6. Resolution of Grievances. (1) A resolution of grievances shall be conducted:

(a) At the request of the Welfare to Work Grant Program participant; or

(b) At the request of a regular employee.

(2) The resolution of grievances shall be conducted by the cabinet, or its agent, and the employer with a Welfare to Work Grant Program participant in an employment activity.

(3) If no informal resolution can be reached within seven (7) days, the dissatisfied party may:

(a) Ask questions about or direct or mail complaints alleging a violation of Section 5(1)(a)1. through 7 of this administrative regulation to the Director, Civil Rights Center, United States Department of Labor, Room N4123, 200 Constitution Avenue, NW, Washington, D.C. 20210; or

(b) Request an administrative hearing on complaints involving gender discrimination, violation of health and safety standards, or displacement of a regular employee pursuant to Section 7 of this administrative regulation.

Section 7. Hearing Rights. (1) A Welfare to Work Grant Program participant shall have the same hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

(2) A regular employee who alleges a violation of a safeguard pursuant to Section 5 of this administrative regulation may file a complaint and may be afforded a hearing in accordance with KRS Chapter 13B.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "WW-1, Welfare to Work (WtW) Information Exchange/Certification", edition 09/98, Cabinet for Families and Children;

(b) "WW-1.1, Consent for Release of Substance Abuse Information to Private Industry Councils (PIC)", edition 09/98, Cabinet for Families and Children;

(c) "WW-2A, WtW Participant Rights and Responsibilities for K-TAP Recipients", edition 09/98, Cabinet for Families and Children;

(d) "WW-2B, WtW Participant Rights and Responsibilities for the Noncustodial Parent", edition 09/98, Cabinet for Families and Children.

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

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 30, 1998

FILED WITH LRC: November 5, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Interim Director

(1) Type and number of entities affected: The affected entities are families who receive assistance under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), certain noncustodial parents of minors whose custodial parents are welfare recipients and former K-TAP recipients. The funding to implement the Welfare to Work Grant Program is included in Title IV-A. As of May 1998, there were a total of 50,490 basic K-TAP cases with approximately 35,657 adults in those cases, and 1,089 unemployed parent cases with 2,150 adults in those cases.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: Compliance, reporting and paperwork requirements should not affect K-TAP recipients required to participate in Kentucky Works. Compliance, reporting and paperwork requirements for non-K-TAP recipients should be minimal.

2. Second and subsequent years: same

(3) Effects on the promulgating administrative body:

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

1. First year: New federal funds \$17,722,913 for FFY 1998. Funds must be expended between 4/23/98 and 4/22/2001. A state match of \$8,861,457 is required and available from General Funds carry forward authorized by the 1998 General Assembly. The cost generates a two-to-one ratio of new federal funds.

2. Continuing cost or savings: same

3. Additional factors increasing or decreasing cost: None

(b) Reporting and paperwork requirements: Quarterly financial reports to the United States Department of Labor; Quarterly participant reports to United States Department of Health and Human Services.

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

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation: Federal funds and state funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the requirements for the program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The anticipated effect is that hard-to-employ present and former welfare recipients living in high poverty areas will obtain the skills necessary to obtain unsubsidized employment and to become economically self-sufficient.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the mandated provisions of 42 USC 601 et seq. would result in loss of federal funds.

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

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

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

(10) Any additional information or comments: This administrative regulation will provide transitional assistance to hard-to-employ present and former welfare recipients living in high poverty areas and help them move into unsubsidized employment and become economically self-sufficient.

(11) TIERING: Is tiering applied? Yes. Federal regulations require that 70 percent of federal grant funds be spent on long-term recipients; up to 30 percent may be spent on those with characteristics associated with long-term welfare dependence.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

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

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

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

908 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676, [1998 GA HB 132] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations.

This administrative regulation sets forth the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program. [House Bill 132 of the 1998 General Assembly [Executive Order 96-862, effective, July 2, 1996,] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.]

Section 1. Evaluation. (1) Every child shall have an evaluation to determine eligibility; ~~or assessment as a part of his permanent record;~~

(a) A primary evaluation shall occur within forty-five (45) days after receipt of the referral; or

(b) If primary evaluation does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(c) When a family is referred for evaluation by the initial service coordinator and the family is under court order or a social services directive to enroll their child in First Steps, the court or social service agency shall be informed within three (3) working days by the initial service coordinator, if the family refuses the evaluation.

(d) Child records of evaluations transferred from out-of-state tertiary or developmental evaluation centers shall be reviewed by the initial service coordinator and shall be utilized for eligibility determination when:

1. The records meet First Steps evaluation time lines; and

2. The records contain all developmental evaluation information required by First Steps to determine eligibility.

(2) The primary level evaluation is the first level in the First Steps evaluation system [in a multi-level system] that shall be utilized to determine eligibility, developmental status and program planning:

(a) The primary level is used when there are no existing evaluations available within the allowed time limits:

1. For children under twelve (12) months of age, evaluations shall have been performed within three (3) months prior to referral to First Steps;

2. For children twelve (12) months to three (3) years of age, evaluation must have been performed within six (6) months prior to referral to First Steps;

(b) Primary level evaluations shall provide evaluation in all five (5) developmental areas;

(c) The primary evaluation shall be provided by a [an approved] team consisting of a physician or nurse practitioner and a primary [developmental] evaluator approved by the cabinet;

(d) Primary evaluation shall be multidisciplinary and shall minimally include:

1. A medical component completed by a physician or a nurse practitioner that includes:

a. A history and physical examination; [and]

b. A hearing and vision screening; and

c. A child's medical evaluation that shall be current according to the following:

(i) For children under twelve (12) months of age, the medical evaluation shall have been performed within three (3) months prior to referral to First Steps; and

(ii) For children twelve (12) months to three (3) years of age, the medical evaluation shall be performed within six (6) months prior to referral;

2. A developmental component completed by a qualified primary [developmental] evaluator that utilizes standardized measures and the results interpreted to the family prior to the IFSP team meeting. [and reported at the initial IFSP team meeting.]

(3) Verification of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting;

(4) Reevaluations shall be provided when a child's eligibility warrants review or a new condition is suspected or becomes apparent;

(a) The need for reevaluation is determined by the IFSP team;

(b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team.

(c) Based on the result of the reevaluation, the IFSP team shall:

1. Continue with the same level of services; or

2. Continue with modified services; or

3. Graduate the child from First Steps services because child is developmentally age appropriate; or

4. Continue eligibility with a tracking and maintenance approach and reevaluate in six (6) months.

(5) An intensive evaluation is the second level in the First Steps evaluation system [in a multilevel system] that shall be utilized to determine eligibility, medical or mental diagnosis, program planning, or plan evaluation:

(a) A child shall be referred for an intensive level evaluation when:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis to [or] further define the child's developmental status in terms of a child's strengths and areas of need; or

2. A child doesn't meet eligibility guidelines at the primary level, but a primary evaluator or the family still have concerns that the child is developing atypically and a determination of professional judgement is needed; or

3. The IFSP team requests an intensive team evaluation for the purposes of a diagnosis or to make specific program planning and evaluation recommendations for the individual child.

(b) A record review shall be done by an intensive team at the request of the IFSP team whenever:

1. There is a question of eligibility;

2. Concern for a child's condition; or

3. Effectiveness of a child's program plan. [When a concern of the child's condition warrants the review of records of the primary evaluation.]

(c) [(b)] An intensive level evaluation shall be provided by an approved team consisting of:

1. A board certified developmental pediatrician; or

2. A pediatrician who has experience in the area of early childhood development; and

3. One (1) or more qualified developmental professionals.

(6) ~~A tertiary level evaluation is the third level in a multilevel system that shall be utilized to determine eligibility:~~

(a) ~~A child shall be referred for a tertiary level evaluation when:~~

1. ~~Diagnostic information is needed in specific areas;~~

2. ~~The intensive team's review of records and the results of the primary evaluation indicate that the complexity of the problems warrant a more comprehensive neurodevelopmental evaluation that is not available at the intensive level.~~

(b) ~~The tertiary team level evaluation is a comprehensive neurodevelopmental evaluation for the purpose of:~~

1. ~~Establishing a definitive diagnosis;~~

2. ~~Providing evaluation of the infant or young child with complex neurological and developmental problems; and~~

3. ~~Making specific recommendations regarding treatment and service planning.~~

(c) ~~The tertiary team evaluation shall be provided by an approved team at a tertiary medical center. The team shall include:~~

1. ~~A board certified developmental pediatrician; and~~

2. ~~A psychologist, with experience in early childhood development.~~

3. ~~Others as identified.~~

(7) Family rights must be respected and procedural safeguards followed in providing evaluation services:

(a) Written parental consent shall be obtained before conducting an evaluation or assessment by the evaluator or assessor respectively.

(b) If a parent or guardian refuses to allow a child to undergo a physical or medical examination for eligibility because of religious beliefs:

1. Documentation shall be obtained in the form of a notarized statement. The notarized statement shall be signed by the parent or guardian to the effect that the physical examination or evaluation is in conflict with the practice of a recognized church or religious denomination to which they belong.

2. With the presence of a professional judgement of developmental delay that determines the child to be eligible, First Steps shall provide, at the parent's request, services that do not require by statute proper physical or medical evaluations.

(c) ~~When a family referred for evaluation is under a court order or~~

a social services directive to enroll their child in First Steps, and the parent refuses the evaluation, the court or social service agency shall be informed.]

(7) [(8)] A written report shall be completed for every level of evaluation including record reviews.

(a) The minimum components are [evaluation report shall include]:

1. Names of evaluators and discipline;
2. Name and telephone number of contact person;
3. Identifying information that includes:
 - a. Age;
 - b. Date of birth;
 - c. Date of evaluation;
 - d. Evaluator's affiliation, and professional degree;
 - e. Referral source; and
 - f. Reason for referral or presenting problems.

4. Tests administered or evaluation procedures utilized and purpose of instrument. No one (1) method of evaluation shall be used, but a combination of tests and methods shall be used;

5. Test results and interpretation of strength and needs of child;

6. Test results reported in standard deviation or developmental quotient when such instrumentation is required;

7. Eligibility;

8. Developmental status or diagnosis;

9. Program plan [Specific] recommendations [for intervention relating to areas of delayed development];

10. Program plan [8.] recommendations] that address the child's holistic needs based on the evaluation;

10. [[1]] [9.] A narrative description of all five (5) areas of a child's developmental status;

(b) The full report [10. Test results that include recommendations and a narrative description] shall be written in clear, concise language that is easily understood by the family.

(c) [(b)] The reports and notification of need for further evaluation shall be made available to the IFSP team within ten (10) working days from the date the evaluation was completed [in a timely manner].

(8) [(9)] Child records of timely evaluations transferred from out of state tertiary centers or developmental evaluation centers may be utilized for eligibility determination;

(a) These records shall be reviewed for all required evaluation record components by the POE services coordinator;

(b) If information is unattainable, the child shall be evaluated for eligibility.

Section 2. Eligibility. (1) Children who are eligible for First Steps services include those who are ages birth through two (2), and:

(a) By using appropriate diagnostic instruments and procedures, or professional judgment, are determined to have fallen significantly behind developmental norms in the following skill areas:

1. Cognitive development;
2. Communication through speech and language development;
3. Physical development including vision and hearing;
4. Social and emotional development;
5. Adaptive skills development; and

(b) Are significantly behind in developmental norms as evidenced by the following criteria:

1. Two (2) standard deviations below the mean in one (1) skill area (developmental quotient equivalent seventy (70) percent or below); or

2. At least one and one-half (1 1/2) standard deviations below the mean in two (2) skill areas; or

3. Children may be determined to be developmentally delayed by professional, clinical judgement, in the event standard deviation scores are inconclusive and evaluation reveals the child has significant atypical development or quality or pattern of development, or further diagnostic evaluation is needed to address concerns related to the five (5) areas of development. Professional judgement to determine a child to be developmentally delayed shall be obtained from an approved evaluator; or

(2) Those children who are diagnosed with physical or mental conditions which have a high probability of resulting in developmental delay and the diagnosis has been specified by KRS 200.645(10) as an established risk condition. The developmental delay shall be within

one (1) of the following categories:

(a) Chromosome abnormalities associated with developmental delay;

(b) Recognizable syndromes associated with developmental delay;

(c) Abnormality in central nervous system;

(d) Neurological or neuromuscular disorders associated with developmental delay;

(e) Symptomatic intrauterine infection or neonatal central nervous system infection;

(f) Sensory impairments that result in significant visual or hearing loss, or a combination of both, interfering with the ability to respond effectively to environmental stimuli;

(g) Metabolic disease having a high likelihood of being associated with developmental delay, even with treatment;

(h) Maternal teratogen exposure at a level known to have a high risk for developmental delay;

(i) Behavioral or emotional disorders associated with extreme excesses or deficits which inhibit function;

(j) Central nervous system malignancy or trauma resulting in developmental delay.

(3) Eligibility for a premature child shall consider:

(a) The chronological age of infants and toddlers who are less than twenty-four (24) months old shall be corrected to account for premature birth;

(b) Correction for prematurity is not appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

(c) Documentation of prematurity shall include a physician, or nurse practitioner, report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 4, 1998

FILED WITH LRC: November 5, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3,800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

FEDERAL MANDATE ANALYSIS COMPARISON

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's Early Intervention System. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15,000,000 in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need for future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for coverage and payments.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(Amended After Hearing)**

908 KAR 2:130. Kentucky Early Intervention Program assessment and service planning.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 194A.030, 200.650-676[~~-1998 GA-HB-132~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of assessment and the Individualized Family Service Plans used in First Steps, Kentucky's Early Intervention Program. [~~House Bill 132 of the 1998 General Assembly (Executive Order 96-862, effective July 2, 1996,) reorganized the Cabinet for Human Resources and placed the Depart-~~]

ment for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.]

Section 1. Assessment. (1) Assessment activities shall occur after the establishment of a child's eligibility for First Steps.

(2) Assessment shall be the on-going procedure used by qualified personnel throughout the period of a child's eligibility to identify:

- (a) The child's unique strengths and needs;
- (b) The services appropriate to meet those needs;
- (c) The family's resources, priorities and concerns which shall be:
 1. Voluntary on the part of the family;
 2. Family-directed; and
 3. Based on information provided by the family through personal interview; and

(d) The supports and services necessary to enhance the family's capacity to meet the developmental needs of their child.

(3) Assessments shall be ecologically valid and reflect appropriate multisource and multimeasures. One (1) source or one (1) measure shall not be used as the sole criterion for determining an intervention program. Assessment methods shall include any combination of the following:

(a) Direct assessment shall include:

1. Instruments that are appropriate for infants and toddlers and that allow for adaptations for disability as needed; and
2. Criterion referenced instruments, which compare the child's level of development with skills listed in a chronological sequence of typical development.

(b) Observations shall:

1. Take place over several days if possible; and
2. Occur in appropriate natural settings; and
3. Include play and functional activities of the child's day;

and

4. Be recorded in a factual manner.

(c) Interview and parent reports shall:

1. Involve the use of open-ended questioning after the assessor establishes rapport; and
 2. Be provided by parents and other primary caregivers.
- (d) Behavioral checklist and inventories:
1. Can be completed by caregivers by mail or phone or through interview; and
 2. Allow for comparison across settings.

(4) [(2)] Every child determined eligible by established risk shall have an assessment in all five (5) areas of development:

- (a) Within [the first] forty-five (45) days after receipt of the referral; or
- (b) If assessment does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(5) Every child who is eligible for First Steps by having a developmental delay shall receive an initial assessment in the areas of development found to be delayed for the purpose of gathering additional information for service planning.

(6) The assessment report shall include:

(a) A description of the assessment activities and the information obtained;

(b) Identifying information:

1. The central billing and information identification number;
- and
2. The child's Social Security number; and
3. The name of the child; and
4. The child's age at the date of the assessment; and
5. The name of the service provider and discipline; and
6. The date of the assessment; and
7. The setting of the assessment; and
8. The state of health of the child during the assessment;

and

9. Whether the child's response level was typical; and
10. The instruments and assessment methods used; and
11. Who was present for the assessment; and
12. The signature of the assessor;

(c) A profile of the child's level of performance, in a narrative form and shall indicate:

1. Concerns and priorities; and

2. Child's unique strengths and needs; and
3. Skills achieved since last report, if applicable; and
4. Emerging skills; and
5. Direction of future service delivery;

(d) Suggestions for any strategies, materials, or equipment or adaptations that shall support the child's development; and

(e) Information that shall be helpful to the family and other providers in building on the team's focus for the child and family.

(7) The initial assessment(s) report(s) shall be shared verbally with the family and the written report sent to the family and the service coordinator within ten (10) working days of the completion of the assessment.

(8) [(3)] Information gathered in the assessment shall be used to develop the individualized family service plan (IFSP).

(9) [(4)] Every child enrolled in First Steps shall receive assessment as an integral part of service delivery throughout the period of the child's enrollment in the program within the limitations identified in 908 KAR 2:200, Section 4.

(10) [(5)] Prior to the annual and six (6) month review of the IFSP a written summary shall be [a formal assessment shall be performed and prior to the meeting a report] provided to the primary service coordinator and family. [For the six (6) month review of the IFSP, a summary of progress and on-going assessment information shall be provided to the primary service coordinator and the family before the meeting.]

Section 2. Individualized Family Service Plan (IFSP). (1) The IFSP is a contract with the family and providers to insure the services are provided.

(2) The completed initial IFSP shall have:

- (a) All appropriate evaluation and assessments;
- (b) All covered services identified; and
- (c) Signed approval of the initial service coordinator.

(3) The First Steps IFSP form shall be used to record the IFSP. All items on the IFSP form shall be completed as instructed on the form.

(4) Each authorized IFSP is valid for a period not to exceed six (6) months in length. Revisions that occur to the IFSP shall be valid for the remaining period of the plan.

(5) [(2)] The following principles shall be adhered to in the development and implementation of the IFSP:

- (a) Infants and toddlers are uniquely dependent on their families for their survival and nurturance. This dependence necessitates a family-centered approach to early intervention;
- (b) Early intervention systems and strategies shall honor the racial, ethnic, cultural, and socioeconomic diversity of families;
- (c) The diversity of family patterns and structures. Each family has its own structure, roles, values, beliefs, and coping styles. Respect for and acceptance of this diversity is a cornerstone of family-centered early intervention;

(d) In the context of the IFSP process, in respect to the autonomy, independence, and decision making. [Respect for family autonomy, independence, and decision making means that] families must be able to choose the level and nature of early intervention's involvement in their lives;

(e) Family and professional collaboration and partnerships are the keys to family-centered early intervention and to successful implementation of the IFSP process;

(f) No one (1) agency or discipline can meet the diverse and complex needs of infants and toddlers with special needs and their families. Therefore, a team approach to planning and implementing the IFSP is necessary;

(g) An enabling approach to working with families requires that professionals reexamine their traditional roles and practices and develop new practices when necessary that promote mutual respect and partnerships;

(h) First Steps services shall be flexible, accessible and responsive to family-identified needs;

(i) First Steps services shall be provided according to the normalization principle that families should have access to services provided in as normal a fashion and environment as possible and that promote the integration of the child and family within the community;

(6) [(3)] For a child that has been evaluated for the first time and determined eligible, a meeting to develop the initial IFSP shall:

(a) Be conducted within forty-five (45) days after the receipt of the referral; or

(b) If the IFSP does not occur within forty-five (45) days due to illness of the child or approval to delay [~~a request~~] by the parent, the delay circumstances shall be documented;

(7) [(4)] A review of the IFSP for a child and the child's family shall be conducted at least every six (6) months. A review shall be conducted more frequently if:

(a) The family requests such a review; or

(b) The child's conditions change; or

(c) The service providers change;

(8) [(5)] A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and to revise if changes have occurred;

(9) [(6)] With the approval of the family, the primary service coordinator shall arrange a conference to discuss the possible transition of the child. The conference shall be conducted at least ninety (90) days before the child's third birthday and shall include:

(a) The family;

(b) A representative of the local education agency and representatives of other potential settings;

(c) The primary service coordinator as a representative of the First Steps Program;

(d) Others identified by the family;

(10) [(7)] The IFSP shall include:

(a) Summary of family rights handbook and signed assurances by the family.

(b) Information about the child's present level of developmental functioning. Information shall cover the following domains:

1. Physical development that includes:

a. Vision;

b. Hearing;

c. Fine and gross motor skills; and

d. Health status and immunization of the child;

2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;

3. Communication development that includes skills related to exchanging information or feelings', including receptive and expressive communication and communication with peers and adults;

4. Social or emotional development that include skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. This includes:

a. Interactions with peers and adults;

b. Play skills;

c. Self-concept development; and

d. Bonding with family members;

5. Adaptive development that includes self-help skills necessary for independent functions, that include:

a. Self-feeding;

b. Toileting; and

c. Dressing and grooming;

(c) [(b)] Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;

(d) [(c)] A description of:

1. Underlying factors that may affect the child's development;

2. What motivates the child, as determined on the basis of observation, child interaction and parent report;

(e) [(d)] With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;

(f) [(e)] A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and time lines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome and strategy statements shall:

1. Be functionally stated;

2. Be representative of the family's own priorities;

3. Fit naturally into the family's routines or schedules;

4. Reflect the use of the family's own resources and social support

network;

(g) [(f)] The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Services shall:

1. Be stated in frequency, intensity, duration, location and method of delivering services; and in the payment arrangements, if any;

2. Unless prior authorization is granted, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall:

a. Not exceed one (1) hour [~~three (3) hours~~] per discipline per week for the following disciplines:

(i) Audiologist;

(ii) Family therapist, nurse or LPN, or health aide;

(iii) Nurse;

(iv) LPN;

(v) Health aide;

(vi) Nutritionist or dietician;

[(vii) Dietician;]

(iv) [(viii)] Occupational therapist or occupational therapist assistant;

[(ix) Occupational therapist assistant;]

(v) [(x)] Orientation and mobility specialist;

(vi) [(xi)] Physician;

(vii) [(xii)] Physical therapist or physical therapist assistant;

[(xiii) Physical therapist assistant;]

(viii) [(xiv)] Psychologist;

(ix) [(xv)] Speech language pathologist or speech language pathologist assistant;

[(xvi) Speech language pathologist assistant;]

(x) [(xvii)] Licensed social worker;

(xi) [(xviii)] Teacher of the visually impaired;

(xii) [(xiv)] Teacher of the deaf and hard of hearing;

(xiii) Developmental interventionist or developmental associate.

[b. Not exceed five (5) hours per discipline per week for the following:

(i) Developmental interventionist; or

(ii) Developmental associate; or

(iii) Developmental assistant;]

b. To request prior authorization for exceeding limits the following process shall be utilized;

(i) Send written request, with copy of IFSP and documentation of need, to the First Steps state office [coordinator].

(ii) [Be reviewed by] The state coordinator will forward [and forwarded] to the state best practice review panel.

(iii) Complete process within ten (10) working days of receiving request.

(iv) The decision of the state panel may be appealed to the state First Steps coordinator or directly pursuant to 908 KAR 2:170.

(v) The decision of the First Steps coordinator may be appealed pursuant to 908 KAR 2:170.

3. To the maximum extent appropriate early intervention services shall be provided in natural environments, including the home and community settings, in which children without disabilities participate;

(h) [(g)] The projected dates for initiation of the services, and the anticipated duration of those services;

(i) [(h)] Other services that the child needs, such as medical services or housing for the family, but that are not required under early intervention. The funding sources to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(j) [(i)] The name of the primary service coordinator chosen to represent the child's or family's needs. The Primary Service Coordinator will be responsible for the implementation of the IFSP and coordination with other agencies and persons;

(k) [(j)] The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;

1. With approval of the family, a transition conference shall occur at least ninety (90) days prior to the child's third birthday;

2. The transition conference shall involve staff from the First Steps Program, the primary service coordinator, the family, staff from the local public educational agency, and other agencies per family request

that could be potential service agencies after the age of three (3):

3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. This meeting shall be chaired by the primary service coordinator;

(11) [(8)] Families shall be encouraged to discuss their child's activities, strengths, likes and dislikes, exhibited at home;

(12) [(9)] The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits;

(13) [(10)] Every attempt shall be made to explain the child assessment process by using language the family uses and understands;

(14) [(11)] The families may agree, disagree, or refute the assessment information;

(15) [(12)] The family's interpretation and perception of the assessment results shall be ascertained and the families wishes and desires shall be documented as appropriate.

Section 3. Incorporated by Reference. (1) First Steps Individualized Family Service Plan (IFSP), October 28, 1998 is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, Commissioner's Office, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 4, 1998

FILED WITH LRC: November 5, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3,800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal

funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's early intervention system. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15,000,000 in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the

requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for assessment and service planning.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 194A.050, 200.650-676, [1998 GA HB 132] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of Primary Service coordination as it relates to First Steps, Kentucky's Early Intervention Program. [House Bill 132 of the 1998 General Assembly [Executive Order 96-862, effective July 2, 1996.] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.]

Section 1. Primary Service Coordination. (1) The primary service coordinator shall coordinate and assist in child find efforts with the local POE through dissemination of materials.

(2) The primary service coordinator shall make referrals to the POE within forty-eight (48) hours upon identification of a child that may be eligible for First Steps services. Referral shall be made after dis-

cussing the benefits of early intervention with the family and acquiring verbal permission to make the referral.

(3) If any materials are developed the primary service coordinator shall utilize the Image Consistency Kit developed by the Inter-agency Coordinating Council Public Awareness Committee for public awareness activities and materials.

(4) The primary service coordinator shall serve as the single point of contact in helping families obtain the services and assistance they need.

(5) The primary service coordinator shall have a caseload of:

(a) Up to forty (40); with a maximum of fifty (50) if ten (10) children are ninety (90) days away from their third birthday; if he is not providing any other First Steps services, or is not carrying a caseload in another program; or

(b) If he is providing ~~other First Steps services to children and families or has~~ a caseload in another program, up to the prorated equivalency of no more than a combined total of 100 percent of a position's time, with a forty (40) caseload being 100 percent in First Steps services, and the equivalent to forty (40) in another program. A caseload of ten (10) in First Steps would represent twenty-five (25) percent of a position's time, leaving the equivalency of seventy-five (75) percent available in another program.

(6) The primary service coordinator shall:

(a) Attend the First Steps Primary Service Coordination and IFSP training prior to facilitating, coordinating, or implementing any IFSP's, and attend communicating with families training within six (6) months of completing primary service coordination and IFSP training;

(b) Attend the initial IFSP meeting, if identified as primary service coordinator choice or if invited as a potential option for primary service coordinator, and help the POE facilitate that plan;

(c) Notify all the IFSP team members, in writing, of the upcoming annual IFSP or the six (6) month review date and location no less than thirty (30) calendar days prior to IFSP or review date;

(d) Provide [reasonable] notice to all the IFSP team members of any IFSP meeting requested to address revisions.

(e) In the event of cancellation, notification of the rescheduling of the IFSP meeting shall be sent to the IFSP members within five (5) working days of the cancelled meeting;

(f) ~~(e)~~ Facilitate the annual IFSP, [or] six (6) months reviews, and IFSP meetings requested to address revisions and document. This includes:

1. Convene or consult team members for involvement in determination of need and rationale.

2. Documenting outcomes that have been achieved, as well as, documenting those that have not been achieved;

3. [2:] Assisting families in identifying new outcomes, the service providers, frequency and location of all services; [and]

[3:] Resolving any conflicts during the IFSP or review by having the team come to consensus on any issue where differences occur.]

4. Insure that outcomes are developed to relate to any changes and that appropriate documentation of the need for the changes occur.

5. Record rationale for amendment and child and family outcomes for amendments [any changes] on the state IFSP form and secure [appropriate] signatures or verified approval from required members in order to verify authorization of the amendment. Amendments to the IFSP are not authorized unless the appropriate signatures or verified approval from the required members are documented on the IFSP form.

6. Resolving any conflicts during the IFSP or review by having the team come to consensus on any issue where differences occur.

7. If consensus cannot be reached, the PSC is responsible for informing the IFSP team of the options and bringing resolution.

8. Submit Summary Sheet to Central Billing and Information System (CBIS) within five (5) days of the approval of the revision.

(g) ~~(f)~~ Refer the family to appropriate agencies for services identified on the IFSP and coordinating those services;

(h) ~~(g)~~ Send copies of the initial and subsequent IFSP reviews to the other team members within ten (10) working days of the IFSP meeting;

(i) ~~(h)~~ Send copies of the IFSP to those persons identified by the

family as needing copies;

(j) [(#)] Notify the **CBIS [POE]** of any changes in the child's or family status and new IFSP services **with a summary sheet and update record in the POE** within five (5) working days of changes on the IFSP;

(k) [(#)] Facilitate the development of a transition plan.

(7) The primary service coordinator shall inform and assist the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook **at every IFSP and at any time the family requests [and at all IFSP meetings];**

(b) Familiarizing **the family [him]** with the procedural safeguards and due process rules, **and ensuring that the family reviews and signs the statement of assurances found with the Family Rights Handbook at every IFSP review;**

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers.

(8) The primary service coordinator shall assist the family in identifying available service providers by:

(a) ~~Assisting the POE in maintaining a current directory of available First Steps service providers;~~

~~[(b)]~~ Keeping current on all available services in the district, including recent rules regarding funding sources;

~~[(c)]~~ Having available to the families a list of all eligible First Steps service providers in each district. The family may choose a service outside the First Steps approved provider list, however, the primary service coordinator's responsibility to the family is to let them know that the provider is not approved through First Steps and may result in a cost to the family;

(c) Making the family aware of community activities that would benefit from their participation such as becoming a member of the District Early Intervention Committee; [and]

(d) Assisting the POE in establishing new service providers by consistently educating the public on the benefits of early identification and intervention.

(9) The primary service coordinator shall ensure that service coordination is available to his families at all times and at the family's request.

(10) The primary service coordinator shall contact the child's family at a minimum of one (1) time a month to discuss service coordination needs, unless otherwise stipulated in the IFSP.

(11) The primary service coordinator shall give the family his address and phone number and any other information that may be helpful, in the event they would need to contact the primary service coordinator.

(12) The primary service coordinator shall identify to the family and to the POE a back-up service coordinator for the family to call in the event the primary service coordinator will be gone over ten (10) consecutive working days **by:**

(a) Choosing the back-up service coordinator from the pool of approved primary service coordinators in the district;

(b) Sending to the family, in writing, within one (1) month of the initial IFSP meeting, the name of the back-up coordinator, their phone number, address and circumstances under which the family should call the back-up coordinator;

(c) Sending a copy of that correspondence to the POE for the records;

(d) Identifying the back-up coordinator in the IFSP;

(e) Calling the family to institute the back-up when the primary service coordinator will be away more than ten (10) consecutive days, and securing their permission to share information;

(f) Notifying the back-up of the scheduled absence;

(g) Sharing only pertinent information for current issues with the back-up; and

(h) Notifying the family, POE, and CBIS, in writing, of any changes in the back-up with-in five (5) working days of the change.

(13) If the primary service coordinator can no longer serve in the role of primary service coordinator due to a resignation or unexpected reason the primary service coordinator shall:

(a) if there is at least one (1) week's time notify, in writing, the

POE in each district, the family, and service providers and facilitate the identification of a new primary service coordinator; **or**

(b) If there is less than one (1) week's time, the primary service coordinator shall contact the POE in his district immediately. The POE shall contact the family to assist them in identifying a new primary service coordinator **and facilitate the transfer of records**. The new primary service coordinator shall notify the other service providers that he is the new primary service coordinator; **or**

(c) If the family desires a change in their primary service coordinator, they shall contact the POE and the POE shall seek to resolve the situation.

(14) The primary service coordinator shall facilitate the development of a transition plan by:

(a) Knowing the transition procedures as outlined in 908 KAR 2:130, Section 2(7)(i) and the Kentucky Transition Project publication "Step by Step: A Guide to Transition" and ensuring that all potential agencies and programs that could provide services to a particular child after the age of three (3) are included when introducing the parents to future program possibilities;

(b) Hold a transition conference at least ninety (90) days prior to the child's third birthday:

1. Involve the family, IFSP team, the Part B local school district representative; and staff from potential next placement options; and

2. Write a transition plan as a part of the IFSP that includes:
a. Description of types of information the family might need in relation to future placements;

b. Strategies and activities to be used to help prepare the child for changes in the service delivery;

c. Specific steps that will help the child adjust to and function in, the new setting;

d. How and when assistive technology equipment will be returned and how it will be replaced in the next setting if appropriate;

e. Description of what information will be shared with the new setting, timelines to share the information, and ways to secure the necessary releases to refer and transmit records to the next placement.

(15) [(14)] The primary service coordinator shall send to the POE all completed IFSPs, changes, and updates, which include the transition plan, no later than five (5) working days after the meeting has been held.

(16) [(15)] In the event there is no primary service coordinator, or the family refuses service coordination, the POE shall coordinate and facilitate the IFSPs.

(17) [(16)] The primary service coordinator shall maintain the child's **PSC** record to ensure that changes are accurately documented. The minimum record to be maintained by the primary service coordinator shall include:

(a) Initial referral information;

(b) Developmental and social history;

(c) All available evaluation reports;

(d) All assessment reports;

(e) All IFSP's;

(f) All primary service coordinator notes;

(g) All correspondence to the family and other service providers;

(h) The transition plan; and

(i) All billing information.

(18) [(17)] The primary service coordinator shall ensure that all contacts with the family or other service providers are documented in the child's record. This documentation shall include a note which consists of:

(a) Child's name, CBIS ID number, and Social Security number;

(b) The date of contact;

(c) [(b)] Amount of time spent;

(d) [(e)] Reason for the contact;

(e) [(d)] Type of contact whether by telephone or face to face;

(f) [(e)] Result of contact;

(g) [(f)] Plan for further action; and

(h) [(g)] Signature of person making contact.

(19) [(18)] Primary service coordinator notes shall also include all

contacts attempted but not made, and reasons why services were not delivered in a timely manner.

~~[(19) The primary service coordinator shall notify the POE of all changes in the status of the child or family within five (5) working days of the changes;]~~

(20) The primary service coordinator shall encourage the family to access all services identified on the individualized family service plan ~~[available to them while enrolled in First Steps].~~

(21) If the family wants to voluntarily terminate a service or all services, the primary service coordinator shall:

(a) Document in the record which services are ending and the date of termination;

(b) Send a follow-up letter to the family which includes when and what services are ending, within seven (7) working days after notice from the family of their choice to end services.

(22) If the family is absent from a service with no prior notice for at least three (3) consecutive visits, the service provider shall notify the primary service coordinator within seven (7) working days after last absence. Then the primary service coordinator shall:

(a) Document the service provider's contact and try to make contact to discuss the circumstances:

1. If contact is made send a letter within seven (7) working days to the providers the result of the discussion; or

2. If no contact is made, send the family a letter within seven (7) working days requesting direction as to the choice of the family in continuation of services and stating that the services will be discontinued [cease] until a choice is made by the family by contacting the PSC and stating that if no contact is made by the family, services will be terminated fifteen (15) working days from the date of the letter. [-and]

(b) Notify the service providers whose services are changing, in writing, when services are terminated and the date of termination.

(23) The primary service coordinator shall be responsible for securing any release of information necessary to send or secure information from other service providers.

(24) The primary service coordinator shall close the child's record and send a copy of the primary service coordinator record to the referring POE within:

(a) Three (3) months after the child's third birthday, unless they state in writing that the record remain with the primary service coordinator due to continued service coordination services by the primary service coordinator after the child reaches age three (3). A copy of the written request from the family shall be sent to the POE;

(b) One (1) month after the child's family terminates all services and the child is no longer receiving any First Steps services.

(25) The primary service coordinator shall provide data to the cabinet upon request.

(26) The primary service coordinator shall agree to have any or all records maintained by said primary service coordinator monitored by the cabinet, or their designee.

~~[(27) The primary service coordinator shall attend all required training prior to providing services. [and participate in required quarterly meetings;]~~

~~[(28) Participate in required quarterly meetings, except when sick or other excused absence as approved by technical assistance team program consultant.~~

~~[(29) With the exception of a family receiving service coordination as of January 1, 1999, by a discipline who is also providing another service and there is one (1) year or less of eligibility for First Steps services remaining, the primary service coordinator shall limit practice in First Steps to service coordination only.~~

Section 2. Assistive Technology. (1) To be eligible to access assistive technology services and devices the child shall:

(a) Be eligible for First Steps;

(b) Have need for assistive technology devices and services documented by appropriate assessment procedures; and

(c) Have need for and use of assistive technology devices and services documented in the IFSP.

(2) The First Steps assistive technology review process shall be utilized for the following:

(a) All equipment requests which exceed \$500; and

(b) All equipment that is questionable by the initial service coordi-

nator, the primary service coordinator, or cannot be determined by the IFSP team as appropriate.

(3) All equipment request requiring review shall:

(a) Be sent to the monitoring coordinator with the following information:

1. A current IFSP;

2. Assessments with recommendations;

3. Justification statement of specific devices based on needs;

4. Information regarding equipment or device request;

(b) Be reviewed by the coordinator for completeness and forwarded to a regional monitoring committee; and

(c) Complete process within ten (10) working days of receiving all information;

(4) The decision of the monitoring committee may be appealed to the state First Steps coordinator who shall:

(a) Consult with the appeal committee; and

(b) Issue final decision.

(5) The decision of the First Steps coordinator may be appealed pursuant to 908 KAR 2:170.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 4, 1998

FILED WITH LRC: November 5, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3,800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health and mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's Early Intervention System. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not ex-

ceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15,000,000 in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for primary service coordination.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following

components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

908 KAR 2:160. Kentucky Early Intervention Program covered services.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 194A.030, 200.650-676[~~1998 GA HB 132~~] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program. [~~House Bill 132 of the 1998 General Assembly~~] [Executive Order 96-862, effective July 2, 1996,] reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.]

Section 1. Covered Services. (1) Services ~~shall be~~ [are] covered when included and authorized through signature or verified approval on [in] the individual's IFSP developed by an IFSP team which shall include, at least, the family and two (2) professionals as identified in 908 KAR 2:150, Section 1(1)(a)-(p), paraprofessionals as identified in 908 KAR 2:150, Section 1(2)(a)-(f) or service positions as identified in 908 KAR 2:160, Section 1(3)(a)-(d): [disciplines:]

(a) At least two (2) professionals, paraprofessionals, or service positions [disciplines] shall be from separate agencies or represent different approved providers; and

(b) One (1) discipline shall be a licensed medical professional as identified in 908 KAR 2:200, Section 3(2)(e), with the exception of Section 3(2)(e)13 and 14 of 908 KAR 2:200.

(2) Services covered shall be [are]:

(a) Service coordination as provided in accordance with 908 KAR 2:110 and 908 KAR 2:140:

1. A child shall have only one (1) designated service coordinator at a given time; [and]

2. Service coordination shall be provided by those identified in 908 KAR 2:150; and

3. Service coordination shall be provided under the limitations of 908 KAR 2:200, Section 4.

(b) Primary evaluation as provided in accordance with 908 KAR 2:120:

1. Primary evaluation shall be considered the first level of a two (2) tier [trilevel] system of evaluation; and

2. Primary evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(c) Intensive team evaluation as provided in accordance with 908 KAR 2:120:

1. Intensive team evaluation shall be considered the second level of a two (2) tier [trilevel] system of evaluation;

2. Intensive team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(d) Tertiary team evaluation as provided in accordance with 908 KAR 2:120:

1. Tertiary team evaluation shall be considered the third level of evaluation in a trilevel system of evaluation;

2. Tertiary team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(e) Service assessment as provided in accordance with 908 KAR 2:130;

(e) [(f)] Therapeutic intervention.

1. Therapeutic intervention, defined as face-to-face intervention with the child and caregivers within the context of the environment, includes three (3) types of service:

a. Individual home or community services which includes intervention provided to the child by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes) under the limitations of 908 KAR 2:200, Section 4; or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professionals office or center site under the limitations of 908 KAR 2:200, Section 4; or

c. Group intervention which includes the provision of early intervention services by First Steps qualified personnel [to an eligible child] in a group, defined as the presence of two (2) or more eligible children, at an early intervention professional's site, office, center, home or other community-based setting where children under three (3) years of age are typically found. The group may also include children without disabilities as long as a three (3) to one (1) ratio of children to staff is maintained. Group intervention shall be provided under the limitations of 908 KAR 2:200, Section 4.

2. Disciplines providing therapeutic intervention shall be qualified in accordance with 908 KAR 2:150, and shall include the following:

- a. An audiologist; or
- b. A family therapist; or
- c. A developmental interventionist; or
- d. A developmental associate; or
- e. A developmental assistant; or
- f. A nurse; or
- g. A LPN; or
- h. A health aide; or
- i. A nutritionist; or
- j. A dietitian; or
- k. An occupational therapist; or
- l. An occupational therapy assistant; or
- m. An orientation and mobility specialist; or
- n. A physical therapist; or
- o. A physical therapist assistant; or
- p. A psychologist; or

- q. A speech language pathologist; or
- r. A speech language pathologist assistant; or
- s. A licensed social worker; or
- t. A teacher of the visually impaired; or
- u. A teacher of the deaf and hard of hearing;

(f) [(g)] Integrated disciplines center-based service shall be [is] an intervention provided by an agency that is approved by the department to be qualified to offer [which offers] services:

1. By at least three (3) of the following disciplines working together in a group setting who qualify in accordance with 908 KAR 2:150:

a. [1:] Developmental interventionist or [2:] developmental interventionist associate; or

b. [3:] Occupational therapist; or

c. [4:] Physical therapist; or

d. [5:] Speech therapist;

2. Where all three (3) disciplines shall be scheduled and present, except in routine absences due to sickness or other conflicts;

3. The disciplines shall give evidence of transdisciplinary planning and practice;

4. Where children have identified in the IFSP multiple disciplines, with the majority of the group make-up being children who need three (3) or more disciplines, except when approved by the department;

5. Where each child's record shall have a staff note from each discipline, except a staff note shall not be required from a discipline for those children where the discipline is not identified in the IFSP as needed;

(g) [(h)] Collateral service shall be [is] the provision of consultation and planning directed toward the needs of the child with professionals while [parents, legal guardian, other persons in a position of custodial control, developmental professionals, or other clinicians responsible for the health of the child in accordance with the IFSP. These services shall include:

1. Professionals attending the IFSP meeting, and

2. Transdisciplinary consultation; and

3. Consultation by and with the child's physician;

(h) [(i)] Assistive technology in accordance with 908 KAR 2:100 and 908 KAR 2:140;

(i) [(j)] Respite shall be [is] a service provided to the family of an eligible child for the purpose of providing relief from the care of the child in order to strengthen the family's ability to attend to the child's developmental needs under the limitations of 908 KAR 2:200, Section 4;

(j) [(k)] Transportation and related cost shall be [is] the costs of travel that are necessary to enable an eligible child to receive early intervention services;

(k) Interpreters shall be used when necessary to assist the family in understanding the services and procedures and shall be reimbursed when:

1. The service is identified on the IFSP;

2. The PSC has identified the vendor and established a link with the billing agent;

3. The vendor meets the qualifications generally accepted for that role in the community and meets all requirements of the agency who hires the interpreter for that role if an agency is involved.

(3) Rates for covered services shall be [are] negotiated rates based on reasonable and customary rates for same services or comparable services provided in the community.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 4, 1998

FILED WITH LRC: November 5, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is esti-

mated that 2 1/2% of children under 3, or approximately 3,800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health and mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's early intervention system. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15,000,000 in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for covered services.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(Amended After Hearing)

908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program Services.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: 194A.030, KRS 200.650-676[, 1998 GA-HB-132] [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. ~~[House Bill 132 of the 1998 General Assembly [Executive Order 96-862, effective July 2, 1996], reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation Services and the First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.]~~ This administrative regulation establishes the provisions relating to early intervention services for which payment shall be made by the First Steps Program on behalf of eligible recipients.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Commercial transportation carrier" means a commercial carrier, including a taxi cab, that is licensed to transport a member of the general public.

(3) "Direct contact" means an activity or contact that is:

(a) Face to face or by telephone, with the child, or on behalf of the child, with the parent, family or person in custodial control, a professional or other service provider, or other significant person; and

(b) Not the direct supervision of a paraprofessional by a professional.

(4) "First Steps" means Kentucky's early intervention system as established by KRS 200.650 through 200.676.

(5) "Noncommercial group carrier" means a vendor who provides bus or bus-type transportation to an identifiable segment of the population eligible for service from the carrier.

(6) "Period of eligibility" means from the date the child was determined eligible to the date of the child's third birthday or prior to the child's third birthday, to the date the child is determined ineligible.

(7) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional transportation of eligible children.

(8) "Provider" means an agency, person, or other entity that meets the requirements for approval as established in 908 KAR 2:100 through 908 KAR 2:180 and who signs an agreement with the department.

(9) **"Therapeutic intervention" means:**

(a) Treatment of the child or intervention with the child in the context of caregivers and environment; and

(b) Not consultation and planning.

(10) "Usual and customary charge" means the uniform amount which the individual provider charges in the majority of the cases for a specific service.

Section 2. Participation Requirements. (1) An early intervention provider that requests to participate as an approved First Steps provider shall comply with the following:

(a) Submit to an annual review by the Department for Mental Health and Mental Retardation Services, or its agent, for compliance with 908 KAR 2:100 through 908 KAR 2:180;

(b) Meet, or employ or contract with a professional or staff who meets the qualifications established in 908 KAR 2:150;

(c) Ensure:

1. [Ensure] That each professional or staff who is employed by the provider and provides a service in the First Steps Program shall attend a minimum of a one (1) day, not to exceed an eight (8) hour period, training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services; and

2. [Ensure] That each professional or staff who is employed by the provider and presently providing a First Steps service shall have evidence of equivalent training;

(d) Agree to provide First Steps services according to an individualized family service plan as required in 908 KAR 2:130;

(e) Agree to submit as requested by the department and to maintain all required information, records, and reports to insure compliance with this administrative regulation;

(f) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services; and

(g) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health Services in accordance with this administrative regulation, which shall include the tax identification number and usual and customary charges.

(2) The Department for Mental Health and Mental Retardation Services shall grant provider approval for participation to a provider who meets the criteria established in subsection (1) of this section.

Section 3. Reimbursement. The department shall reimburse a participating First Steps provider the lower of the actual billed charge for the service or the preestablished fixed upper limit taking into consideration information available to the department with regard to cost and the department's estimate as to the amount necessary to secure the service.

(1) A charge submitted to the department shall be the provider's usual and customary charge for the same service.

(2) The preestablished upper limit fee for services shall be as follows:

(a) Primary service coordination:

1. In the office, the fee shall be sixty-five (65) dollars per hour of direct contact service.

2. In the home or community site, the fee shall be eighty-eight (88) dollars per hour of direct contact service.

(b) Initial service coordination:

1. In the office, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

2. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

(c) Primary evaluation:

1. In the office or center based site, the fee shall be \$250 per service event.

2. In the home or community site, the fee shall be \$250 per service event.

(d) Intensive clinic evaluation:

1. In the office or center-based site the fee shall be \$1,100 [1,000] per service event.

2. In the community site the fee shall be \$1,000 per service event.

(e) Service assessment:

1. For an audiologist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

2. For a family therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

3. For a licensed psychologist or certified psychologist with autonomous functioning:

a. In the office or center based site, the fee shall be \$207 per hour of direct contact service.

b. In the home or community site, the fee shall be \$268 per hour of direct contact service.

4. For a developmental interventionist:

a. In the office or center based site, the fee shall be eighty-three

(83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

5. For a registered nurse:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

6. For a nutritionist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

7. For a dietitian:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

8. For an occupational therapist:

a. In the office or center based site, the fee shall be eight-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

9. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

10. For a physical therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

11. For a speech therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

12. For a social worker:

a. In the office or center based site, the fee shall be eighty-three (83) per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

13. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

14. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

15. For an assistive technology specialist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

(f) [(e)] Therapeutic intervention and collateral services:

1. For an audiologist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

2. For a family therapist:

a. In the office or center based site, the fee shall be seventy (70) per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) per hour of direct contact service.

3. For a licensed psychologist or certified psychologist with autonomous functioning:

a. In the office or center based site, the fee shall be \$155 per hour of direct contact service.

b. In the home or community site, the fee shall be \$226 per hour of direct contact service.

4. For a certified psychological associate:

a. In the office or center based site, the fee shall be \$116 per hour of direct contact service.

b. In the home or community site, the fee shall be \$170 per hour of direct contact service.

5. For a developmental interventionist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

6. For a developmental associate:

a. In the office or center based site, the fee shall be fifty-one (51) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

7. For a developmental assistant, in the office or center based site, the fee shall be ten (10) dollars per hour of direct contact service.

8. For a registered nurse:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

9. For a licensed practical nurse:

a. In the office or center based site, the fee shall be twenty-four (24) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be thirty-two (32) dollars per hour of direct contact service.

10. For a nutritionist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

11. For a dietitian:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

12. For an occupational therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

13. For an occupational therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

14. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

15. For a physical therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

16. For a physical therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

17. For a speech therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

18. For a speech therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

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dollars per hour of direct contact service.

19. For a social worker:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of service.

20. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

21. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

22. For a physician providing a collateral service in the office or center based site, the fee shall be seventy-six (76) dollars per hour of direct contact service. A physician shall not receive reimbursement for therapeutic intervention.

23. For an assistive technology specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

(g) [(f)] Respite shall be seven (7) dollars and sixty (60) cents per hour.

(h) [(g)] Integrated disciplines center-based services shall be fifty-six (56) dollars per hour of direct contact service.

(3) Except as specified in subsection (4) of this section, a payment for professional or staff services listed in subsection (2) of this section shall be based on a unit of service in fifteen (15) minutes increments.

(4) A payment for a primary or intensive [an] evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

(5) A payment for an assistive technology device shall be based on the actual invoiced cost, including the cost of shipping and handling, for the authorized equipment included in the individualized family service plan.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For a commercial transportation carrier:

1. An amount derived by multiplying one (1) dollar by the actual number of loaded miles; or

2. The metered amount plus an administration charge not to exceed twelve (12) percent of metered amount.

(b) For a private automobile carrier, an amount equal to twenty-five (25) cents per loaded mile transported;

(c) For a noncommercial group carrier, an amount equal to fifty (50) cents per eligible child per mile transported.

(7) A payment for a single professional or paraprofessional group intervention service, with a minimum of one (1) professional or paraprofessional [discipline] who can practice without direct supervision shall be thirty-six (36) dollars per child hour of direct contact service for each child in the group with a limit of three (3) eligible children per professional or paraprofessional.

(8) A payment for a multiprofessional or paraprofessional [multidisciplinary] [an interdisciplinary] group intervention service, with a minimum of two (2) professionals or paraprofessionals [disciplines] who can practice without direct supervision, shall be forty-six (46) dollars per child hour of direct contact service for each eligible child in the group with a limit of three (3) eligible children per professional or paraprofessional.

Section 4. Limitations. (1) For primary service coordination, payment shall be limited to no more than fifteen (15) hours per child per six (6) month period unless preauthorized by the department.

(2) For initial service coordination, payment shall be limited to no more than twenty-five (25) hours per child per period of eligibility unless preauthorized by the department.

(3) For service assessment:

(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthor-

ized by the department.

(b) Payment shall be limited to four (4) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the department.

(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(4) For therapeutic intervention:

(a) For office and center:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional meeting the qualifications in 908 KAR 2:150 unless preauthorized by the department; ~~except if the professional or discipline and paraprofessional is participating in a group. In a group setting, the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day unless preauthorized by the department.~~

2. Payment shall be limited to no more than one (1) office visit per child, per day, per discipline unless preauthorized by the department except that billing for collateral while participating in an IFSP meeting in the same day shall be allowed ~~except that billing for a collateral visit with the parent in the same day shall be allowed.~~

(b) For home and community sites:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional unless preauthorized by the department.

2. Payment shall be limited to no more than three (3) disciplines per child per day unless preauthorized by the department except that billing for collateral while participating in an IFSP meeting in the same day shall be allowed ~~except that billing for a collateral visit with the parent in the same day shall be allowed.~~

(c) For group:

1. In a group setting the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day, five (5) hours per week, unless preauthorized by the department.

2. The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) children per professional or discipline and paraprofessional per group, unless preauthorized by the department.

(5) For respite, payment shall [be]:

(a) Be limited to no more than eight (8) hours of respite per month, per eligible child;

(b) Not be allowed to accumulate beyond each month; and

(c) Be limited to families in crisis, or strong potential for crisis without the provision of respite.

Section 5. Sliding Fee. (1) Families are required to participate in the payment of services based on a sliding fee scale, except that no charge be made for the following functions:

(a) Child find;

(b) Evaluation and assessment;

(c) Service coordination; and

(d) Administrative and coordinative activities including development, review, and evaluation of individualized family service plans, and the implementation of procedural safeguards.

(2) Payment of fees shall be for the purpose of:

(a) Maximizing all available sources of funding for early intervention services; and

(b) To give families an opportunity to assist with the cost of services where there is a means to do so, in a family share approach.

(3) The family share payment shall:

(a) Be an income-based flat monthly fee for the duration of participation in early intervention services, as determined by:

1. Level of family gross income identified on last Federal Internal Revenue Service statement, as reported by family;

2. Level of income matched with level of poverty, utilizing the federal poverty measure, poverty guidelines as published an-

nually by the Federal Department of Health and Human Services, based on the following scale:

- a. Below 200 percent of poverty there shall be no payment;
- b. From 200 percent of poverty to 300 percent the payment shall be twenty (20) dollars per month of participation;
- c. From 300 percent of poverty to 400 percent the payment shall be thirty (30) dollars per month of participation;
- d. From 400 percent of poverty to 500 percent the payment shall be forty (40) dollars per month of participation; or
- e. From 500 percent of poverty and over the payment shall be fifty (50) dollars per month of participation [scale].
- (b) Not apply to children eligible for Medicaid;
- (c) Not prevent a child from receiving services if family shows to the satisfaction of the department an inability to pay;
1. By submitting a statement showing extraordinary medical or other cost of care; and
2. By signing a statement to the effect that payment would be a hardship due to financial demands on the family.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 4, 1998

FILED WITH LRC: November 5, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2% of children under 3, or approximately 3,800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. No public comments have been received relevant to cost of doing business. No effect to business is anticipated.

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's early intervention system. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are

considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15,000,000 in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need for future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

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

(a) Necessity of proposed regulation in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? No, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for coverage and payments.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; person-

nel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, NOVEMBER 13, 1998

KENTUCKY LEGISLATIVE ETHICS COMMISSION
(Amendment)

2 KAR 2:010. Required forms. ~~[Legislative agent or employer registration statement, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, employer's updated registration statement, employer's notice of termination of engagement.]~~

RELATES TO: KRS 6.666(6) to (13), 6.807, 6.821, 6.824, 6.827
STATUTORY AUTHORITY: KRS 6.666(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.807 requires each legislative agent and employer to file an initial registration statement, periodic updated registration statements, and a notice of termination of engagements. This administrative regulation incorporates by reference the required forms.

Section 1. Definitions. [(4)] "Personal expenses" mean expenses that [which] are not:

- (1) [neither] Reimbursable to the legislative agent by the employer; or
- (2) [-nor] Deductible as a business expense under the Internal Revenue Code.

Section 2. (1) The employer shall include the information specified by this section on the:

- (a) "Employer's Updated Registration Statement"; and
- (b) "Employer's Notice of Termination of Engagement".

(2)(a) Source of funds and financial resources that [on the employer's updated registration statements (revised 7/15/96) shall mean reporting such funds and resources which] are designated primarily for lobbying-related expenditures shall include [by] the name and address of the contributor.

(b) [However,] Lobbying-related funds obtained from a [deriving] pro rata assessment for [from] general membership dues [assessed] by an association [by some standard method] shall not require the reporting of the names and addresses of members.

(c) [All other] Funds and financial resources may be reported by types of categories, such as "membership dues", "contributions", "grants", "interest", "scholarships".

(d) [-and the like. In either case,] Records shall be maintained in such a way that a more detailed accounting can be made if requested.

Section 3. [2-] The completed registration forms and termination forms required by KRS 6.807 shall be mailed or delivered to the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601.

Section 4. Incorporation by Reference. [3-] (1) The following documents are incorporated by reference:

- (a) "Initial Legislative Agent/Employer Registration Statement (11/98)";
- (b) "Legislative Agent's Updated Registration Statement (11/98)";
- (c) "Legislative Agent's Notice of Termination of Engagement (11/98)";
- (d) "Employer's Updated Registration Statement (11/98)"; and
- (e) "Employer's Notice of Termination of Engagement (11/98)";

are incorporated by reference on July 15, 1996].
(2) These documents may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman
PAULA K. PABON, Legal Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1998, at 10 a.m. at 22 Mill Creek Park, Frankfort, Kentucky. Individuals interested in being

heard at this hearing shall notify this agency in writing by December 15, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky, 40601, (502) 573-2863, or Fax (502) 573-2929.

REGULATORY IMPACT ANALYSIS

Contact Person: Anthony M. Wilhoit

(1) Type and number of entities affected: These required forms will affect all registered legislative agents and their employers. The average number of legislative agents is 600 with about 450 legislative employers. This number varies and can only be approximate.

(2) Direct and indirect costs or savings: The only costs involved are the costs of printing the amended forms.

(a) 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 affects upon competition) for the:

1. First year following implementation: In the first year there will be an increase in copying costs to replace the old forms. However, the actual numbers of papers to be filed with the commission will remain the same.

2. Second and subsequent years: The costs, compliance, and paperwork requirements should be essentially the same each year unless there is a drastic reduction or increase in the number of registered legislative agents and employers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for printing of each page is approximately one cent. The original printing of 10,000 pages will cost \$100. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.

2. Continuing costs or savings: The costs should be consistent on an annual basis.

3. Additional factors increasing or decreasing costs: There are none that can be estimated at this time.

(b) Reporting and paperwork requirements: KRS Chapter 6 requires that the Commission shall make the completed forms available for public inspection, and shall maintain an alphabetical index. Completed forms shall be preserved for 2 years. The commission shall provide the Legislative Research Commission and every member of the General Assembly with a list of every registered legislative agent and employer on or before the tenth day of the month except during session when a new list is furnished every Friday. This regulation adds no additional requirements.

(4) Assessment of anticipated effect on state and local revenues: There is no effect that can be estimated at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds budgeted for these administrative costs will be used to cover the cost of printing of the updated registration statements and terminations for employers and legislative agents.

(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: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) There are no known effects on public health and environmental welfare of the geographical area in which the regulation will be implemented and on Kentucky.

(b) No known effect would result on the environment and public health if the regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: NA

(9) There is no known statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication.

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

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

(10) Any additional information or comments: None

(11) TIERING: Tiering has not been applied. KRS Chapter 6 establishes the fees and reporting requirements for legislative agents and employers. The statutes governing the subject matter of this regulation require uniformity and therefore prohibit tiering. KRS 6.809 establishes the amount of the fee for registering as a legislative agent or employer. KRS 6.807 establishes the requirements for the reporting of expenditures by legislative agents and employers. This regulation establishes the forms that are required by all legislative agents and employers.

KENTUCKY LEGISLATIVE ETHICS COMMISSION (Amendment)

2 KAR 2:020. Statement of financial disclosure.

RELATES TO: KRS 6.787 [6.781 to 6.797]

STATUTORY AUTHORITY: KRS 6.666(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.781 requires [all] members of the General Assembly, [all] candidates and nominees for election to the General Assembly, and major management personnel in the Legislative Branch of state government to file statements of financial disclosure. This administrative regulation establishes the required form.

Section 1. The "Statement of Financial Disclosure" required by KRS 6.781 shall be mailed to the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, [Room 318, Capitol Annex,] Frankfort, Kentucky 40601.

Section 2. (1) The "Statement of Financial Disclosure (11/98)" is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, [Room 318, Capitol Annex,] Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman
PAULA K. PABON, Legal Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1998, at 10 a.m. at 22 Mill Creek Park, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed admin-

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

REGULATORY IMPACT ANALYSIS

Contact Person: Anthony M. Wilhoit

(1) Type and number of entities affected: This required form will affect all members of the General Assembly, candidates for election to the General Assembly, and major management personnel of the Legislative Research Commission. There are 138 General Assembly members. The number of candidates varies and can only be approximate. In addition, LRC determines which employees hold major management positions within LRC.

(2) Direct and indirect costs or savings: The only costs involved are the costs of printing the amended forms.

(a) 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 affects upon competition) for the:

1. First year following implementation: In the first year there will be an increase in copying costs to replace the old forms. However, the actual numbers of papers to be filed with the commission will remain the same.

2. Second and subsequent years: The costs, compliance, and paperwork requirements should be essentially the same each year unless there is a drastic reduction or increase in the number of registered legislative agents and employers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for printing of each page is approximately one cent. The original printing of 10,000 pages will cost \$100. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.

2. Continuing costs or savings: The costs should be consistent on an annual basis.

3. Additional factors increasing or decreasing costs: There are none that can be estimated at this time.

(b) Reporting and paperwork requirements: KRS Chapter 6 requires that the commission shall make the financial disclosure forms available for public inspection. The completed forms shall be preserved for five (5) years for current members of the General Assembly, three (3) years after an individual ceases to be a member of the General Assembly or ceases employment with LRC.

(4) Assessment of anticipated effect on state and local revenues: There is no effect that can be estimated at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds budgeted for these administrative costs will be used to cover the cost of printing of the updated registration statements and terminations for employers and legislative agents.

(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: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) There are no known effects on public health and environmental welfare of the geographical area in which the regulation will be implemented and on Kentucky.

(b) No known effect would result on the environment and public health if the regulation is not implemented.

(c) NA
(9) There is no known statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication.

(a) NA

(b) NA

(10) Any additional information or comments: None

(11) TIERING: Tiering has not been applied. KRS Chapter 6 establishes the financial disclosure requirements for legislators, candidates, and major management personnel of LRC. The statutes governing the subject matter of this regulation require uniformity and therefore prohibit tiering. KRS 6.787 establishes the information that must be disclosed. This regulation establishes the forms that are required to be filed by all legislators, candidates, and major management personnel of LRC.

KENTUCKY LEGISLATIVE ETHICS COMMISSION (Amendment)

2 KAR 2:040. Updated registration short forms for employers and legislative agents.

RELATES TO: KRS 6.666(6) to (13), 6.807, 6.821, 6.827
STATUTORY AUTHORITY: KRS 6.666(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.807(3) requires [that all] employers and legislative agents registered with the Legislative Ethics Commission to file periodic updated registration forms. There are reporting periods in which there are no expenditures or expenses to be reported. This administrative regulation establishes the short forms to be used by employers and legislative agents if there are no expenditures or expenses to be reported. [certain prerequisites are met.]

Section 1. (1) The "Legislative Agent's Updated Registration Statement, Short Form" may be filed by a legislative agent if, during a reporting period, he did not:

(a) Expend sums for lobbying activities during a reporting period; and

(b) Engage in a financial transaction governed by KRS 6.824.

(2) The "Employer's Updated Registration Statement, Short Form" may be filed by an employer if, during a reporting period, he:

(a) Did not:

1. Expend sums for lobbying activities during a reporting period; and

2. Engage in a financial transaction governed by KRS 6.824; and

(b) Paid only compensation to a legislative agent.

(3) The "Legislative Agent's Updated Registration Statement, Short Form" shall include:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Name of employer; and

(e) The bills or resolutions lobbied during the reporting period.

(4) The "Legislative Employer's Updated Registration Statement, Short Form" shall include:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Name and position of person completing the form;

(e) Source of funds and financial resources;

(f) Name(s) of legislative agent(s) and compensation accrued during reporting period;

(g) Bills or resolutions lobbied during the reporting period;

(h) Names of legislative agents terminated since last reporting period.

Section 2. (1) The "Legislative Agent's Updated Registration Statement, Short Form" [Employer-Short Form and Legislative Agent Short Form] shall be mailed to the Legislative Ethics Commission at 22 Mill Creek Park, Frankfort, Kentucky 40601.

(2) The "Legislative Employer's Updated Registration Statement, Short Form" shall be mailed to the Legislative Ethics Commission at

22 Mill Creek Park, Frankfort, Kentucky 40601.

Section 3. Incorporation by Reference. [2:] (1) The following forms are incorporated by reference:

(a) "Legislative Agent's Updated Registration Statement, Short Form (11/98)"; and

(b) "Employer's Updated Registration Statement, Short Form (11/98)". [Employer-Short Form and Legislative Agent-Short Form (1996) are incorporated by reference.]

(2) These documents may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman
PAULA K. PABON, Legal Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 22, 1998, at 10 a.m. at 22 Mill Creek Park, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 15, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Anthony M. Wilhoit, Executive Director, Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky, 40601, (502) 573-2863, or Fax (502) 573-2929.

REGULATORY IMPACT ANALYSIS

Contact Person: Anthony M. Wilhoit

(1) Type and number of entities affected: These required forms will affect all registered legislative agents and their employers. The average number of legislative agents is 600 with about 450 legislative employers. This number varies and can only be approximate.

(2) Direct and indirect costs or savings: The only costs involved are the costs of printing the amended forms.

(a) 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 affects upon competition) for the:

1. First year following implementation: In the first year there will be an increase in copying costs to replace the old forms. However, the actual numbers of papers to be filed with the commission will remain the same.

2. Second and subsequent years: The costs, compliance, and paperwork requirements should be essentially the same each year unless there is a drastic reduction or increase in the number of registered legislative agents and employers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs for printing of each page is approximately one cent. The original printing of 10,000 pages will cost \$100. The costs will be paid from money already budgeted from general and restricted funds, and fees collected.

2. Continuing costs or savings: The costs should be consistent on an annual basis.

3. Additional factors increasing or decreasing costs: There are none that can be estimated at this time.

(b) Reporting and paperwork requirements: KRS Chapter 6 requires that the commission shall make the completed forms available for public inspection, and shall maintain an alphabetical index. Completed forms shall be preserved for two years. The commission shall provide the Legislative Research Commission and every member of the General Assembly with a list of every registered legislative agent and employer on or before the tenth day of the month except during session when a new list is furnished every Friday. This regulation allows a legislative agent or employer to file a short form rather than a long form when there are no expenditures, aside from compensation to report.

(4) Assessment of anticipated effect on state and local revenues: There is no effect that can be estimated at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds budgeted for these administrative costs will be used to cover the cost of printing of the updated registration statements and terminations for employers and legislative agents.

(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: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) There are no known effects on public health and environmental welfare of the geographical area in which the regulation will be implemented and on Kentucky.

(b) No known effect would result on the environment and public health if the regulation is not implemented.

(c) NA

(9) There is no known statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication.

(a) NA

(b) NA

(10) Any additional information or comments: None

(11) TIERING: Tiering has not been applied. KRS Chapter 6 establishes the fees and reporting requirements for legislative agents and employers. The statutes governing the subject matter of this regulation require uniformity and therefore prohibit tiering. KRS 6.807 and 6.821 establishes the reporting requirements for legislative agents and employers. This regulation establishes an optional form that may be utilized by legislative agents and employers when there are no expenditures, aside from compensation, to report.

COUNCIL ON POSTSECONDARY EDUCATION (Amendment)

13 KAR 2:020. Guidelines for [undergraduate] admission to the state-supported postsecondary [institutions of higher] education institutions in Kentucky.

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS [13A-100;] 164.020(8) [(9); 164.030, 164.284]

NECESSITY, FUNCTION, AND CONFORMITY: [Admission requirements shall be established by the institutions in keeping with adopted policies of the Council on Postsecondary Education:] Pursuant to KRS 164.020(8) [(9)] the council sets [approves] the minimum qualifications for admission to the state-supported postsecondary [public institutions of higher] education institutions. It is the intent of the council that all Kentucky residents shall have available to them an opportunity for postsecondary [higher] education appropriate to their interests and abilities. This administrative regulation sets forth the minimum qualifications [standards and policies of the council] related to admission at state-supported postsecondary [institutions of higher] education institutions.

Section 1. Definitions. (1) [The term] "Adult student" means a

student who is twenty-one (21) years of age or older.

(2) "Council" is the Council on Postsecondary Education established by KRS 164.011.

(3) "Institutions" is a state-supported postsecondary education institution as defined in KRS 164.001(10).

(4) "Program of Studies" is the document "Program of Studies for Kentucky Schools: Grades Primary-12" published by the Kentucky Board of Education. [The term "approved unit" means a course of study included in the "Program of Studies for Kentucky Schools: Grades K-12".

(5) The term "nontraditional student" means a student twenty-five (25) years of age or older.]

Section 2. [General. (1) Students from other states and countries will be accepted by Kentucky public institutions providing that nonresident enrollment does not inhibit the opportunities of Kentucky residents to benefit from the facilities provided. Public institutions of higher learning may establish additional admission criteria that are in compliance with council policy established pursuant to KRS 164.020(3);

(2) The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for the acceptance of transfer credits. Generally, a student dismissed from a college or university shall not be accepted at a Kentucky public institution for the semester following his dismissal. Failure to report enrollment at another institution may result in dismissal and loss of credits earned.

(3) The Council on Postsecondary Education is concerned that a student's transfer from one (1) institution to another be as smooth as possible. It shall be the responsibility of all public institutions to assure that the student is adequately counseled concerning transfer of credit. Consistent with the community college objective of a two (2) year curriculum, transfer from community colleges is normally expected at the completion of requirements for the associate degree. Transfer prior to that time, however, may be advisable in specialized programs.

Section 3. Minimum Qualifications for Institutional Admission as First-time Freshmen. (1) A Kentucky resident [residents] who has [have] graduated from a public high school [schools] or a certified nonpublic high school [schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education)], who has [have] taken the ACT Assessment Test [American College Testing Assessment (ACT)], and who will enroll in college classes for the first time following graduation from high school is [are] generally granted admission to community and technical colleges and community college-type programs at each university. The Career Planning Program Level II (CPP-II), [or] the ASSET testing program, or the COMPASS testing program may be substituted for the ACT Assessment Test requirement for adult students, if the institution believes any [either] of these testing instruments is better suited to the needs of adult students. The Kentucky Community and Technical College System may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college.

(2) A Kentucky resident [residents] who has [have] graduated from a public high school [schools] or a certified nonpublic high school [schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education)], who has [have] taken the ACT Assessment Test, who has [have] completed the minimum academic [educational] preparation, and who will enroll in college classes for the first time following graduation from high school has [have] fulfilled the minimum requirements for admission to a baccalaureate program at a university. An [programs at each university. Each] institution may accept the Scholastic Aptitude Test (SAT) in lieu of the ACT Assessment Test. An institution [for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs. Each university] may establish additional admission criteria to supplement these minimum requirements.

(3) A Kentucky resident [residents] who has [have] earned a high school equivalency certificate (GED) or who is a graduate [are graduates] of a noncertified nonpublic high school [schools (i.e., nonpublic high schools not adhering to the "Program of Studies for Kentucky

Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education) may be admitted to community or technical colleges or community college-type programs at an institution [each university] upon completion of the ACT Assessment Test. The Career Planning Program Level II (CPP-II), [or] the ASSET testing program, or the COMPASS testing program may be substituted for the ACT Assessment Test requirement for adult students. KCTCS may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college [if the institution believes either of these testing instruments is better suited to the needs of adult students]. These same individuals may be admitted to baccalaureate programs at each university by meeting the minimum requirements specified in subsection (2) of this section. Completion of the minimum educational preparation may be validated through the submission of ACT area scores which are deemed adequate by each university. A [Each] university may establish additional admission criteria to supplement these minimum requirements.

(4) An institution shall establish a policy for the admission of a student to a technical college, community college, or a university where a Kentucky resident student has attended a noncertified nonpublic school and completed a course of study. Noncertified nonpublic schools include home schools. Except for the high school graduation or high school equivalency certificate (GED) requirements, all remaining requirements of subsections (1), (2) and (3) of this section shall apply to a student who has attended a noncertified nonpublic school and completed a course of study.

(5) A nonresident [Nonresidents] must meet the same minimum qualifications for admission as a Kentucky resident [residents] as stated in subsections (1) through (4) [(3)] of this section and at least one (1) of the following conditions in order to be admitted to a state institution [institutions]:

- (a) Graduate in the top fifty (50) percent of their high school class;
- (b) Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants [in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs]); or
- (c) Demonstrate through other accepted measures the ability to pursue the college academic program without substantial remedial education [aid].

(6) [(5)] If, under extenuating circumstances, a student is [students are] admitted conditionally without having fulfilled the testing requirement, the student [students] must take the ACT to fulfill this requirement during the first semester of enrollment.

Section 3. [4:] Minimum Academic [Educational] Preparation and the Precollege Curriculum. (1) Effective for the fall semester of 2002, an applicant who has [1987, applicants who have] satisfied the minimum qualifications for institutional admission as a first-time freshman and who has [freshmen and have] successfully completed twenty-two (22) [twenty-(20)] or more approved high school units including the following precollege curriculum describing the minimum academic preparation requirements is [are] eligible for admission to baccalaureate programs at each university. The precollege curriculum described in this section shall include the following categories and courses of study and is based on the Program of Studies. An institution [Each university] may establish additional requirements to supplement this minimum academic [educational] preparation.

(a) Four (4) units of high school study in English/language arts, specifically, including English I [(2301)], English II [(2302)], English III [(2303)], and English IV [(2304) or AP English (2307 or 2308)].

(b) Three (3) units of high school study in mathematics, [specifically] including Algebra I, [(2710), (2722) or (both 2720 and 2721) or] Algebra II, and [(2711 or 2723);] Geometry. Provided, however:

1. A student may substitute for Algebra I a mathematics course whose content is more rigorous than that described in the Program of Studies.

2. Algebra I may be taken prior to high school and counted as a mathematics required course if the academic content of the course is at least as rigorous as that listed in the Program of Studies.

3. Algebra II shall include the content and skills described in the

Core Content for Assessment, published by the Kentucky Department of Education. [(2712 or 2735 or 2732), and one (1) additional mathematics elective. Beginning in 1990-91, the mathematics elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12" published by the Kentucky Department of Education. Effective with admissions for the fall semester of 1995, the three (3) required units of high school study in mathematics shall include Algebra I (2710 or 2722 or 2751); Algebra II (2711 or 2723); and Geometry (2712 or 2732 or 2735). This mathematics requirement also may be met by completing the integrated mathematics series consisting of three (3) units (2756, 2757, and 2758).]

(c) Three (3) [Two-(2)] units of high school study in science, to include physical science, life science, and earth/space science. At least one (1) unit shall be a laboratory course. [specifically including either Biology I (2517) or Chemistry I (2521) or Physics I (2532), and one (1) additional science elective. At least one (1) of the science courses must be a laboratory course. Beginning in 1990-91, the science elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12". Effective with admissions for the fall semester of 1995, the two (2) required units of high school study in science shall include Biology I (2517) and either Chemistry I (2521) or Physics I (2532), at least one (1) of which shall be a laboratory course.]

(d) Three (3) [Two-(2)] units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization.

(e) One-half (1/2) unit in health education.

(f) One-half (1/2) unit in physical education.

(g) One (1) unit in history and appreciation of visual and performing arts.

(h) Effective with the fall semester 2008, an applicant shall:

1. Complete two (2) units in a nonnative language where the academic content includes the spoken and written aspects of a nonnative language as well as the culture associated with that language; or

2. Demonstrate linguistic competence and awareness of a nonnative language and culture equivalent to two (2) years of high school language and the culture associated with that language.

(2) A student is also required to take seven (7) electives. Five (5) of the seven (7) electives must be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements and must be in the approved areas of study:

(a) Social studies.

(b) Science.

(c) Mathematics.

(d) English/language arts.

(e) Arts and humanities.

(f) Physical education and health. A student is limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

(g) Nonnative language where the academic content includes spoken and written aspects of a nonnative language as well as the culture associated with the language.

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. The academic content shall be more rigorous than the introductory level as described in 703 KAR 4:060. [specifically including World Civilization (2246) and U.S. History (2243) or AP American History (2244).]

(i) A [(e) in addition,] college-bound student is [students are] encouraged to take, as part of his [their] elective course selection [selections], additional coursework in mathematics, sciences, and [foreign languages,] arts. Two (2) elective courses in a nonnative language and an elective course that ensures computer literacy are strongly recommended. [and computer literacy. Substitutions cannot be made for any course which is identified by a specific program of studies number unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.]

(3)(a) A student may substitute an integrated, applied, interdisciplinary, or higher level course within a program of study for a

course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated math courses are intended to be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated math sequence.

(c) An approved substitute course shall include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(4) A waiver of a required precollege curriculum course may, however, be justified if:

(a) A student is physically unable to complete a course because of a physical handicap;

(b) [1-] A [given] student's handicapping condition is verified through appropriate documentation;

(c) [2-] The school district superintendent (or designee) verifies that a student's handicapping condition will prevent the student from completing the course in question; and

(d) [3-] Another course in a closely related area can be substituted for the course that cannot be completed.

(5) [(2)] Course selections are tied to the Program of Studies [for Kentucky Schools: Grades K-12"] and the individual course descriptions contained in that document. Adjustments in the minimum academic [educational] preparation for college will occur as changes are made in the program of studies. For guidance in the selection of specific courses, counselors should consult the program of studies and Council [on Postsecondary Education] materials on the precollege curriculum.

(6) [(3)] It is the responsibility of each institution [of higher education] to determine whether an applicant has met these minimum academic [educational] preparation requirements.

(7) [(4)] Effective with admissions for the fall semester of 2002, a student [1992, all students] admitted to a baccalaureate degree program at an institution [with baccalaureate degree status to universities] shall be subject to the precollege curriculum [as established in this section].

(8) The following are exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student [Excluded from this requirement shall be nontraditional students and students] entering baccalaureate degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale; or

(c) [- Also excluded from this requirement shall be] Active duty military personnel, their spouses, and their dependents.

(9) Specifically subject to this requirement are the following:

(a) First-time freshmen pursuing a baccalaureate degree with or without a declared major;

(b) A student [students] converting from nondegree status to baccalaureate degree status;

(c) A student [students] changing from certificate or associate-degree level to baccalaureate degree level; and

(d) A student [students] who, transferring from another institution, has [other institutions, have] been admitted to baccalaureate degree status by the receiving institution. A [All] degree-seeking student [students] shall be assigned a degree-level code.

Section 4. [5-] Conditional Admissions Qualifications. (1) Subject to the requirements and limitations established by the council [on Postsecondary Education], an institution [each university] shall have the option of admitting conditionally a first-time freshman applicant [applicants] to a baccalaureate program [programs] who has [have] not met the minimum academic [educational] preparation qualifications for admission. A [Beginning in the fall semester of 1987, each university may grant exceptions to the minimum educational preparation qualifications and admit conditionally each academic term a maximum of twenty (20) percent of the total number of applicants admitted to baccalaureate programs as first-time freshmen:] first-time freshman [freshmen] admitted conditionally shall remove or otherwise satisfy all deficiencies regarding the minimum academic [educational] preparation in a manner and time period established by the enrolling university.

(2) An institution [Effective with the fall semester of 1994, each university] enrolling students under the conditional admission provision of this policy in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. [The transition from twenty (20) percent to five (5) percent shall be initiated as follows: beginning with the fall semester of 1992, each university shall admit conditionally each academic term not more than fifteen (15) percent of a base figure; and, beginning with the fall semester of 1993, each university shall admit conditionally each academic term not more than ten (10) percent of a base figure.] The base figure shall be the average number of students reported as enrolled with baccalaureate degree status over the preceding four (4) years. [Nonresident students who failed to take world civilization while in high school shall not be reported or treated as having a precollege curriculum deficiency and shall not be subject to conditional admission on this basis.]

(3) By January 1, 1992, each university shall submit to the Council on Postsecondary Education for review and approval its policy covering the removal of precollege curriculum course deficiencies for students admitted conditionally. These policies shall apply to admissions beginning with the fall semester of 1992 and shall include the following components and conditions:

(a) Precollege curriculum course deficiencies in English and mathematics should be removed as soon as possible after enrollment, and shall be removed before students earn twenty-four (24) hours of degree credit. Students failing to comply with this condition of admission shall be prohibited from enrolling in additional degree credit courses until the required corrective measures have been completed.

(b) Courses used to remove precollege curriculum deficiencies in English and mathematics shall not apply toward graduation credit.

(c) Students who have not completed the required courses in English and mathematics, but who score at or above the 60th percentile on the relevant portion of the ACT or SAT, shall be considered as having demonstrated a proficiency in the subject and shall not be assessed as deficient on this basis.

(d) Removal of precollege curriculum deficiencies in science and social studies shall be required before students complete twenty-four (24) hours of degree credit. The institutions shall stipulate the manner in which deficiencies shall be removed.

(e) University policies shall specify how the removal of deficiencies will be monitored and enforced.]

(3) [(4)] Although not subject to the precollege curriculum for admission purposes, students enrolled in community colleges or community college-type programs in universities shall be assessed and reported as to their precollege curriculum status [effective with admissions for the fall semester of 1992. Students with precollege curriculum deficiencies shall remove deficiencies subject to the same requirements and conditions as baccalaureate students who are admitted conditionally. By January 1, 1992, individual community colleges or the University of Kentucky Community College System shall submit their policies or its policy covering the removal of precollege curriculum course deficiencies to the Council on Postsecondary Education for review and approval. By January 1, 1992, universities shall submit their policies applicable to community college-type students to the Council on Postsecondary Education for review and approval, if these policies differ from their policies for baccalaureate students admitted conditionally].

Section 5. [6-] Special Students. (1) An applicant [Applicants] of superior ability, as demonstrated by exceptional academic achievement, a high ACT score [scores], and social maturity, may be granted early admission [to the freshman class].

(2) At the discretion of the institution, an applicant [applicants] unable to meet college entrance requirements may be admitted to a college class [classes] for which he is [they are] qualified.

(3) A Kentucky resident [residents] sixty-five (65) or older who is [are] admitted to an institution [state-supported institutions] shall have all registration and tuition charges waived. However, an institution may limit admission under this subsection [of these students] if classes are filled, or if [their] admission necessitates creating additional classes.

Section 6. [7-] Admission with Advanced Standing. (1) Applicants who have attended another accredited college or university may be

admitted with advanced standing in accordance with admission requirements established by each institution. An institution may have additional requirements for nonresidents.

(2) Lower division academic courses offered for undergraduate credit at any accredited Kentucky community college are transferable for academic credit to state-supported universities. Lower division academic courses are those offered for undergraduate credit at the freshman and sophomore level or normally counted toward requirements for an associate degree. Usually numbered 100 to 299, these are introductory in nature and require no significant prerequisites. Determination of course level shall be made by the governing boards of the public universities and filed with the Council on Postsecondary Education.

(3) The number of semester hours earned at the community college level which will be applied toward meeting requirements for a baccalaureate degree will depend upon the degree being pursued and the transfer practices of the receiving institution. In cases where educational objectives have changed, students may take additional courses at a community college after having completed the associate degree requirements. In this event, the college to which the student plans to transfer should be consulted.

(4) Although each public university has the responsibility for determining its degree requirements, it normally takes two (2) additional academic years for a community college transfer student to complete baccalaureate degree requirements.

(5) Credits presented from institutions not accredited may be accepted only when validated by advanced work at the receiving institution or by examination at the discretion of the institution.

Section 8.] General Policy on Nonresident Enrollment. (1) An institution providing a scholarship to a nonresident student, regardless of the source or nature of the scholarship, shall [institutions which waive the nonresident surcharge for nonresident students will continue to] count that student as a nonresident student [those students as nonresident students] for purposes of this policy and reporting to the council.

(2) A student from another state or country will be accepted by an institution provided that nonresident enrollment does not inhibit the educational opportunities of a Kentucky resident. An institution may establish additional admission criteria consistent with this administrative regulation.

Section 7. Transfer Students. (1) The council's general education transfer policy and baccalaureate program transfer framework policy shall provide the basis for institutional policies on the acceptance of transfer credits. The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for admission of transfer students to an institution and for the acceptance of transfer credits. Generally, a student dismissed from a college or university shall not be accepted at an institution for the semester following his dismissal. Failure by a student to report enrollment at another institution may result in dismissal and loss of credits earned.

(2) The council is concerned that a student's transfer from one (1) institution to another be as smooth as possible. It shall be the responsibility of all state-supported institutions to assure that the student receives adequate academic counseling concerning transfer of credit.

Section 8. Remedial Placement. (1) The council shall adopt a policy on remedial placement by June 30, 1999, that provides minimum standards for placement of a student in a college-level course.

(2) An institution shall establish, no later than the end of calendar year 1999, a policy on placement of a student in a college-level course. The institutional policy shall use an assessment system that:

(a) Meets or exceeds the minimum level of the policy developed by the council in subsection (1) of this section;

(b) Evaluates whether a student meets entry level standards in reading, English and mathematics;

(c) Requires a student who does not meet the entry level standards to enroll in appropriate remedial level courses and pass them with a grade of "C" or higher; and

(d) Requires an institution to use placement tests for assigning

students to the appropriate level course; and

(3) The Kentucky Community and Technical College System also shall establish uniform placement policies for the two (2) branches, the Technical College Branch and the University of Kentucky Community College Branch.

LEONARD V. HARDIN, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: November 9, 1998

FILED WITH LRC: November 13, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:020, Guidelines for Admission, will be held on December 22, 1998, at 9 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Postsecondary Education in writing by December 15, 1998. 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 administrative regulation. A transcript of the public hearing will not be made unless requested in writing. 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 new administrative regulation to: Roger Sugarman, Associate Director for Research and Accountability, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of individuals, businesses, organizations, and state and local governments affected by the administrative regulation: 8 public universities, 16 private colleges, 28 public technical and community colleges, local school districts and the Kentucky Department of Education.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. Negligible impact on local schools or on institutions.

2. Second and subsequent years. Negligible

(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. Negligible on the promulgating body.

(b) Reporting and paperwork requirements. No additional 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 funds.

(6) Economic impact in Kentucky on:

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

(b) On Kentucky. Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected. None

(8) Assessment of expected benefits.

(a) Impact on public health and environmental welfare. Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Same as (a).

(c) If detrimental effect would result, explain detrimental effect. Same as (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. Not applicable.

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

(10) Any additional information or comments. No additional comments are offered.

(11) TIERING: Is tiering being applied. Tiering is not being applied and is not appropriate for this administrative regulation.

**GENERAL GOVERNMENT CABINET
Kentucky State Board of Examiners and
Registration of Landscape Architects
(Amendment)**

201 KAR 10:050. Fees.

RELATES TO: 323A.060, 323A.100(1), (4)

STATUTORY AUTHORITY: KRS 323A.060, 323A.210(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: The board is authorized by KRS 323A.060 to promulgate administrative regulations to establish fees for services. This administrative regulation establishes fees for landscape architect licensees.

Section 1. Fees. The following nonrefundable fees shall be paid:

(1) Renewal fees:

(a) Active license - \$150.

(b) Inactive license - twenty-five (25) dollars.

(2) Duplicate certificate: ten (10) dollars.

(3) Issuance of original license certificate: \$200.

(4) Restoration of a suspended license: renewal fee established in subsection (1) of this section, plus an amount calculated pursuant to KRS 323A.100(1).

(5) Issuance of a license on reciprocity basis: \$200.

(6) Examination:

(a) Processing fee. A fifty (50) dollar nonrefundable processing fee shall be:

1. Submitted with a new application for examination; and
2. Deducted from the total exam fee.

(b) Examination sections:

1. Section A: ~~forty-five (45) dollars; [1: forty-eight (48) dollars.]~~
2. Section B: ~~eighty (80) dollars; [2: seventy-eight (78) dollars.]~~
3. Section C: \$175; [3: \$126.]
4. Section D: \$150; [4: \$126.]
5. Section E: \$175; [5: \$126.]
6. Section F: \$126;
7. Section G: ~~fifty-seven (57) dollars.]~~

HORST SCHACH, President

DIANE FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 30, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on these proposed administrative regulations shall be held on December 29, 1998 at 1 p.m., at the Kentucky State Board of Examiners & Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 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 these proposed administrative regulations. 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 regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to: Jane Alexander Gardner, Executive Director, Kentucky State Board of Examiners & Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263, FAX (502) 573-6687.

REGULATORY IMPACT ANALYSIS

Contact person: Jane Alexander Gardner

(1) Type of number of entities affected: This administrative regulation will affect approximately 25 individuals per year. The individuals affected are those individuals who take the Landscape Architecture Registration Examination in order to obtain a license to practice landscape architecture in the Commonwealth 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:

(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: This administrative regulation will reduce the current examination costs by a total of \$5. This amendment should have no effect on the cost of living, cost of employment, or cost of doing business for the examination candidates. As the examination has been restructured, it will reduce the number of sections of the examination, which will reduce the paperwork requirements.

(3) Effects on the promulgating administrative body:

(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: This administrative regulation amendment should pose no change in costs or savings to the board. The change in structure of the examination will reduce the amount of paperwork required.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation amendment will require no new revenue to implement or enforce.

(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: There will be no economic impact in any specific geographical areas as this regulation applies to all examination candidates.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were needed, as this amendment is in response to a change in the national licensing examination.

(8) Assessment of expected benefits:

(a) Identify the 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: This regulation will have no effect on public health or environmental welfare.

(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: This amendment will not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all examination candidates.

**GENERAL GOVERNMENT CABINET
Kentucky State Board of Examiners and
Registration of Landscape Architects
(Amendment)**

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)

STATUTORY AUTHORITY: KRS 323A.210(2)(a), (b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education contact hours established by an administrative regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for registrants. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions. (1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined by KRS 323A.010(1).

(3) "Clock hour" means fifty (50) minutes of actual instruction.

(4) "Continuing education unit" or "CEU" means ten (10) clock hours of continuing education experience approved by the board.

(5) "LARE" means the landscape architectural registration exam.

(6) "Self-directed study" means a course of study in which a registrant takes and passes an examination offered by the sponsor after the registrant reviews material, views a video, or listens to an audio tape.

(7) "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

(8) "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a registrant shall maintain, improve or expand skills and knowledge obtained prior to initial license or develop new and relevant skills and knowledge.

Section 3. Continuing Education Requirements. (1) A registrant shall acquire fifteen (15) clock hours of continuing education annually.

(2) A registrant may be credited for a maximum of seven and one-half (7 1/2) clock hours of continuing education for a tour annually.

(3) A registrant may carry forward a maximum of fifteen (15) clock hours of continuing education to meet the subsequent year's requirements. Tour hours shall not be carried forward into subsequent years.

Section 4. Approval of Continuing Education Programs. (1) The board shall:

(a) Approve a continuing education program that it determines:

1. Is relevant to the practice of landscape architecture; and

2. Furthers the competence of a registrant; and

(b) Determine the number of clock hours allowed.

(2)(a) A sponsor shall obtain the approval of the board at least sixty (60) days prior to the date on which the sponsor intends to conduct a continuing education program that is to be offered, presented, or advertised as meeting the continuing education requirements established for a registrant.

(b) A sponsor shall submit a copy of the continuing education program for which it seeks approval, including a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker.

(c) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a registrant unless it has obtained the approval of the board.

(3) A registrant who completes an educational program that has not been submitted to the board for approval shall receive continuing education credit if:

(a) The registrant submits to the board a copy of the continuing education program, including a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker; and

(b) The board determines that the program meets the requirements established in subsection (1)(a) of this section.

(4) A continuing education credit shall be given for self-directed study if a registrant:

(a) Prior to taking the course, has:

1. Submitted to the board a copy of the course description, including a detailed summary of the course; and

2. Received approval of the course by the board; and

(b) Submitted proof to the board that the registrant has passed the examination given by the sponsor.

(5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed seven and a half (7 1/2) hours, of a tour if the registrant has:

(a) Submitted to the board:

1. A description of the tour; and

2. Proof that the tour was related to the practice of landscape architecture as defined by KRS 323A.010(3); and

(b) Received approval of the tour by the board.

(6) The number of clock hours for which credit shall be given for a continuing education program shall be the number of clock hours approved by the board.

(7) The conversion of university credits to clock hours shall be:

(a) One (1) university quarter hour of credit shall equal ten (10) clock hours.

(b) One (1) university semester hour of credit shall equal fifteen (15) clock hours.

Section 5. (1) Continuing education activities shall include:

(a) A college or university course;

(b) An activity for which a CEU was approved by the board; and

(c) The portion of a technical meeting, seminar, or other course

that was:

1. Related to landscape architectural practice or management; and

2. Approved by the board.

(2)(a) A landscape architect who teaches a continuing education course shall be credited with the number of clock hours equal to the time spent teaching the course.

(b) Credit shall not be given for repeated instruction of the same course.

(3) A registrant shall obtain the board's approval prior to completing a continuing education activity that has not been accredited by the board.

Section 6. Reporting of Continuing Education Activities. (1) Upon license renewal, a registrant shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

(a) Name of activity;

(b) Date of activity;

(c) Location of activity; and

(d) Contact hours earned.

(3) The report of continuing education activities shall contain the following affidavit of compliance:

I certify that I attended the above continuing education courses and that the hours attended are correct. By certifying that I attended the above listed courses, I understand that my license to practice Landscape Architecture in the Commonwealth of Kentucky may be revoked if I falsify any of the information or if I did not attend a listed course. I understand that the Kentucky State Board of Examiners and Registration of Landscape Architects has the right to verify my attendance to the above listed courses. I have retained in my files a registration receipt, canceled check or other acceptable verification of my attendance to the above listed course.

(4) The report of continuing education activities shall be made:

(a) On a "Continuing Education Approval Request and Affidavit Form"; or

(b) By a written statement containing the:

1. Information specified by subsection (2) of this section; and

2. Affidavit of compliance established by subsection (3) of this

section.

(5) The report of continuing education activities shall be:

- (a) Signed by the registrant; and
- (b) Affixed with the registrant's seal.

(6) A registrant shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

Section 7. Verification of Continuing Education Activities. (1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the registrants, chosen randomly, to furnish documentation of the completion of the appropriate number of CEU's for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by:

(a) Submission of an official document, including a:

- 1. Transcript;
- 2. Certificate of attendance;
- 3. Affidavit signed by the instructor; or
- 4. Receipt for a fee paid to a sponsor; or

(b) If evidence specified in paragraph (a) of this subsection is not issued by a sponsor, a written summary of attendance and participation.

(3) To verify that an activity listed by a registrant qualifies as a continuing education activity, the board shall determine if the activity had the prior approval of the board. If the activity has not been approved by the board, the board shall determine if the activity meets the requirements of Section 4(1) of this administrative regulation for approval as a continuing education activity.

(a) If the activity qualifies as continuing education, the board shall include the number of clock hours earned for that activity in determining if the applicant obtained the required fifteen (15) hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of clock hours claimed for that activity from the total number of clock hours earned by the registrant. After this calculation, if a registrant does not have the required fifteen (15) hours of continuing education, the board shall send written notification to the registrant that:

1. The registrant did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his license if the requirements of subsection (4) of this section are not met.

(4) The license of the registrant shall be suspended if the registrant fails to:

(a) Complete the required number of continuing education clock hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated "Continuing Education Approval Request and Affidavit Form" within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. (1) Credit for continuing education earned by a registrant who does not reside in Kentucky shall be granted if:

(a) The registrant:

1. Is registered in another state having continuing education requirements equal to, or more stringent than, the requirements established by the provisions of this administrative regulation; and

2. Has met all requirements for registration in the state in which the registrant resides; and

(b) The other state certifies to the board that:

1. Its continuing education requirements are equal to, or more stringent than, the requirements established in this administrative regulation; and

2. The registrant has met its requirements for the current renewal period.

(2) The number of clock hours earned in a registrant's state of residence shall be credited against the clock hours required by the provisions of this administrative regulation.

(3) If a registrant obtains a license in Kentucky by reciprocity, the registrant shall be exempt from the continuing education requirements

established by the provisions of this administrative regulation until the renewal period following licensure in Kentucky.

Section 9. Exempt Registrant. (1) A registrant shall be exempt from the continuing education requirements:

(a) For the period of initial licensure;

(b) During the period of time in which the registrant has an inactive license in accordance with the provisions of Section 10 of this administrative regulation; or

(c) If the board approves a written request for an exemption submitted by the registrant in accordance with the provisions of subsection (2) of this section.

(2) A registrant may request an exemption from the continuing education requirements by submitting written document that the registrant was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

- 1. Physical disability;
- 2. Personal illness; or
- 3. Illness of a family member or dependent.

Section 10. Inactive License. (1) A registrant may choose to inactivate his license.

(2) During the period a license is inactive, a registrant shall:

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

(b) Not practice landscape architecture, or use a title conveying that the registrant is a landscape architect.

Section 11. Reinstatement of Suspended or Inactive License. (1) Prior to reinstatement of a suspended or inactive license, a registrant shall complete the number of CEU's required for the annual renewal of the license times the number of years the license was suspended or inactive.

(2) The number of CEU's required by subsection (1) of this section shall not exceed thirty (30) clock hours.

Section 12. Incorporation by Reference. (1) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), March 1997 edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HORST SCHACH, President

DIANE FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 30, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on these proposed administrative regulations shall be held on December 29, 1998 at 1 p.m., at the Kentucky State Board of Examiners & Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 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 these proposed administrative regulations. 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 regulations. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulations to: Jane Alexander Gardner, Executive Director, Kentucky State Board of Examiners & Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, (502) 573-3263, FAX (502) 573-6687.

REGULATORY IMPACT ANALYSIS

Contact person: Jane Alexander Gardner

(1) Type of number of entities affected: This administrative regulation will affect approximately 225 individuals per year. The individuals affected at those individuals who maintain a license to practice landscape architecture in the Commonwealth 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:

(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: This administrative regulation should pose no change in costs or savings to the licensed professionals.

(3) Effects on the promulgating administrative body:

(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: This administrative regulation amendment should pose no change in costs or savings on the board.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation amendment will require no revenue to implement or enforce.

(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: There will be no economic impact in any specific geographical areas as this regulation applies to all licensees.

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

(8) Assessment of expected benefits:

(a) Identify the 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: This regulation will have no effect on public health or environmental welfare.

(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: This amendment will not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering is not applicable to this administrative regulation as uniformity has been set for all licensees.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

RELATES TO: KRS 150.025(1), 150.340, 150.370(1), 150.399,

150.400, 150.410, 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department authority to establish hunting seasons and to regulate bag and possession limits for, and the methods of taking and the devices use to take wildlife. This administrative regulation is necessary to insure the permanent and continued supply of small game and furbearer species by protecting them from overharvest.

Section 1. Definitions. (1) "Conibear-type trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foot-hold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws which close upon an animal's foot.

(4) "Furbearers" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels or striped skunk.

(5) "Hunter" means a person hunting small game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the five (5) or ten (10) day period established by 301 KAR 2:172 [beginning on the second Saturday of November] during which hunters may take deer with breech-loading firearms.

(7) "Nonlocking snare" means a wire, cable or string loop without a device to keep the loop from loosening.

(8) "Padded trap" means a commercially manufactured foot-hold trap with metal jaws padded with a soft, nonmetallic substance.

(9) "Small game" means squirrels, rabbits, quail or grouse.

(10) "Squirrel [Squirrels]" means gray squirrel or fox squirrel [squirrels and fox squirrels in any combination].

(11) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as otherwise allowed by 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Squirrel:

(a) The first Saturday in June for fourteen (14) consecutive days; and

(b) [Squirrels] The third Saturday in August through January 31. The season shall be closed during the modern gun deer season.

(2) Rabbits and quail: November 1 through January 31 except:

(a) The day after the modern gun deer season closes through January 31 in the first and second wildlife districts as stipulated in 301 KAR 4:010.

(b) The season shall be closed during the modern gun deer season in the third through ninth wildlife districts as stipulated in 301 KAR 4:010.

(3) Grouse: the day after the modern gun deer season closes through the last day in February in Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(4) Raccoon and opossum hunting: November 1 through noon on the day after the modern gun deer season.

(a) A person shall not trap during this period.

(b) During the modern gun deer season, a raccoon or opossum hunter shall not:

1. Hunt during daylight hours; or

2. Carry a firearm except a .22 caliber rimfire firearm.

(5) Furbearers, hunting and trapping: from noon the day after the modern gun deer season through noon, February 1.

(6) Extended beaver season: the month of February.

(7) Small game and furbearers taken by falconry: September 1 through February 15.

(8) There shall not be a closed season on:

(a) Chasing red and gray foxes and rabbits during daylight hours

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for sport and not to kill.

(b) Chasing raccoons or opossums for sport and not to kill.

~~[(9) Bobcats shall be taken only according to the provisions of 301 KAR 2:240.]~~

Section 3. Small Game Bag and Possession Limits.

	Daily	Possession
Squirrels	6	12
Rabbits	4	8
Quail	8	16
Grouse	4	8

Section 4. Furbearer Hunter Limits. (1) There shall not be a limit on furbearers except raccoons.

(2) A hunter shall not take more than one (1) raccoon within a twenty-four (24) hour period from noon to noon.

Section 5. Limits by Falconry. A falconer hunting within the falconry season but outside the dates specified in Section 2(1) through (6) of this administrative regulation shall not take more than two (2) of any small game or furbearer species, singly or in the aggregate per day.

Section 6. Shooting Hours. A person shall not take small game or furbearers except during the times specified in this section.

(1) Small game or furbearers, except opossum and raccoon: daylight hours only.

(2) Raccoon and opossum: day or night, except that a person shall not hunt during daylight hours ~~[night hunting only]~~ during the modern gun deer season.

Section 7. Use of Calls. A hunter may use hand- or mouth-operated call ~~[calls]~~ or attracting device ~~[devices]~~.

Section 8. A hunter shall not possess buckshot or a shotgun slug ~~[slugs]~~.

Section 9. Raccoon and Opossum Hunting Restrictions. (1) A hunter shall not use a light ~~[lights]~~ from a boat to take raccoon or opossum.

(2) Except as specified in subsection (3) of this section, a person chasing raccoon or opossum from noon, February 1 through October 31 shall not use or carry a:

- Firearm;
- Slingshot;
- Tree climber;
- Squealer; or
- Similar device capable of killing, injuring or forcing a raccoon or opossum from a tree or den.

(3) A person participating in a department-approved raccoon dog trial sanctioned by one (1) of the following organizations may use a squealer ~~[squealers]~~:

- The American Coon Hunters Association.
- The American Kennel Club/American Coon Hunters Association.
- The National Kennel Club.
- The Professional Kennel Club.
- The United Coon Hunters Association.
- The United Kennel Club.

Section 10. Trapping. (1) There shall not be daily or possession limit on a furbearer ~~[limits on furbearers]~~ taken by trapping.

(2) A person trapping on dry land shall not:

- Set traps closer than ten (10) feet apart.
- Use a trap except a:
 - Deadfall;
 - Wire cage or box trap;
 - Number two (2) or smaller foot-hold trap;
 - Padded trap with a jaw spread of six (6) inches or less;
 - Number 220 or smaller conibear-type trap; or
 - A nonlocking snare.

(3) There shall be no restrictions on a trap used as a water set

except during the extended beaver season as specified in Section 11 of this administrative regulation.

(4) A trap shall not be set in a trail or path commonly used by a human or a domestic animal.

(5) A trapper may use lights from a boat or a vehicle.

Section 11. During the extended beaver season a trapper shall not:

- A dry land set;
- A trap except a:
 - Number three (3) or larger foot-hold trap;
 - Padded trap with a jaw spread of at least five and one-half (5 1/2) inches;
 - Conibear-type trap with a jaw spread of at least eight (8) inches; or
 - A snare.

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: November 10, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 28, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 17, 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, Assistant Director, Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406 FAX: (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 251,000 small game hunters and 700 trappers participate in the seasons proposed by this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation, which continues long-standing hunting and trapping seasons, will have no impacts on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no 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:

- First year following implementation: This administrative regulation imposes no new paperwork or reporting requirements.
- Second and subsequent years: Same as first year.
- Effects on the promulgating administrative body:
 - Direct and indirect costs or savings:
 - First year: This administrative regulation imposes no new direct or indirect costs.
 - Continuing costs or savings: Same as first year.
 - Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no new reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not impact 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: The provisions of this administrative regulation apply statewide.

(b) Kentucky: Small game hunters annually spend over \$50 million for equipment, transportation, food and lodging in Kentucky. This administrative regulation, by allowing for the continuance of hunting seasons, assures the perpetuation of this economic benefit.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is closure of hunting seasons. This alternative was rejected because small game and furbearer populations are at levels which can sustain hunter or trapper harvest and provide recreational and economic benefits to the Commonwealth.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Hunting and trapping seasons help limit the population growth of some species, which could pose both environmental and public health problems if allowed to grow unchecked.

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

(c) If detrimental effect would result, explain detrimental effect: Without hunting or trapping, populations of some animals, particularly furbearers, could grow to levels that would pose threats to agricultural crops, increase the incidence wildlife diseases, or cause damage to ecosystems.

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used in setting different seasons dates for various species, taking into account both biological concerns and hunter preference.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)**

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 50. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions. [Chapters 50 to 65.]

Section 1. Definitions. All terms not defined in this administrative

regulation or in subsequent administrative regulations, shall have the meaning given them in KRS 224.01-010 or by commonly accepted usage. As used in the administrative regulations of the Division for Air Quality, unless the content clearly indicates otherwise, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in Section 4 of this administrative regulation, and the affected facility's basis, as defined by Section 1012 of the Internal Revenue Code which has been incorporated by reference in Section 4 of this administrative regulation. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quanti-

tatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. [the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.]

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source,

upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM₁₀ emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation or chapter.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methyl-ene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-

pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonfluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCH₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonfluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCH₂OC₂H₅); methyl acetate; and perfluorocarbon compounds which fall into these classes:

- (a) Cyclic, branched, or linear, completely fluorinated alkanes;
- (b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter [Chapters] 50 [to-65], shall have the following meanings:

AOAC - Association of Official Analytical Chemists
 ANSI - American National Standards Institute
 ASTM - American Society for Testing and Materials
 BOD - Biochemical oxidant demand
 BTU - British Thermal Unit
 °C - Degree Celsius (centigrade)
 Cal - calorie
 cfm - Cubic feet per minute
 CFR - Code of Federal Regulations
 CH₄ - methane
 CO - Carbon monoxide
 CO₂ - Carbon dioxide
 COD - Chemical oxidant demand
 dscf - dry cubic feet at standard conditions
 dscm - dry cubic meter at standard conditions
 °F - Degree Fahrenheit
 ft - feet
 g - gram
 gal - gallon
 gr - grain
 hr - hour
 HCl - Hydrochloric acid
 Hg - mercury
 HF - Hydrogen fluoride
 H₂O - water
 H₂S - Hydrogen sulfide
 H₂SO₄ - Sulfuric acid
 in - inch
 J - joule
 KAR - Kentucky Administrative Regulations
 kg - kilogram
 KRS - Kentucky Revised Statutes
 l - liter
 lb - pound
 m - meter
 m³ - cubic meter
 min - minute
 mg - milligram
 MJ - megajoules
 MM - million

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mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State Implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
tpy - tons per year
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard.

Section 3. 401 KAR 50:047 Definitions. As used in 401 KAR 50:047, unless the content clearly indicates otherwise, the following terms shall have the following meanings:

- (1) "Capture" means the containment or recovery of emissions from a process for direction into a duct which may be exhausted through a stack or sent to a control device.
- (2) "Capture system" means all equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.
- (3) "Capture efficiency" means the weight per unit time of volatile organic compounds (VOCs) entering a capture system and delivered to a control device divided by the weight per unit time of VOCs generated by a source of VOCs, expressed as a percentage.
- (4) "Control device" means equipment such as an incinerator or carbon adsorber used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.
- (5) "Control system" means a combination of one (1) or more capture systems and control devices working in concert to reduce discharges of pollutants to the ambient air.
- (6) "Destruction or removal efficiency" means the efficiency, expressed as a decimal fraction, of a control device in destroying or removing contaminants. It is calculated as one (1) minus the quotient of the amount of VOCs exiting the control device divided by the amount of VOCs entering the control device, i.e., $1 - ((\text{VOC exiting})/(\text{VOC entering}))$.
- (7) "Gas-gas method" means either of two (2) methods for determining capture of emissions which rely on only gas phase measurements. One (1) method requires construction of a total temporary enclosure to assure all would-be fugitive emissions are measured; the other method uses the room or building which houses the emission source as an enclosure.
- (8) "Hood" means a partial enclosure or canopy for capturing and exhausting, by means of a draft, the organic vapors or other fumes rising from a coating process or other source.
- (9) "Liquid-gas method" means either of two (2) methods for determining capture of emissions which require both gas phase and liquid phase measurements and analysis. One (1) liquid-gas method requires construction of a temporary enclosure; the other uses the building or room which houses the facility as an enclosure.
- (10) "Overall emission reduction efficiency" means the weight per unit time of VOC removed by a control device divided by the weight per unit time of VOC emitted by an emission source, expressed as a

percentage. With the efficiencies expressed as decimal fractions, the overall emission reduction efficiency is the product of the capture efficiency and the control equipment destruction or removal efficiency.

Section 4. ~~[Reference Material - (t)]~~ Incorporation by Reference.

(1) The following material is ~~[documents are]~~ incorporated by reference:

(a) Depreciation, IRS Publication 534, catalog number 150640, Department of the Treasury, Internal Revenue Service; and

(b) Section 1012, Basis of Property Cost, Income Tax-Basic Rules, Internal Revenue Code.

(2) This material may be inspected, copied, or obtained at the Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m., and at the following regional offices: ~~[The documents incorporated by reference in subsection (1) of this section are available for public inspection and copying, subject to copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time.]~~

(a) ~~[Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601 (502) 573-3382;~~

(b) ~~[(e)]~~ Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(b) ~~[(e)]~~ Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(c) ~~[(d)]~~ Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(d) ~~[(e)]~~ Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(e) ~~[(f)]~~ London Regional Office, 85 State Police Road, London, Kentucky 40741, (606) 878-0157;

(f) ~~[(g)]~~ Owensboro Regional Office, 3032 Alvey Park Drive, W., Owensboro, Kentucky 42303, (502) 687-7304; and

(g) ~~[(h)]~~ Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definitions of volatile organic compound (VOC) and fugitive emissions and add the abbreviation for tons per year (tpy). The title of 401 KAR 50:010 is being changed to conform to KRS Chapter 13A. The revision to the definition of VOC makes the definition compatible with the United States Environmental Protection Agency (U.S. EPA) definition by adding com-

pounds of negligible photochemical reactivity promulgated in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. The revision to the definition of fugitive emissions makes the definition compatible with the definition in 401 KAR 50:035, Permits. This definition of fugitive emissions is the same as the U.S. EPA definition, 40 CFR 51.165(a)(1)(ix). No entities are directly affected by the revisions to these definitions. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. The fugitive emissions definition is already in effect in 401 KAR 50:035. The language at Section 4(2) of the administrative regulation has been revised to conform with KRS Chapter 13A drafting requirements. No entities are affected by this change.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal final rulemaking in *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in (3)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This

amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(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 not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result, as stated in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises definitions. The federal definitions apply to all facilities and have no tiering, and there is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the definition of volatile organic compound (VOC) which add compounds to the list of excluded compounds in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. This federal rule defines volatile organic compound. The fugitive emissions definition is already in effect in 401 KAR 50:035 as mandated in 40 CFR 51.165(a)(1)(ix).

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for those compounds in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. This amendment revises the state VOC definition so that it is compatible with the U.S. EPA definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There are no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 51. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. [General] Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 51, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

- (1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.
- (2) "Air contaminant" has the meaning given it in KRS 224.01-010.
- (3) "Air pollutant" means an air contaminant.
- (4) "Air pollution" has the meaning given it in KRS 224.01-010.
- (5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.
- (6) "Alteration" means:
 - (a) The installation or replacement of air pollution control equipment at a source;
 - (b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.
- (7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.
- (8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
- (9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.
- (10) "Cabinet" has the meaning given it in KRS 224.01-010.
- (11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.
- (12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has en-

tered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. [the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.]

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that

increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The

cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions":

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area,

then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methyl-ene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4, 5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoro-propane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane(C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF₃)₂ CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nona-fluorobutane(C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ((CF₃)₂ CFCF₂OC₂H₅); methyl acetate; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;
(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 51 shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon

gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
ug - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
tpy - tons per year
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or dis-

ability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definitions of volatile organic compound (VOC) and fugitive emissions and add the abbreviation for tons per year (tpy). The revision to the definition of VOC makes the definition compatible with the United States Environmental Protection Agency (U.S. EPA) definition by adding compounds of negligible photochemical reactivity promulgated in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. The revision to the definition of fugitive emissions makes the definition compatible with the definition in 401 KAR 50:035, Permits. This definition of fugitive emissions is the same as the U.S. EPA definition, 40 CFR 51.165(a)(1)(ix). No entities are directly affected by the revisions to these definitions. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. The fugitive emissions definition is already in effect in 401 KAR 50:035.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal final rulemaking in *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in (3)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(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 not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result as stated in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises definitions. The federal definitions apply to all facilities and have no tiering, and there is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the definition of volatile organic compound (VOC) which add compounds to the list of excluded compounds in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. This federal rule defines volatile organic compound. The fugitive emissions definition is already in effect in 401 KAR 50:035 as mandated in 40 CFR 51.165(a)(1)(ix).

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for those compounds in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. This amendment revises the state VOC definition so that it is compatible with the U.S. EPA definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to

any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(Amendment)**

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 59. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. [General] Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 59, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of

the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operate.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-010.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. [the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.]

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal non-

attainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(43) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source

to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with Title 401, Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methyl-ene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4, 5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoro-propane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane(HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane(C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF₃)₂CF₂OCH₂); 1-ethoxy-1,1,2,2,3, 3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1, 2,3,3,3-heptafluoropropane ((CF₃)₂CF₂OC₂H₅); methyl acetate; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of Title 401, Chapter 59, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand

BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry
tpy - tons per year
TSP - Total suspended particulates
TSS - Total suspended solids
U.S. EPA - United States Environmental Protection Agency
UTM - Universal Transverse Mercator
VOC - Volatile organic compound
yd - yard

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality,

803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definitions of volatile organic compound (VOC) and fugitive emissions and add the abbreviation for tons per year (tpy). The revision to the definition of VOC makes the definition compatible with the United States Environmental Protection Agency (U.S. EPA) definition by adding compounds of negligible photochemical reactivity promulgated in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. The revision to the definition of fugitive emissions makes the definition compatible with the definition in 401 KAR 50:035, Permits. This definition of fugitive emissions is the same as the U.S. EPA definition, 40 CFR 51.165(a)(1)(ix). No entities are directly affected by the revisions to these definitions. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. The fugitive emissions definition is already in effect in 401 KAR 50:035.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal final rulemaking in *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will

continue to issue reports of inspections and emissions data for each source as stated in (3)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(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 not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result as stated in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises definitions. The federal definitions apply to all facilities and have no tiering, and there is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the definition of volatile organic compound (VOC) which add compounds to the list of excluded compounds in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. This federal rule defines volatile organic compound. The fugitive emissions definition is already in effect in 401 KAR 50:035 as mandated in 40 CFR 51.165(a)(1)(ix).

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for those compounds in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. This amendment revises the state VOC definition so that it is compatible with the U.S. EPA definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There will be no stricter requirements or additional or different responsibilities or require-

ments beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms used in 401 KAR Chapter 61. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. [General] Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 61, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Design capacity" means the maximum rate at which a unit was designed to operate.

(17) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(18) "District" has the meaning given it in KRS 224.01-010.

(19) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(20) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(21) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(22) "Existing source" means a source which is not a new source.

(23) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(24) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(25) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(26) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or functionally equivalent opening. [the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.]

(27) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(28) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(29) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(30) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(31) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(32) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(33) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(34) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(35) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(36) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(37) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(38) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(39) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to which an affected facility is a part.

(40) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(41) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(42) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(43) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(44) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(45) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(46) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(47) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(48) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(49) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(50) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(51) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(52) "Shutdown" means the cessation of an operation.

(53) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be consid-

ered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(54) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(55) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(56) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(57) "Start-up" means the setting in operation of an affected facility.

(58) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(59) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(60) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(61) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(62) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(63) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4, 5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoro-propane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoro-propane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane(HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nona-fluoro-4-methoxy-butane($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2, 3,3,3-heptafluoropropane($(CF_3)_3CFCH_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_3CFCH_2OC_2H_5$); methyl acetate; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have

been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 61, shall have the following meanings:

AC - Association of Official Analytical Chemists
ANSI - American National Standards Institute
ASTM - American Society for Testing and Materials
BOD - Biochemical oxidant demand
BTU - British Thermal Unit
°C - Degree Celsius (centigrade)
Cal - calorie
cfm - cubic feet per minute
CFR - Code of Federal Regulations
CH₄ - methane
CO - Carbon monoxide
CO₂ - Carbon dioxide
COD - Chemical oxidant demand
dscf - dry cubic feet at standard conditions
dscm - dry cubic meter at standard conditions
°F - Degree Fahrenheit
ft - feet
g - gram
gal - gallon
gr - grain
hr - hour
HCl - Hydrochloric acid
Hg - mercury
HF - Hydrogen fluoride
H₂O - water
H₂S - Hydrogen sulfide
H₂SO₄ - Sulfuric acid
in - inch
J - joule
KAR - Kentucky Administrative Regulations
kg - kilogram
KRS - Kentucky Revised Statutes
l - liter
lb - pound
m - meter
m³ - cubic meter
min - minute
mg - milligram
MJ - megajoules
MM - million
mm - millimeter
mo - month
Ng - nanograms
N₂ - Nitrogen
NO - Nitric oxide
NO₂ - Nitrogen dioxide
NO_x - Nitrogen oxides
oz - ounce
O₂ - oxygen
O₃ - ozone
ppb - parts per billion
ppm - parts per million
ppm (w/w) - parts per million (weight by weight)
mg - microgram
psia - pounds per square inch absolute
psig - pounds per square inch gage
S - at standard conditions
sec - second
SIP - State implementation plan
SO₂ - Sulfur dioxide
sq - square
TAPPI - Technical Association of the Pulp and Paper Industry

tpy - tons per year

TSP - Total suspended particulates

TSS - Total suspended solids

U.S. EPA - United States Environmental Protection Agency

UTM - Universal Transverse Mercator

VOC - Volatile organic compound

yd - yard

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definitions of volatile organic compound (VOC) and fugitive emissions and add the abbreviation for tons per year (tpy). The revision to the definition of VOC makes the definition compatible with the United States Environmental Protection Agency (U.S. EPA) definition by adding compounds of negligible photochemical reactivity promulgated in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. The revision to the definition of fugitive emissions makes the definition compatible with the definition in 401 KAR 50:035, Permits. This definition of fugitive emissions is the same as the U.S. EPA definition, 40 CFR 51.165(a)(1)(ix). No entities are directly affected by the revisions to these definitions. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. The fugitive emissions definition is already in effect in 401 KAR 50:035.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal final rulemaking in *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in (3)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(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 not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result as stated in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises definitions. The federal definitions apply to all facilities and have no tiering, and there is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the definition of volatile organic compound (VOC) which add compounds to the list of excluded compounds in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. This federal rule defines volatile organic compound. The fugitive emis-

sions definition is already in effect in 401 KAR 50:035 as mandated in 40 CFR 51.165(a)(1)(ix).

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for those compounds in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. This amendment revises the state VOC definition so that it is compatible with the U.S. EPA definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

RELATES TO: KRS 224.01-010, 224.20-100, 224.20-110, 224.20-120, 40 CFR Chapter I, Appendices A through K to 50, 51.100(s), 53, 60, Appendices A and B to 60, Appendix B to 61, 42 USC 7410, 7411(a)(8)

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the definition of terms used in 401 KAR Chapter 63. The definitions contained in this administrative regulation, which have corresponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. [General] Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 63, unless the content clearly indicates otherwise in a specific administrative regulation, the following words shall have the following meanings:

(1) "Affected facility" means an apparatus, building, operation, road, or other entity or series of entities which emits or may emit an air contaminant into the outdoor atmosphere.

(2) "Air contaminant" has the meaning given it in KRS 224.01-010.

(3) "Air pollutant" means an air contaminant.

(4) "Air pollution" has the meaning given it in KRS 224.01-010.

(5) "Air pollution control equipment" means a mechanism, device or contrivance used to control or prevent air pollution, which is not, aside from air pollution control laws and administrative regulations, vital to production of the normal product of the source or to its normal operation.

(6) "Alteration" means:

(a) The installation or replacement of air pollution control equipment at a source;

(b) A physical change in or change in the method of operation of an affected facility which increases the potential to emit of a pollutant (to which a standard applies) emitted by the facility or which results in the emission of an air pollutant (to which a standard applies) not previously emitted.

(7) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(8) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(9) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(10) "Cabinet" has the meaning given it in KRS 224.01-010.

(11) "Capital expenditure" means an expenditure for a physical or operational change to an affected facility which exceeds the product of the applicable "Annual asset guideline repair allowance percentage" specified in the Internal Revenue Service (IRS) Publication 534 which has been incorporated by reference in 401 KAR 50:010, and the affected facility's basis, as defined by section 1012 of the Internal Revenue Code which has been incorporated by reference in 401 KAR 50:010. However, the total expenditure for a physical or operational change to an affected facility shall not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(12) "Commence" means that an owner or operator has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility.

(13) "Compliance schedule" means a time schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with a limitation or standard.

(14) "Construction" means fabrication, erection, installation or modification of an air contaminant source.

(15) "Continuous monitoring system" means the total equipment, required under the applicable administrative regulations used to sample, to condition (if applicable), to analyze and to provide a permanent record of emissions or process parameters.

(16) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(17) "District" has the meaning given it in KRS 224.01-010.

(18) "Emission standard" means that numerical limit which fixes the amount of an air contaminant or air contaminants that may be vented into the atmosphere (open air) from an affected facility or from air pollution control equipment installed in an affected facility.

(19) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(20) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(21) "Existing source" means a source which is not a new source.

(22) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(23) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(24) "Fuel" means natural gas, petroleum, coal, wood, and any form of solid, liquid, or gaseous fuel derived from these materials for the purpose of creating useful heat.

(25) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. [the emissions of an air contaminant into the open air other than from a stack or air pollution control equipment exhaust.]

(26) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(27) "Incineration" means the process of igniting and burning solid, semisolid, liquid, or gaseous combustible wastes.

(28) "Intermittent emissions" means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(29) "Major source" means a source of which the potential emission rate is equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds or carbon monoxide.

(30) "Malfunction" means a failure of air pollution control equipment, or process equipment, or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(31) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(32) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(33) "Modification" means a physical change in, or change in the method of operation of, an affected facility which increases the amount of an air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of an air pollutant (to which a standard applies) into the atmosphere not previously emitted. The following shall not, by themselves, be considered modifications:

(a) Maintenance, repair, and replacement which the cabinet determines to be routine for a source category;

(b) An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if, prior to the date any standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in 42 USC 7411(a)(8), shall not be considered a modification;

(e) The addition or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control system is removed or is replaced by a system which the cabinet determines to be less environmentally beneficial;

(f) The relocation or change in ownership of an existing facility.

(34) "Monitoring device" means the total equipment, required in applicable administrative regulations, used to measure and record (if applicable) process parameters.

(35) "New source" means a source, the construction, reconstruction, or modification of which commenced on or after the classification date as defined in the applicable administrative regulation. A source, upon reconstruction, becomes a new source, irrespective of a change in emission rate.

(36) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(37) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(38) "Owner or operator" means a person who owns, leases, operates, controls, or supervises an affected facility or a source to

which an affected facility is a part.

(39) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(40) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(41) "Person" means an individual, public or private corporation, political subdivision, government agency, municipality, industry, co-partnership, association, firm, trust, estate, or other entity.

(42) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(43) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter I, or by a test method specified in the approved state implementation plan.

(44) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions shall not count in determining the potential to emit of a stationary source.

(45) "Reconstruction" means the replacement of components of an existing affected facility to the extent that the fixed capital cost of the new components exceeds fifty (50) percent of the fixed capital cost that would be required to construct a comparable entirely new affected facility, and it is technologically and economically feasible to meet the applicable new source standards. Individual sections of these administrative regulations may include specific provisions which refine and delimit the concept of reconstruction set forth in this subsection. The cabinet's determination as to whether the proposed replacement constitutes reconstruction shall be based on:

(a) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility;

(b) The estimated life of the affected facility after the replacements compared to the life of a comparable entirely new affected facility;

(c) The extent to which the components being replaced cause or contribute to the emissions from the affected facility; and

(d) Economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

(46) "Reference method" means a method of sampling and analyzing for an air pollutant as prescribed by Appendices A through K to 40 CFR 50, Appendices A and B to 40 CFR 60, and Appendix B to 40 CFR 61, which have been incorporated by reference in 401 KAR 50:015. This term may be more narrowly defined within a specific administrative regulation.

(47) "Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(48) "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions shall be specific, well defined, quantifiable, and shall impact the same general area as does the stationary source modification which causes the secondary emissions. Secondary emissions may include, but are not limited to emissions from an off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or

operation of the major stationary source or major modification. Secondary emissions do not include emissions which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(49) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious nonattainment in 401 KAR 51:010.

(50) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(51) "Shutdown" means the cessation of an operation.

(52) "Source" means one (1) or more affected facilities contained within a given contiguous property line. The property shall be considered contiguous if separated only by a public thoroughfare, stream, or other right of way.

(53) "Stack or chimney" means a flue, conduit, or duct arranged to conduct emissions to the atmosphere.

(54) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(55) "Standard conditions:"

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(56) "Start-up" means the setting in operation of an affected facility.

(57) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(58) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(59) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(60) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(61) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(62) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methyl-ene chloride; 1,1,1-trichloroethane (methyl chloroform) trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12) chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4, 5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoro-propane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane(HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nona-

fluoro-4-methoxy-butane(C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2, 3,3,3-heptafluoropropane((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2, 3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅); methyl acetate; and perfluorocarbon compounds which fall into these classes:

- (a) Cyclic, branched, or linear, completely fluorinated alkanes;
- (b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 63, shall have the following meanings:

AOAC - Association of Official Analytical Chemists
 ANSI - American National Standards Institute
 ASTM - American Society for Testing and Materials
 BOD - Biochemical oxidant demand
 BTU - British Thermal Unit
 °C - Degree Celsius (centigrade)
 Cal - calorie
 cfm - cubic feet per minute
 CFR - Code of Federal Regulations
 CH₄ - methane
 CO - Carbon monoxide
 CO₂ - Carbon dioxide
 COD - Chemical oxidant demand
 dscf - dry cubic feet at standard conditions
 dscm - dry cubic meter at standard conditions
 °F - Degree Fahrenheit
 ft - feet
 g - gram
 gal - gallon
 gr - grain
 hr - hour
 HCl - Hydrochloric acid
 Hg - mercury
 HF - Hydrogen fluoride
 H₂O - water
 H₂S - Hydrogen sulfide
 H₂SO₄ - Sulfuric acid
 in - inch
 J - joule
 KAR - Kentucky Administrative Regulations
 kg - kilogram
 KRS - Kentucky Revised Statutes
 l - liter
 lb - pound
 m - meter
 m³ - cubic meter
 min - minute
 mg - milligram
 MJ - megajoules
 MM - million
 mm - millimeter
 mo - month
 Ng - nanograms
 N₂ - Nitrogen
 NO - Nitric oxide
 NO₂ - Nitrogen dioxide
 NO_x - Nitrogen oxides
 oz - ounce
 O₂ - oxygen

O₃ - ozone
 ppb - parts per billion
 ppm - parts per million
 ppm (w/w) - parts per million (weight by weight)
 mg - microgram
 psia - pounds per square inch absolute
 psig - pounds per square inch gauge
 S - at standard conditions
 sec - second
 SIP - State implementation plan
 SO₂ - Sulfur dioxide
 sq - square
 TAPPI - Technical Association of the Pulp and Paper Industry
 tpy - tons per year
 TSP - Total suspended particulates
 TSS - Total suspended solids
 U.S. EPA - United States Environmental Protection Agency
 UTM - Universal Transverse Mercator
 VOC - Volatile organic compound
 yd - yard

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definitions of volatile organic compound (VOC) and fugitive emissions and add the abbreviation for tons per year (tpy). The revision to the definition of VOC makes the definition compatible with the United States Environmental Protection Agency (U.S. EPA) definition by adding compounds of negligible photochemical reactivity promulgated in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. The revision to the definition of fugitive emissions makes the definition compatible with the definition in 401 KAR 50:035, Permits. This definition of fugitive emissions is the same as the U.S. EPA definition, 40 CFR 51.165(a)(1)(ix). No entities are directly affected by the revisions to these definitions. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity. The fugitive emissions definition is already in effect in 401 KAR 50:035.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal

final rulemaking in *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in (3)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(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 not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result as stated in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

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(11) TIERING: Is tiering applied? No. This amendment revises definitions. The federal definitions apply to all facilities and have no tiering, and there is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the definition of volatile organic compound (VOC) which add compounds to the list of excluded compounds in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. This federal rule defines volatile organic compound. The fugitive emissions definition is already in effect in 401 KAR 50:035 as mandated in 40 CFR 51.165(a)(1)(i).

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for those compounds in reasonable further progress determinations, ozone control strategies, emissions netting, offsetting or trading. This amendment revises the state VOC definition so that it is compatible with the U.S. EPA definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

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

RELATES TO: KRS 224.01-010, 224.10-100, 40 CFR ch. I, Appendices B and J to 40 CFR 50, 40 CFR 53, 60, 42 USC 7410

STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 65. The definitions contained in this administrative regulation, which have corre-

sponding federal definitions, are not more stringent nor otherwise different than the corresponding federal definitions.

Section 1. [General] Definitions. As used in the Division for Air Quality administrative regulations of 401 KAR Chapter 65, unless the content clearly indicates otherwise in a specific administrative regulation, the following terms shall have the following meanings:

(1) "Air contaminant" has the meaning given it in KRS 224.01-010.

(2) "Air pollutant" means an air contaminant.

(3) "Air pollution" has the meaning given it in KRS 224.01-010.

(4) "Alternative method" means a method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to, in specific cases, produce results adequate for its determination of compliance.

(5) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(6) "Ambient air quality standard" means a numerical expression of a specified concentration level for a particular air contaminant and the time averaging interval over which that concentration level is measured and is a goal to be achieved in a stated time through the application of appropriate preventive or control measures.

(7) "Cabinet" has the meaning given it in KRS 224.01-010.

(8) "Director" means Director of the Division for Air Quality of the Natural Resources and Environmental Protection Cabinet.

(9) "District" has the meaning given it in KRS 224.01-010.

(10) "Equivalent method" means a method of sampling and analyzing for an air pollutant which has been demonstrated to the cabinet's and the U.S. EPA's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(11) "Exempt solvent" means an organic compound listed in the definition of volatile organic compound as not participating in atmospheric photochemical reactions.

(12) "Extreme nonattainment county" or "extreme nonattainment area" means a county or portion of a county designated extreme nonattainment in 401 KAR 51:010.

(13) "Hydrocarbon" means an organic compound consisting predominantly of carbon and hydrogen.

(14) "Marginal nonattainment county" or "marginal nonattainment area" means a county or portion of a county designated marginal nonattainment in 401 KAR 51:010.

(15) "Moderate nonattainment county" or "moderate nonattainment area" means a county or portion of a county designated moderate nonattainment in 401 KAR 51:010.

(16) "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods specified by the cabinet.

(17) "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

(18) "Particulate matter" means a material, except uncombined water, which exists in a finely divided form as a liquid or a solid as measured by the appropriate approved test method.

(19) "Particulate matter emissions" means, except as used in 40 CFR 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(20) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J to 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015, and designated in accordance with 40 CFR 53, or by an equivalent method designated in accordance with 40 CFR 53.

(21) "PM₁₀ emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in 40 CFR Chapter 1, or by a test method specified in the approved state implementation plan.

(22) "Serious nonattainment county" or "serious nonattainment area" means a county or portion of a county designated serious non-

attainment in 401 KAR 51:010.

(23) "Severe nonattainment county" or "severe nonattainment area" means a county or portion of a county designated severe nonattainment in 401 KAR 51:010.

(24) "Standard" means an emission standard, a standard of performance, or an ambient air quality standard as promulgated under the administrative regulations of the Division for Air Quality or the emission control requirements necessary to comply with 401 KAR Chapter 51, of the administrative regulations of the Division for Air Quality.

(25) "Standard conditions."

(a) For source measurements means twenty (20) degrees Celsius (sixty-eight (68) degrees Fahrenheit) and a pressure of 760 mm Hg (29.92 in. of Hg);

(b) For the purpose of air quality determinations means twenty-five (25) degrees Celsius and a reference pressure of 760 mm Hg.

(26) "State implementation plan" means the most recently prepared plan or revision required by 42 USC 7410 which has been approved by the U.S. EPA.

(27) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of 40 CFR 50, which has been incorporated by reference in 401 KAR 50:015.

(28) "Uncombined water" means water which can be separated from a compound by ordinary physical means and which is not bound to a compound by internal molecular forces.

(29) "Urban county" means a county which is a part of an urbanized area with a population of greater than 200,000 based upon the 1980 census. If a portion of a county is a part of an urbanized area, then the entire county shall be classified as urban with respect to the administrative regulations of the Division for Air Quality.

(30) "Urbanized area" means an area defined as such by the U.S. Department of Commerce, Bureau of Census.

(31) "Volatile organic compound" or "VOC" means an organic compound which participates in atmospheric photochemical reactions. This includes an organic compound other than the following compounds: methane; ethane; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methylene chloride; 1,1,1-trichloroethane (methyl chloroform); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); dichlorotetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); dichlorotrifluoroethane (HCFC-123); tetrafluoroethane (HFC-134a); dichlorofluoroethane (HCFC-141b); chlorodifluoroethane (HCFC-142b); 2-chloro-1,1,1, 2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTf); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4, 5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1, 3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nona-fluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ((CF₃)₂CFCF₂OC₂H₅); methyl acetate; and perfluorocarbon compounds which fall into these classes:

(a) Cyclic, branched, or linear, completely fluorinated alkanes;

(b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine. These compounds have been determined to have negligible photochemical reactivity. For purposes

of determining compliance with emission limits, VOCs shall be measured by test methods that have been approved by the cabinet and the U.S. EPA. If a method used also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with an emissions standard.

Section 2. Abbreviations. The abbreviations used in the administrative regulations of 401 KAR Chapter 65 shall have the following meanings:

AOAC means Association of Official Analytical Chemists
ANSI means American National Standards Institute.
ASTM means American Society for Testing and Materials.
BOD means Biochemical oxidant demand.
BTU means British Thermal Unit.
°C means Degree Celsius (centigrade).
Cal means calorie.
cfm means cubic feet per minute.
CFR means Code of Federal Regulations.
CH₄ means methane.
CO means Carbon monoxide.
CO₂ means Carbon dioxide.
COD means Chemical oxidant demand.
dscf means dry cubic feet at standard conditions.
dscm means dry cubic meter at standard conditions.
°F means Degree Fahrenheit.
ft means feet.
g means gram.
gal means gallon.
gr means grain.
hr means hour.
HCl means Hydrochloric acid.
Hg means mercury.
HF means Hydrogen fluoride.
H₂O means water.
H₂S means Hydrogen sulfide.
H₂SO₄ means Sulfuric acid.
in means inch.
J means joule.
KAR means Kentucky Administrative Regulations.
kg means kilogram.
KRS means Kentucky Revised Statutes.
l means liter.
lb means pound.
m means meter.
m³ means cubic meter.
min means minute.
mg means milligram.
MJ means megajoules.
MM means million.
mm means millimeter.
mo means month.
Ng means nanograms.
N₂ means Nitrogen.
NO means Nitric oxide.
NO₂ means Nitrogen dioxide.
NO_x means Nitrogen oxides.
oz means ounce.
O₂ means oxygen.
O₃ means ozone.
ppb means parts per billion.
ppm means parts per million.
ppm (w/w) means parts per million (weight by weight).
µg means microgram.
psia means pounds per square inch absolute.
psig means pounds per square inch gage.
S means at standard conditions.
sec means second.
SIP means State implementation plan.
SO₂ means Sulfur dioxide.
sq means square.
TAPPI means Technical Association of the Pulp and Paper Industry.

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TSP means Total suspended particulates.

TSS means Total suspended solids.

U.S. EPA means United States Environmental Protection Agency.

UTM means Universal Transverse Mercator.

VOC means Volatile organic compound.

yd means yard.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendments to this administrative regulation revise the definitions of volatile organic compound (VOC). The revision to the definition of VOC makes the definition compatible with the United States Environmental Protection Agency (U.S. EPA) definition by adding compounds of negligible photochemical reactivity promulgated in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. No entities are directly affected by the revisions to this definition. The addition of more compounds of negligible photochemical reactivity indirectly affects sources which emit these compounds and are regulated by VOC regulations. The VOC standards would not apply to those compounds of negligible photochemical reactivity.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal final rulemaking in *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no compliance, reporting, or paperwork requirements in this administrative regulation.

2. Second and subsequent years: There are no compliance, reporting, or paperwork requirements in this administrative regulation as stated in (2)(c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The division reviews and processes permits as part

of the division's normal day-to-day operations. The costs of this activity are absorbed as a part of the operating budget.

2. Continuing costs or savings: The division inspects all permitted sources and maintains an emissions inventory for each source. This activity is a part of the division's normal day-to-day operations and is budgeted accordingly.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The division will continue to issue reports of inspections and emissions data for each source as stated in (3)(a)1 and 2 above.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This amendment will have no economic impact in the geographical location of affected sources beyond those described in the proposed and final federal rulemakings.

(b) Kentucky: This amendment will have no economic impact in any geographical location in Kentucky since all affected sources in the country are subject to the same provisions.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this amendment contains the same provisions as the federal definition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment will have no additional effects on public health and the environment beyond those described in the federal rulemaking.

(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 not result if this amendment is not implemented by the state.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would not result as stated in (8)(b) above.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(11) TIERING: Is tiering applied? No. This amendment revises definitions. The federal definitions apply to all facilities and have no tiering, and there is no further tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the definition of volatile organic compound (VOC) which add compounds to the list of excluded compounds in the *Federal Register*, 63 FR 17333, April 9, 1998; 62 FR 44903, August 25, 1997; and 61 FR 52850, October 8, 1996. This federal rule defines volatile organic compound.

2. State compliance standards. There are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. While states are not obligated to exclude from control as a VOC those compounds that the U.S. EPA excludes, states can no longer take credit for those compounds in reasonable further prog-

ress determinations, ozone control strategies, emissions netting, offsetting or trading. This amendment revises the state VOC definition so that it is compatible with the U.S. EPA definition.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There will be no stricter requirements or additional or different responsibilities or requirements beyond those required by the federal amendment.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. No known unit, part, or division of local government will be affected by this amendment.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE CABINET Kentucky Department of Corrections (Amendment)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, November 12 [July 13], 1998":

- 1.1 Legal Assistance for Corrections Staff
- 1.2 News Media
- 01-04-01 The operation of Contracted Adult Correctional Facilities
- 1.6 Extraordinary Occurrence Reports
- 1.9 Institutional Duty Officer
- 1.11 Population Counts and Reporting Procedures
- 1.12 Operation of Motor Vehicles by Department of Corrections Employees
- 2.1 Inmate Canteen [(Amended 7/13/98)]
- 2.2 Warden's Fund
- 2.10 Surplus Property
- 3.1 Code of Ethics (Added 11/12/98)
- 3.3 Holding of Second Jobs by Corrections' Employees (Added 11/12/98)
- 3.5 Sexual Harassment (Added 11/12/98)

- 3.6 Criminal History Checks on All Personnel and the Employment of Exoffenders (Added 11/12/98)
- 3.12 Institutional Staff Housing
- 4.2 Staff Training and Development
- 4.3 Firearms and Chemical Agents Training
- 4.7 Uniformed Employee Dress Code
- 6.1 Open Records Law [(Amended 7/13/98)]
- 6.5 E-mail (Added 11/12/98)
- 7.2 Asbestos Abatement
- 8.1 Occupational Exposure to Bloodborne Pathogens
- 8.2 Fire Safety
- 9.4 Transportation of Inmates to Funerals or Bedside Visits
- 9.5 Execution [(Amended 7/13/98)]
- 9.6 Contraband
- 9.8 Search Policy
- 9.18 Informants
- 9.19 Found Lost or Abandoned Property
- 10.2 Special Management Inmates
- 10.3 Safekeepers
- 10.4 Special Needs Inmates
- 11.2 Nutritional Adequacy of the Diet for Inmates
- 11.3 Special Diet Procedures
- 11.4 Alternative Diet
- 13.1 Pharmacy Policy and Formulary
- 13.2 Health Maintenance Services [(Amended 7/13/98)]
- 13.3 Medical Alert System
- 13.4 Health Program Audits
- 13.5 Acquired Immune Deficiency Syndrome
- 13.6 Sex Offender Treatment Program
- 13.7 Involuntary Psychotropic Medication Policy
- 13.8 Substance Abuse Treatment Program [(Amended 7/13/98)]
- 13.9 Dental Services [(Amended 7/13/98)]
- 14.1 Investigation of Missing Inmate Property
- 14.2 Personal Hygiene Items
- 14.3 Marriage of Inmates
- 14.4 Legal Services Program
- 14.6 Inmate Grievance Procedures [(Amended 7/13/98)]
- 15.1 Hair and Grooming Standards
- 15.2 Offenses and Penalties
- 15.3 Meritorious Good Time [(Amended 7/13/98)]
- 15-05-01 Restoration of Forfeited Good Time
- 15.6 Adjustment Procedures and Programs
- 15.7 Inmate Account Restriction
- 15.8 Unauthorized Substance Abuse Testing [(Amended 7/13/98)]
- 16.1 Inmate Visits [(Amended 7/13/98)]
- 16.2 Inmate Correspondence
- 16.3 Telephone Calls
- 16.4 Inmate Packages
- 17.1 Inmate Personal Property
- 17.2 Assessment Center Operations
- 17.3 Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume II, July 13, 1998":

- 18.1 Classification of the Inmate
- 18.5 Custody and Security Guidelines [(Amended 7/13/98)]
- 18.7 Transfers
- 18.9 Out-of-state Transfers
- 18-10-01 Parole Progress Reports
- 18.11 Kentucky Correctional Psychiatric Center Transfer Procedures
- 18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
- 18.13 Population Categories
- 18.15 Protective Custody
- 18.17 Interstate Agreement on Transfers
- 18.18 International Transfer of Inmates
- 19.1 Government Services Projects
- 19.2 Community Services Projects
- 19.3 Inmate Wage Program

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20.1	Educational Programs and Educational Good Time	27-20-02	Prisoner Intake Notification [(Amended 7/13/98)]
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)	27-20-03	Prisoner Status Change
21.2	Phase I: Program Selection Assessment Criteria	27-21-01	Apprehension and Transportation of Probation and Parole Violators [(Amended 7/13/98)]
21.3	Program Schedule - Phase II and Phase III	27-22-01	Fugitive Unit - Apprehensions
21.4	Platoon Size and Composition	27-22-02	Fugitive Unit - Transportation of Fugitives
21.5	Physical Conditions Program Component	27-23-01	In-state Transfer
21.6	Group and Individual Counseling	27-24-01	Closing Supervision Report
21.7	Drug and Alcohol Abuse Counseling and Treatment	27-24-02	Reinstatement of Clients to Active Supervision
21.8	Work Programs Component	27-25-01	Application for Final Discharge from Parole [(Amended 7/13/98)]
21.9	Education and Life Management	27-26-01	Assistance to Former Clients and Dischargees
21.10	Auxiliary Services	27-27-01	Restoration of Civil Rights
21.11	Offenses and Penalties	27-28-01	Firearms/Explosives: Application for Relief from Disability
22.1	Privilege Trips	27-29-01	Parole Review Dates Modification
23.1	Religious Programs [(Amended 7/13/98)]	27-30-01	Sex Offender Registration [(Added 11/10/98)]
25.1	Gratuities	28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
25.2	Public Official Notification of Release of an Inmate	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
25.3	Prerelease Program	28-01-03	Presentence, Postsentence, Supplemental and Partial Investigations [(Amended 7/13/98)]
25.4	Inmate Furloughs	28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
25.6	Community Center Program	28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
25.7	Expedient Release	28-02-01	Expedient Release Program
25.8	Extended Furloughs	28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
25.10	Administrative Release of Inmates	28-04-01	Furlough Verifications
25.11	Victim Notification	28-05-01	Out-of-state Investigations
(c) "Department of Corrections Policies and Procedures, Volume III, July 13, 1998":			
27-01-01	Probation and Parole Procedures		
27-02-01	Duties of Probation and Parole Officers		
27-03-01	Workload Formula Supervisor/Staff Ratio		
27-05-01	Testimony, Court Demeanor and Availability of Legal Services		
27-06-01	Availability of Supervision Services		
27-06-02	Equal Access to Services		
27-07-01	Cooperation with Law Enforcement Agencies		
27-08-01	Use of Force		
27-09-01	Kentucky Community Resources Directory		
27-10-01	Pretrial Diversion [(Added 7/13/98)]		
27-11-01	Intensive Supervision		
27-11-02	Prerelease Probation [(Amended 7/13/98)]		
27-12-01	Supervision: Case Classification		
27-12-02	Risk Assessment		
27-12-03	Initial Interview		
27-12-04	Conditions of Regular Supervision/Request for Modification		
27-12-05	Releasee's Report		
27-12-06	Grievance Procedures for Offenders		
27-12-07	Employment, Education/Vocational Referral		
27-12-08	Supervision Plan		
27-12-09	Casebook		
27-12-10	Guidelines for Monitoring Supervision Fee		
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority [(Amended 7/13/98)]		
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)		
27-12-13	Community Service Work		
27-12-14	Client Travel Restrictions		
27-13-01	Drug and Alcohol Testing of Offenders [(Amended 7/13/98)]		
27-13-02	Alcohol Detection		
27-14-01	Interstate Compact Transfers		
27-14-02	Interstate Compact Out-of-state Probation and Parole Violation		
27-15-01	Supervision Report; Violations, Unusual Incidents		
27-15-02	Community Confinement Program Subject: Electronic Monitoring [(Amended 7/13/98)]		
27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence		
27-17-01	Absconder Procedures		
27-18-01	Probation and Parole Issuance of Detainer/Warrant		
27-19-01	Preliminary Revocation Hearing		
27-20-01	Division of Probation and Parole Controlled Intake Program		

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

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 23, 1998, at 9 a.m., in the 5th Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by December 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 the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone (502) 564-2024, Facsimile (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8729 inmates, 14211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Policy revisions.
- (4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-2000 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

JUSTICE CABINET

Kentucky Department of Corrections (Amendment)

501 KAR 6:999. Corrections secured policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference: "Department of Corrections Secured Policies and Procedures, February 12, 1998."

BCC 09-01-01	Inclement Weather/Emergency Condition Operation
BCC 09-02-01	Restricted Areas (Amended 11/12/98)
BCC 09-02-02	Inmate Pass System to Restricted Areas

BCC 09-02-03	Regulation of Inmate Movement
[BCC 09-02-04]	Radio-Escorted Yard Movement During Daylight Savings Time (November 1-April 30) (Deleted (11/12/98))
BCC 09-04-01	Construction Crew Entry, Exit and Regulations (Added 11/12/98)
BCC 09-04-02	Complex Entry and Exit (Amended 11/12/98)
BCC 09-05-01	Key Control
BCC 09-06-02	Transportation to Courts (Amended 11/12/98)
BCC 09-07-01	Drug Abuse and Intoxicants Testing (Amended 11/12/98)
BCC 09-09-01	Population Counts and Count Documentation (Amended 11/12/98)
BCC 09-15-01	Search Policy and Disposition of Contraband (Amended 11/12/98)
BCC 09-16-01	Security Activity Logs (Amended 11/12/98)
BCC 09-17-01	Institutional Supervisor Inspections (Amended 11/12/98)
BCC 09-20-01	Inmate Death
BCC 09-21-01	Tool Control
BCC 09-22-01	Emergency Communication System
CPP 8.3	Emergency Planning [(Amended 2/12/98)]
CPP 8.4	Emergency Preparedness
CPP 8.5	Emergency Squads [(Amended 2/12/98)]
CPP 9.1	Use of Force
CPP 9.7	Storage, Issue and Use of Weapons Including Chemical Agents
CPP 9.9	Transportation of Inmates
CPP 9.10	Security Inspections
CPP 9.11	Tool Control
FCDC 09-01-02	Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-03-01	Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
GRCC 08-03-01	Escape Plan
GRCC 08-05-01	Emergency Squad: Selection, Training and Evaluation
GRCC 08-06-01	Response Units
GRCC 09-03-01	Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power
GRCC 09-04-01	Inmate Death
GRCC 09-06-01	Entry and Exit Procedures
KSP 09-08-01	Searches and Preservation of Evidence
KSR 09-00-04	Horizontal Gates/Box 1 Entrance and Exit Procedure
KSR 09-00-09	Contraband, Dangerous Contraband and Search Policy
KSR 09-00-27	Construction Crew Entry/Exit
RCC 08-08-01	Control and Use of Flammable, Toxic, and Caustic Materials
RCC 09-06-01	Search Policy/Disposition of Contraband

(2) There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: See Section 1(2) of this administrative regulation.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8729 inmates, 14211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent

available from the public comments received: None

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**LABOR CABINET
Department of Workers' Claims
(Amendment)**

803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY KRS 342.260, 342.340, 342.345

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 carry out the provisions of KRS Chapter 342. This administrative regulation establishes minimum requirements for individual employers who self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR 2:020, which is repealed.

Section 1. Definitions. (1) "Cessation liability security" means the security covering liability associated with anticipated claims occurring upon cessation of all operations of an individual self-insurer in the state.

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(3) "Employer" means any employer subject to the Kentucky Workers' Compensation Act.

(4) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(5) "Service organization" means a person or entity which provides services which may include but is not limited to, claims adjustment, safety engineering, computation of statistics, preparation of loss or tax reports, purchase of excess insurance, and preparation of any other self-insurance reports as may be required by law. Any contract with a service organization that includes the adjustment and settlement of claims shall include a requirement that the service organization adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.

(6) "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.

Section 2. Certification. No person, party, or employer shall act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the commissioner. All certifications issued by the commissioner shall remain in effect on an annual basis, unless otherwise revoked or suspended pursuant to Section 11 of this administrative regulation.

Section 3. Application. (1) Every initial application for individual self-insurance shall be submitted to the commissioner on form SI-02 and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. Any subsidiaries [or-contractors] which are to be covered under the application, or who are already self-insured are to be identified and their relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance must be received five (5) days prior to certification of self-insurance;

(d) Copies of the proposed surety deposit or letter of credit instruments required by Section 5 of this administrative regulation. The surety must be received by the commissioner prior to certification to self-insure;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs on form SI-08;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on form SI-01;

(j) Any individual or service organization which will be responsible for administration and adjustment of workers' compensation claims must provide satisfactory evidence to the commissioner as to their qualifications to administer and adjust workers' compensation claims.

(2) An applicant may perform, if qualified, any and all of the functions of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents must be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance. Upon receipt of a complete application and all required documents, the commissioner shall approve or reject status as a self-insurer within thirty (30) days.

(4) Variation from the requirements of this section, for good cause shown, may be sought by application to the commissioner.

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the commissioner shall consider all relevant factors including the following:

- (a) The financial strength of the applicant or guarantor;
- (b) The excess insurance policy and retention level;
- (c) The experience of the service organization;
- (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
- (e) Profit and loss history;
- (f) Workers' compensation loss history of the applicant;
- (g) The prospect of increased losses by the employer's cessation of operations in Kentucky;
- (h) The number of employees and degree of hazard to which employees are exposed;
- (i) Safety programs; and
- (j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor must have assets in excess of all liabilities of at least \$3,000,000. Variance from this requirement may be granted to those currently certified individual self-insurers who have demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted only if the commissioner finds the applicant has complied with all sections of this administrative regulation and is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

Section 5. Specific Excess Insurance and Surety Requirements.

(1) Specific excess insurance shall be purchased with a coverage limit of at least \$10,000,000 per occurrence.

(2) To be eligible to write specific excess insurance for individual self-insurers in Kentucky, a casualty insurance company on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000. The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

(3) Each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form SI-03 or by irrevocable letter of credit on form SI-04, in an amount specified by the commissioner, but not less than \$500,000. In fixing the amount of security the commissioner shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky. The commissioner may direct that separate cessation liability security be deposited pursuant to Section 8 of this administrative regulation. The amount shall be reviewed and recalculated at the same times as the primary security.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of SI-05 in an amount specified by the commissioner, but not less than \$500,000. To be acceptable any securities which are deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

Section 6. Coverage of Subsidiary or Related Corporations. A corporation having wholly owned subsidiaries may submit one (1) joint application to the commissioner, provided the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and its subsidiaries. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) written notice to the commissioner.

Section 7. Examination and Review of Filings. A certified public accountant or other qualified individual may be employed by the Department of Workers' Claims for the purpose of reviewing and analyzing

the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review.

Section 8. Cessation Liability Security. (1) Cessation liability security is distinct from the primary security required in Section 5 of this administrative regulation.

(2) Upon cessation of all operations of an individual self-insurer in the state of Kentucky, cessation liability security will be called for payment of claims only after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security may be issued in one (1) or more of the following forms:

(a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 5 of this administrative regulation;

(b) An escrow account; or

(c) An irrevocable letter of credit.

(4) In the event that an individual self-insurer secures its workers' compensation obligation by obtaining standard workers' compensation insurance or by joining an approved self-insurance group, the commissioner may release the cessation liability security, effective as of the date of the employers acquiring other coverage.

Section 9. Annual filings. (1) All individual self-insured employers shall file with the commissioner on or before 120 days from the end of the self-insured's fiscal year [Sixty (60) days prior to the end of each self-insurance year, the following information and reports shall be filed with the commissioner]:

(a) The statement of financial condition required by KRS 342.347(2) [A certified audited financial statement of the individual self-insured and any guarantor];

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the commissioner, including relevant claim data.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the commissioner;

(3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) In the event of a change in majority ownership of a parent company, the individual self-insurer shall notify the commissioner within thirty (30) days of that change. A new application to self-insure shall be filed upon such a change in ownership.

(2) If any employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, ~~[or if contractors or subcontractors are brought within the coverage,]~~ the individual self-insured shall notify the commissioner within thirty (30) days and the adequacy of the surety bond will be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during any quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the commissioner and the surety bond requirements may be reviewed and the bond shall be increased accordingly.

Section 11. Revocation or Modification of Certification. (1) Should the commissioner receive information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a show cause order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for hearing.

(2) The commissioner may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insurer is operating in contravention of its submitted application or is in material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor is no longer of such financial stability as to assure its ability to meet its obligations for the payment of workers' compensation benefits;

(3) In the event the commissioner ~~[suspends or]~~ revokes any indi-

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vidual self-insurer's certification, the commissioner shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund [may appoint one (1) or more individuals or professional corporation as a receiver to conduct the ongoing workers' compensation affairs of the individual self-insured].

(4) Self-insurance certification may be revoked by the commissioner after an issuance of a show cause order setting forth as grounds of revocation and setting a hearing date in not less than ten (10) days. The hearing shall be conducted pursuant to Section 12 of this administrative regulation. [a hearing in compliance with the following procedures:

(a) The commissioner may issue a show cause order setting forth the grounds of revocation and setting a hearing in not less than ten (10) days:

(b) The commissioner, [During the pendency of any hearing or appeal the commissioner [appeal or request for hearing,] may utilize the surety deposit provided by the individual self-insurer to make any payments of workers' compensation benefits which are currently due for which payments are not being made by the individual self-insurer or its service organization. [The application for hearing shall briefly state the grounds on which the individual self-insurer is relying and the basis for relief to be sought at the hearing. 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, setting the date, time and place for the hearing, and specify the matters to be considered.

(c) Any party to the hearing shall have the right to appear in person or by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence, 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 right of inducing evidence by interrogatories or by deposition. Formal rules of pleading 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) No later than thirty (30) days after the termination of the hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.]

Section 12. Aggrieved Parties. (1) Any person aggrieved by an action of the commissioner [a failure of the individual self-insured employer to meet those requirements of Section 11(2) of this administrative regulation] may request a hearing by filing a written request with the commissioner setting forth the basis [of the purported failure]. Upon receipt of a request the commissioner shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty (30) days after such notice.

(2) No later than thirty (30) days after the termination of the hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

(3) The ruling of the commissioner may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form S1-01 (March 15, 1995 edition);
- (b) Form S1-02 (March 15, 1995 edition);
- (c) Form S1-03 (March 15, 1995 edition);
- (d) Form S1-04 (March 15, 1995 edition);
- (e) Form SI-05 (March 15, 1995); and

(f) Form S1-08 (October 1998 edition).

(2) This material may be inspected, copied, or obtained at the Department of Workers' Claims, Monday through Friday, 8 a.m. to 4:30 p.m. at 1270 Louisville Road, Frankfort, Kentucky 40601.

[Section 13. Forms. (1) Forms, SI-01, SI-02, SI-03, SI-04, SI-05 and SI-08, (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., Monday through Friday, inclusive for this purpose.]

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: November 13, 1998

FILED WITH LRC: November 13, 1998 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on December 21, 1998, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 1998, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on December 21, 1998, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, 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 224 individual self-insureds.

(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 the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on the cost of doing business.

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

1. First year following implementation: The self-insured must file a statement of financial condition as required by KRS 342.347(2).

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: Same as above.
3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: The department will receive statement of financial condition as required by KRS 342.347(2).
- (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 normal budget for Department of Workers' Claims.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: No public comments were received. No economic impact is anticipated.
 - (b) Kentucky: See response to 6(a) above.
 - (7) Assessment of alternative methods; reasons why alternatives were rejected: The department must amend this regulation to adequately carry out its statutory. To not amend this regulation would be neglecting our duty.
 - (8) Assessment of expected benefits: Individual self-insureds will be in better financial situations to provide worker's compensation coverage for its employees.
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: If self-insured employers are not financially sound, employees who do not have adequate protection by workers' compensation coverage would suffer.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: Yes
 - (c) If detrimental effect would result, explain detrimental effect: If individual self-insurers are not held to certain standards, employees may be detrimentally affected if proper workers' compensation is not provided.
 - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
 - (10) Any additional information or comments: None
 - (11) Tiering: Tiering is not applied because the regulation applies to all individual self-insureds.

LABOR CABINET

Kentucky Occupational Safety and Health Review Commission (Amendment)

803 KAR 50:010. Hearings; procedure, disposition.

RELATES TO: KRS Chapter 338

STATUTORY AUTHORITY: KRS 338.071, 338.081, 338.121(3)(b), 338.141(1), (3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.071(4) requires the Kentucky Occupational Safety and Health Review Commission [is authorized by KRS 338.071 and 338.081] to hear and rule on appeals from citations, notifications, and variances and adopt and promulgate [rules and] administrative regulations governing procedure [with respect to the procedural aspect of its hearings]. This administrative regulation provides [is to provide] for these hearings and disposition of Kentucky Occupational Safety and Health contents. [their proper disposition.]

Section 1. Definitions. As used herein:

- (1) "Act" means the Occupational Safety and Health Act of 1972, KRS Chapter 338.
- (2) "Review commission" is defined at KRS 338.051(8) [means the Kentucky Occupational Safety and Health Review Commission].
- (3) "Commissioner" is defined at KRS 338.015(7) [means the Commissioner of the Department of Workplace Standards, Labor Cabinet].

(4) "Executive Director" means the Executive Director of the Review Commission.

(5) "Hearing Officer" means a person [hearing officer] appointed by [the commission pursuant to] KRS 338.071(5) and 338.081(1).

(6) "Affected employee" or "employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.

(7) "Authorized employee representative" means a labor organization which has a collective bargaining relationship with a cited employer and which represents affected employees.

(8) "Representative" means a [any] person, including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(9) "Citation" means a written communication issued by the commissioner to an employer under [pursuant to] KRS 338.141(1).

(10) "Notification of proposed penalty" means a written communication issued by the commissioner to an employer under [pursuant to] KRS 338.141(1).

(11) "Day" means a calendar day.

(12) "Working day" means all days except Saturdays, Sundays, or federal or state holidays.

(13) "Proceeding" means a matter [any proceeding] before the review commission or before its [a] hearing officer.

(14) "Discrimination" is defined at KRS 338.121(3)(a). [Unless otherwise specified, definitions set forth in KRS 338.015 are hereby adopted by this review commission.]

Section 2. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) This administrative regulation shall govern all proceedings before the review commission and its hearing officers.

(2) In the absence of a specific provision within this administrative regulation, procedure shall be in accordance with the Kentucky Rules of Civil Procedure.

Section 3. Words Denoting Number or Gender. (1) Words used in the singular number may be used in the plural.

(2) Words used in masculine gender may also mean feminine or neuter gender.

Section 4. Meetings. (1) Unless changed to another date, place or time by review commission action, regular meetings of the review commission shall be held in its offices, Frankfort, Kentucky, on the first Tuesday of each month at 11 a.m.

(2) Special meetings may be called by the chairman or by two (2) members of the review commission, and shall be held at the place and time directed by the call.

(3) The review commission shall be in continuous session for the performance of administrative duties.

(4) Two (2) members of the review commission shall constitute a quorum.

Section 5. Assignment of Hearing; Filings. (1) Under KRS 338.081(1), at the discretion of the review commission, cases before it may be assigned to a hearing officer for a hearing and submission to the review commission of findings of fact, conclusions of law, and a recommended order.

(2) Cases may be withdrawn by agreement or dismissed for cause before hearing, at the discretion of the review commission.

(3) As provided under KRS 338.071(4) and 338.081(1), the review commission shall

(a) Conduct hearings; or

(b) May appoint a hearing officer to preside over its hearings.

(4) The review commission may conduct hearings:

(a) Upon its own motion; or

(b) Upon the motion of a party.

(5) If the review commission hears the case, sections of this administrative regulation pertaining to responsibilities of a hearing officer shall apply.

(6) Before assignment of a case to a hearing officer, all papers shall be filed with the executive director at the review commission offices, #4 Millcreek Park, Millville Road, Frankfort, Kentucky 40601.

(7) After assignment of the case to a hearing officer, and before the issuance of his decision, all original pleadings and papers shall

be filed with the hearing officer at the address given in the notice informing the parties of assignment.

(8) After issuance of a decision of the hearing officer, all original pleadings and papers shall be filed with the executive director. [Meetings. (1) Regular meetings of the commission shall be held in its offices, Frankfort, Kentucky, on the first Tuesday of each month at 11 a.m., unless changed to another date, place, or time by commission action:

(2) Special meetings may be called by the chairman or by two (2) members of the commission, and shall be held at such times and places as the call directs:

(3) The commission shall be considered as in continuous session for the performance of administrative duties:

(4) Two (2) members of the commission shall constitute a quorum:

Section 3. Assignment of Hearing; Filings. (1) Pursuant to KRS 338.081, cases coming before the commission may be assigned to a hearing officer within the discretion of the commission for a hearing and a finding of facts, conclusions of law, and recommended order. Cases may be withdrawn by agreement, dismissed for cause, or otherwise disposed of before hearing in the discretion and judgment of the commission. Further, the commission may, upon its own motion or on motion of any party, if granted, hold hearings, as provided under KRS 338.071, in which case provisions of this regulation relating to hearing officers and hearings shall apply where applicable.

(2) A recommended order or adjudication by the hearing officer or the initial order of the Review Commission, if dismissed or disposed of as provided in subsection (1) or if the commission sits for a hearing, shall become the final order of the commission, under the provisions of KRS 338.091, appealable to the Franklin Circuit Court, forty (40) days from date of issue, unless called for further review pursuant to Section 48 of this regulation. In the event of review by the commission, an order of the commission determinative of issues before it shall become a final order as defined in KRS 338.091 upon date of issue:

(3) Prior to the assignment of a case to a hearing officer, all papers shall be filed with the executive director at the commission offices, #4 Millcreek Park, Route #3, Millville Road, Frankfort, Kentucky 40601. Subsequent to the assignment of the case to a hearing officer, and before the issuance of his decision, all papers shall be filed with the hearing officer at the address given in the notice informing of such assignment. Subsequent to a decision of the hearing officer, all papers shall be filed with the executive director:

(4) Unless otherwise ordered, all filing may be accomplished by first-class mail:

(5) Filing is deemed effected at the time of mailing:

Section 4. Scope of Rules; Applicability of Kentucky Rules of Civil Procedure. (1) These rules shall govern all proceedings before the commission and its hearing officers:

(2) In the absence of a specific provision, procedure shall be in accordance with the Kentucky Rules of Civil Procedure:

Section 5. Words Denoting Number or Gender. (1) Words importing the singular number may extend and be applied to the plural and vice versa:

(2) Words importing masculine gender may be applied to feminine or neuter gender and vice versa:]

Section 6. Computation of Time. (1) In computing a [any] period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. If the designated period ends on [The last day of the period so computed shall be included unless it is] a Saturday, Sunday, or federal or state holiday, the time will automatically be extended to the end of the next business day, [in which event the period runs until the end of the next day which is not a Saturday, Sunday, or federal or state holiday.]

(2) When the period of time prescribed or allowed is less than seven (7) days, [intermediate] Saturdays, Sundays, and federal or state holidays shall not be included, [be excluded in the computation:

(2) Where service of a pleading or document is by mail pursuant to Section 3 of this regulation, three (3) days shall be added to the time allowed by these rules for the filing of a responsive pleading:]

Section 7. Extensions of Time. Requests for extensions of time for the filing of a [any] pleading or document shall be filed before [must be received in advance of] the date [on which] the pleading or document is due to be filed.

Section 8. Record Address. The initial pleading filed by a [any] person shall contain his name, address and telephone number. A [Any] change in this [such] information shall [must] be promptly communicated [promptly] to the hearing officer or review [the] commission, [as the case may be,] and to [all] other parties and intervenors. A party or intervenor who fails to furnish this [such] information shall waive the [be deemed to have waived his] right to notice and service [under these rules].

Section 9. Service and Notice. (1) The original pleading or other document shall be filed with the review commission or hearing officer. [At the time of filing pleadings or other documents] A copy [thereof] shall be served by the filing party or intervenor on [every] other parties and intervenors. If the case has been assigned to a hearing officer, a copy shall be served upon the executive director, [party or intervenor,]

(2) Service upon a party or intervenor who has appeared through a representative shall be made only upon the [such] representative.

(3) Except as provided in subsections (8) and (10) of this section, and Sections 16, 31(2), and 54(3) and (4) of this administrative regulation, [Unless otherwise ordered,] service may be accomplished by [postage-prepaid] first-class mail or by personal delivery. Except as provided in Sections 49(2) and (4) and 51(1) and (2) of this administrative regulation, service shall be effected when postmarked. Service by personal delivery shall be effective on the date personal delivery is made. [Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).]

(4) If the original document or pleading is postmarked by the date the document or pleading is due to be filed, service before the review commission may be accomplished by facsimile (limited to ten (10) pages). The facsimile copy shall be marked tendered by the review commission and shall be removed from the record and destroyed upon receipt and filing of the original pleading or document.

(5) Proof of service shall be accomplished by a written statement certifying [of the same which sets forth] the date and manner of service. The [Such] statement shall be filed with the pleading or document.

(6) If [(5)-Where] service is accomplished by posting, proof of [such] posting shall be filed by [not later than] the first working day following the posting.

(7) [(6)] Service and notice to employees represented by an authorized employee representative shall be [deemed] accomplished by serving the representative [in the manner prescribed in subsection (3) of this section].

(8) If [(7)-In the event that] there are [any] affected employees who are not represented by an authorized employee representative, the employer shall:

(a) Post a notice [, immediately upon receipt of notice of contest or request for extension or modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice] informing [such] affected employees of their right to elect party status and of the availability of all pleadings for inspection and copying at reasonable times.

(b) Post a copy of the notice of contest.

(9) A notice to employees and a copy of the letter of contest shall be provided to the employer by the review commission for use in meeting the requirements of subsection (8) of this section.

(10) Posting under subsections (8) and (9) of this section shall be accomplished by the employer immediately following receipt from the review commission of the notice of receipt of contest or notice of receipt of request for extension of modification of the abatement period. [A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Commissioner of the Department of Workplace Standards for violation of the Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in

this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its rules of procedure. Notice of intent to participate should be sent to:

Kentucky Occupational Safety and Health Review Commission
#4 Millcreek Park
Route #3, Millville Road
Frankfort, Kentucky 40601

All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near work place.)

(8) Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted: The reasonableness of the period prescribed by the Commissioner of the Department of Workplace Standards for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(11) If affected employees are represented by an authorized employee representative, the employer shall serve [(9)] the authorized employee representative[, if any, shall be served] with the notices referred to in subsection (8) of this section, [set forth above and with a copy of the notice of contest.

(10) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(11) A copy of the notice of the hearing to be held before the hearing officer shall be served by the employer on the authorized employee representative or affected employees in the manner prescribed in subsection (3) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.]

(12) If [Where] a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer by the affected employee or authorized employee representative for posting [in the manner prescribed in subsection (7) of this section].

(13) An authorized employee representative who files a notice of contest shall be responsible for serving [any] other authorized employee representatives [representative] whose members are affected employees.

(14) Where posting is required by this section, the document [such posting] shall be posted in a location conspicuous to affected employees and shall remain posted [maintained] until the hearing is held [commencement of the hearing] or until earlier disposition of the case.

Section 10. Consolidation. (1) If there are common parties or common questions of law or fact, or if merited by circumstance, cases may be consolidated.

(2) Consolidation may be ordered on the motion of a [any] party, or on the motion of the hearing officer or review commission, [on the hearing officer's own motion, or on the commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.]

Section 11. Severance. On [Upon] its own motion, or on [upon] motion of a [any] party or intervenor, the review commission or the hearing officer may, for good cause, order severance of issues or parties in a proceeding. [any proceeding severed with respect to some or all issues or parties.]

Section 12. Protection of Trade Secrets and Other Confidential Information. (1) [Upon application by any person,] In a proceeding where trade secrets or other confidential matters protected by law might [matters may] be divulged, upon application for protection, [the confidentiality of which is protected by law,] the hearing officer or review commission shall issue appropriate orders [such orders as may be appropriate] to protect [the] confidentiality [of such matters].

(2) Interlocutory appeal from an adverse ruling under this section shall be granted as a matter of right.

Section 13. Election of Party Status. [Employer or Employee Contests:] (1) If [Where] a notice of contest of a citation or notification issued under KRS 338.141(1) or 338.153 has been [is] filed by an employer [contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153], an affected employee not represented by an authorized employee representative or an authorized employee representative of affected employees may elect party status.

(2) Party status may be elected by written notification to the executive director or to the hearing officer (if the case has been assigned) of intent to exercise this right.

(3) Notification under this section shall be filed between the time notice of contest is received by the review commission and [a request for intervention at any time before commencement of the] hearing on the matter begins or, if a [no] hearing is not held, notification may be filed within the ten (10) day time period a motion for dismissal is required to be posted.

(4) If party status has been elected through subsections (1) through (3) of this section, it shall be reflected in the caption of the case by adding, after the name of the respondent, the name of the unrepresented employee, followed by the designation, unrepresented employee. Similarly, if an authorized employee representative has elected party status, it shall be reflected in the caption of the case by adding the name of the authorized employee representative, followed by the designation, authorized employee representative.

(5) If [(2) Where] a notice of contest of a citation or notification issued under KRS 338.141(1) or 338.153 has been [is] filed by an employee or by an authorized employee representative [contesting a citation or notification issued pursuant to KRS 338.131, 338.141 or 338.153], the employer may elect party status as set forth in subsections (2) and (3) of this section.

(6) Where party status has been elected through subsection (5) of this section, it shall be reflected in the caption of the case by adding, after the name of the respondent-employee or respondent-authorized employee representative, the name of the employer, followed by the designation, employer, [at any time before commencement of the hearing, or if no hearing is held, within the time period a motion for dismissal is required to be posted.]

Section 14. Intervention. (1) A petition for leave to intervene may be filed between the time notice of contest is received by the review commission and hearing on the matter begins or, if settled or dismissed, [at any stage of a proceeding before commencement of the hearing, or in the event of a settlement or dismissal] before issuance of a recommended order.

(2) The petition shall:

(a) Set forth the interest of the petitioner in the proceeding; and

(b) Show that participation of the petitioner will assist in the determination of the issues in question; and

(c) Show that the intervention will not unnecessarily delay the proceeding.

(3) The review commission or [the] hearing officer may grant a petition for intervention and may set the terms and limitations of intervention, [to such an extent and upon such terms as the commission or the hearing officer shall determine.]

(4) If intervention is allowed, it shall be reflected in the caption of the case [all cases where intervention is allowed shall reflect such intervention] by adding, [to the caption] after the name of the respondent, the name of the intervenor, followed by the designation, intervenor.

Section 15. Representatives of Parties and Intervenors. (1) A [Any] party or intervenor may appear in person, through an attorney, or through another representative who is not an attorney.

(2) If a party or intervenor appears before the review commission through a representative, control of matters concerning the interest of the party or intervenor shall rest with the representative. [A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.]

(3) Affected employees who are represented by an authorized employee representative may appear only through the [such] authorized employee representative.

(4) In the absence of an appearance by a representative, a party

or intervenor ~~may [will be deemed to]~~ appear for himself. A corporation or unincorporated association may be represented by an authorized officer or agent.

(5) Withdrawal of appearance of a [any] representative may be effected by filing a written notice of withdrawal and by serving a copy [thereof] on the [all] parties and intervenors.

Section 16. Discrimination Contests. (1) Discrimination contests shall comply with KRS 338.141(1).

(2) Within seven (7) days of his receipt of contest, the commissioner shall forward the original and one (1) copy of the contest and copies of relevant documents to the review commission.

(3) Upon receipt by the review commission of a notice of contest of a citation and notification of penalty issued under KRS 338.121(3)(b), the review commission shall issue a notice informing the parties of its receipt of contest.

(4) With the following exceptions, the provisions of this administrative regulation relating to contest of citations shall apply in discrimination contests:

(a) The service requirements of Section 9(3) and (6) through (13) of this administrative regulation.

(b) The service and notice requirements of Section 31(2) of this administrative regulation.

(c) The right to elect party status under Section 13(1) through (3) of this administrative regulation.

(d) Sections 17 and 18 of this administrative regulation, concerning variance and petition for modification of abatement.

(e) The requirement for posting of settlements and dismissals set forth in Section 54(2) through (4) of this administrative regulation.

(5) Service under this section shall be accomplished through first-class mail, and shall be effected upon date of postmark.

(6) The employer shall serve a copy of the notice of contest upon the aggrieved employee or terminated employee who alleges discrimination under KRS 338.121(3)(b).

(7) The employer shall serve a copy of the notice of hearing upon the employee or terminated employee described in subsection (5) of this section.

(8) The employer shall serve a copy of the proposed settlement agreement or motion to dismiss upon the employee or terminated employee described in subsection (5) of this section, ten (10) days before the settlement agreement or motion to dismiss is submitted to the review commission or hearing officer.

(9) Discretion rests with the commissioner to prosecute discrimination cases under this section. An affected employee or former employee may appear as a party only through the provisions for intervention of Section 14 of this administrative regulation.

(10) Disposition of discrimination contests before the review commission shall comply with KRS 338.081(3) and 338.121(3)(b).

Section 17. Variance Contests. (1) Contests of a final ruling by the commissioner, following an application for variance under KRS 338.153, shall comply with KRS 338.141(1) and (3).

(2) Within seven (7) days of receipt of notice of contest, [An employer, employee or authorized employee representative who receives notification of an adverse ruling to an application for a variance made pursuant to KRS 338.153 may, within fifteen (15) working days of issuance of such ruling file a notice of contest with the Commissioner of the Department of Workplace Standards:] the commissioner [of the Department of Workplace Standards] shall transmit [such notice, together with] the complete record in the matter [as compiled before the Commissioner of the Department of Workplace Standards], to the review commission [within seven (7) days of receipt, under authority of KRS 338.071(4)].

(3) Under KRS 338.071(4) the review [(2) The] commission may:

(a) On its own order or on motion of a [any] party, [if granted,] consider the matter on the record; or

(b) [may] Require further hearing, pleading or [filings of] information in the matter.

[(3) All pertinent provisions relating to contests of citations, where applicable, shall apply.]

Section 18. [17:] Request for Extension or Modification of Abate-

ment. (1) Appeal of an adverse ruling of the commissioner, following a request for extension or modification of abatement under KRS 338.141(2), shall comply with the provision of KRS 338.141(1).

(2) Appeals under this section [Any party adversely affected by a ruling of the Commissioner of the Department of Workplace Standards on any application for extension or modification of an abatement period may file an appeal from such notification with the Commissioner of the Department of Workplace Standards, provided such appeal is filed within fifteen (15) working days from receipt of such notice. Such appeal] shall be limited to the commissioner's ruling affecting the party's application for extension or modification of the abatement period.

(3) Within seven (7) days after his receipt of the appeal, [(2)] the commissioner [of the Department of Workplace Standards] shall transmit the [such] appeal and the records considered by him in making his ruling to the review commission [(within seven (7) days after its receipt, together with all pertinent and relevant records considered by the Commissioner of the Department of Workplace Standards in making his ruling)].

(4) [(3)] The commissioner [of the Department of Workplace Standards] shall file a response to such appeal within ten (10) days of receipt of notice of [such] appeal.

(5) On its own order or on motion of a party, the review [(4) The] commission may [on its own order or on motion of any party, if granted,] consider the matter on the record or may require further hearing, pleading or information in the matter.

Section 19. [18:] Form. (1) [Except as provided herein, there are no specific requirements as to the form of any pleading:] A pleading shall:

(a) Include [is simply required to contain] a caption sufficient to identify the parties, in accordance with Section 20 [19] of this administrative regulation;

(b) [which shall] Include the review commission's docket number, if assigned;

(c) Include [and] a clear and plain statement of the relief requested and the basis for relief. [that is sought, together with the grounds therefor.]

(2) Pleadings and other documents (other than exhibits) shall be typewritten on eight and one-half (8 1/2) by eleven (11) inch paper, double spaced.

(3) Pleadings shall be signed by the party filing or by its [his] representative. The signature shall indicate:

(a) [Such signing constitutes a representation by] The signer [that he] has read the document or pleading;

(b) [that] To the best of his knowledge, information and belief, the [that] statements made [therein] are true and [that it is] not made [interposed] for the purpose of delay.

(4) The review commission may refuse for filing a [any] pleading or document [that] which] does not comply with the requirements of subsections (1), (2), and (3) of this section.

(5) All pleadings, with the exception of briefs, shall be filed in duplicate [unless otherwise indicated].

(6) Unless otherwise designated in this regulation, any pleading shall be assumed as admitted as correct unless a reply or denial is received within ten (10) days of receipt of such pleading.]

Section 20. [19:] Captions. (1) Cases initiated by a notice of contest shall be titled: Commissioner of the Department of Workplace Standards, Complainant v. (Name of Contestant), Respondent.

(2) Cases initiated from an adverse ruling of the commissioner [of the Department of Workplace Standards] relative to a variance application or by a request for extension or modification of the abatement period shall be titled: (Name of Petitioner), Petitioner v. Commissioner of the Department of Workplace Standards, Respondent.

(3) The titles listed in subsections (1) and (2) of this section shall appear at the left upper portion of the initial page of a [any] pleading or document (other than exhibits) [filed].

(4) The initial page of a [any] pleading or document (other than exhibits) shall include [show, at the upper right of the page, opposite the title,] the docket number[, if known,] assigned by the review commission, on the upper right of the page.

Section 21. [20:] Notices of Contest of Citations. (1) Notice of contest of a citation shall comply with KRS 338.141(1). [Any employer, employee or authorized employee representative may contest any citation issued pursuant to KRS 338.141.]

(2) Within seven (7) days of his receipt of notice of contest, the original and one (1) copy of the notice of contest and copies of relevant documents shall be filed with the review commission by the commissioner. [When a notice of contest is received by the commissioner the original and one (1) copy of the notification of contest shall be transmitted to the commission together with copies of all relevant documents, within seven (7) days of receipt of notice by the commissioner.]

(3) Complaint.

(a) No later than twenty (20) days after his receipt of the notice of contest, the commissioner shall file a complaint with the review commission [no later than twenty (20) days after his receipt of the notice of contest].

(b) The complaint shall set forth all alleged, contested violations and proposed penalties and shall state [which are contested, stating with particularity]:

1. The basis for jurisdiction;

2. The time, location, place and circumstances of each [such] alleged violation; and

3. The considerations upon which the period for abatement and the proposed penalty on each alleged violation is based.

(c) If [Where] the commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(4) Answer.

(a) Within fifteen (15) days after service of the complaint, the party against whom the complaint was issued shall file an answer with the review commission.

(b) The answer shall contain a short and plain statement denying those allegations in the complaint [which] the party intends to contest. An [Any] allegation not denied shall be deemed admitted.

Section 22. [21:] Statement of Position. Between the time notice of contest is received by the review commission and hearing on the matter begins, a [At any time prior to the commencement of the hearing before the hearing officer, any] person entitled to appear as a party, or a [any] person who has been granted leave to intervene, may file a statement of position regarding the [with respect to any or all] issues to be heard.

Section 23. [22:] Response to Motions. A [Any] party or intervenor upon whom a motion is served shall have ten (10) days from service of the motion to file a response.

Section 24. [23:] Failure to File. Failure to timely file a [any] pleading under this administrative regulation [pursuant to these rules when due,] may, in the discretion of the review commission or [the] hearing officer, result in [constitute] a waiver of right to further participation in the proceedings or imposition of other sanctions.

Section 25. [24:] Withdrawal of Notice of Contest. Subject to the approval of the review commission, the notice of contest may be withdrawn at any stage of the proceedings. [At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the commission.]

Section 26. [25:] Prehearing Conference. (1) Between the time notice of contest is received by the review commission and the hearing on the matter begins, the review [At any time before a hearing, the] commission or [the] hearing officer, on his [their] own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference to consider [for the purpose of considering] matters which could [will tend to] simplify the issues or expedite the proceedings.

(2) The review commission or [the] hearing officer shall [may] issue a prehearing order which includes the agreements reached by the parties. This [Such] order shall be served on all parties and shall be a part of the record.

Section 27. [26:] Requests for Admissions. (1) [At any time] After the filing of responsive pleadings, a [any] party may request that ~~an other~~ [of any other] party file admissions of facts, to be made under oath.

(2) Each admission requested shall be set forth separately.

(3) Unless the party to whom the request is directed serves an answer or objection [The matter shall be deemed admitted unless,] within fifteen (15) days after service of the request, or within the period of time ordered by the hearing officer or review commission, the matter shall be deemed admitted. [such shorter or longer time as the commission or the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.]

(4) [(2)] Copies of all requests and responses shall be:

(a) Filled with the review commission;

(b) Served on the [all] parties;

(c) Made [in accordance with the provisions of these rules and filed with the commission within the time allotted and shall be] a part of the record.

Section 28. [27:] Discovery Depositions and Interrogatories. (1) Except by special order of the review commission or [the] hearing officer, discovery depositions of parties, intervenors or witnesses and interrogatories directed to parties, intervenors or witnesses shall not be allowed.

(2) If the review [in the event the] commission or [the] hearing officer grants an application for the conduct of [such] discovery proceedings, the order [granting the same] shall set forth appropriate time limits governing the discovery.

Section 29. [28:] Failure to Comply With Orders for Discovery. If the review commission or hearing officer permits discovery and a [any] party or intervenor fails to comply [with an order of the commission or the hearing officer to permit discovery in accordance with the provisions of these rules], the review commission or [the] hearing officer may take necessary action, including imposition of sanctions, or another appropriate and just action authorized by this administrative regulation. [issue appropriate orders.]

Section 30. [29:] Issuance of Subpoenas; Petitions to Revoke or Modify Subpoenas; Right to Inspect or Copy Data. (1) On the application of a party, a subpoena shall be issued. [Any member of the commission shall, on the application of any party directed to the commission, forthwith issue subpoenas] requiring:

(a) The attendance and testimony of witnesses;

(b) [and] The production of [any] evidence, including;

(c) Relevant books, records, correspondence or documents in the [his] possession or under the [his] control of the person named on the subpoena.

(2) Upon application and if the hearing is to be heard directly by the review commission, any commission member may issue subpoenas, and the requirements of this section shall apply individually to each member of the review commission.

(3) If filed after assignment of the case to a hearing officer, applications for subpoenas shall [-if filed subsequent to the assignment of the case to a hearing officer, may] be filed with the hearing officer, and the requirements of this section shall apply to the hearing officer.

(4) [A hearing officer shall grant the application on behalf of any member of the commission:] Applications for subpoenas may be made ex parte. The subpoena shall show [on its face] the name and address of the party at whose request the subpoena was issued.

(5) Within five (5) days after service of the subpoena, the [(2) Any] person served [with a subpoena, whether ad testificandum or duces tecum,] shall, [-within five (5) days after the date of service of the subpoena upon him,] move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued.

(6) The hearing officer or review [the] commission, [-as the case may be,] shall revoke or modify the subpoena if:

(a) In its opinion, the evidence [whose production is] required by the subpoena does not relate to the proceeding; [any matter under investigation or in question in the proceedings] or

(b) The subpoena does not describe with sufficient detail [particu-

larity) the evidence it requires; [whose production is required,] or

(c) [if] For another [any other] reason sufficient in law, the subpoena is otherwise invalid.

(7) The hearing officer or the review commission, [as the case may be,] shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, the [any] answer filed [thereto,] and the ruling [thereon] shall become a part of the record.

(8) [(3)] Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payments of lawfully prescribed costs, to procure copies of transcripts of the data or evidence submitted by them.

(9) If in its judgment the enforcement of the subpoena would be consistent with the law and upon the failure to comply with a subpoena, the review commission, by its counsel, shall initiate proceedings in the Franklin Circuit Court or appropriate circuit court. [(4) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the commission by its counsel shall initiate proceedings in the Franklin Circuit Court or appropriate circuit court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. Neither the commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.]

Section 31. [30:] Notice of Hearing. (1) Unless expedited proceeding is ordered as provided in Section 54 of this administrative regulation, notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least ten (10) days before the [in advance of such] hearing, [except as otherwise provided in Section 52 of this regulation].

(2) Copy of notice of hearing shall be served by the employer on unrepresented affected employees by posting the notice in a location commonly used by and readily visible to affected employees.

(3) [and/or the affected employees' representative as provided in Section 9(9) and (10) of this regulation,] If [no] information is not [has been] received by the employer regarding election of party status by an authorized employee representative, the employer shall serve a copy of the hearing notice upon the authorized employee representative.

(4) [as to employee intervention in the case before the commission:] Notice of hearing shall [will] be given by the review commission or hearing officer to parties and intervenors.

(5) [to any party intervenor.

(3) The executive director shall secure or cause to be secured a location for the [such] hearing. Unless the employer agrees to a convenient alternate site, the hearing shall be held as near as possible to the employer's place of business or the site of the alleged violation.

(6) The executive director shall also secure, or cause to be secured [in the discretion of the commission, and secure] a reporter for the taking of proof at the [any] hearing.

Section 32. [31:] Postponement of Hearing. (1) Postponement of a hearing ordinarily will not be allowed.

(2) Except in the case of [an extreme] emergency or in unusual circumstances, a motion to postpone or continue the hearing shall not [no such request will] be considered unless received in writing at least three (3) days before [in advance of] the time set for the hearing.

(3) If the hearing officer determines that emergency or unusual circumstances exist, he may postpone the hearing for no more than [Postponement of hearing not in excess of] thirty (30) days [may be granted in the discretion of the hearing officer].

(4) If the hearing officer determines that emergency or unusual circumstances exist, one (1) additional postponement not in excess of thirty (30) days may be granted [by the hearing officer in extreme emergency or under unusual circumstances]. No additional postponement may be granted without review commission approval.

Section 33. [32:] Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, [the failure of] a party who fails to appear at a hearing shall waive [be deemed to be a waiver of] all rights except the rights to be served with a copy of the decision of the hearing officer and to request commission review pursuant to Section 49 [48] of this

administrative regulation.

(2) In the absence of extraordinary circumstances, requests for reinstatement shall [must] be made [in the absence of extraordinary circumstances,] within five (5) days after the scheduled hearing date.

(3) Upon a showing of good cause, the review [The] commission or the hearing officer, [upon a showing of good cause,] may excuse a [such] failure to appear. If so [in such event], the hearing will be rescheduled.

Section 34. [33:] Payment of Witness Fees and Mileage; Fees of Persons Taking Depositions. (1) Witnesses summoned before the review commission or the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of the Commonwealth of Kentucky.

(2) [and] Witnesses whose depositions are taken and the persons taking the [the same] shall severally be entitled to the same fees as are paid for like services in the courts of the Commonwealth of Kentucky.

(3) Fees and mileage for witnesses and the person taking a deposition [Witness fees and mileage] shall be paid by the party requesting the deposition, [at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.]

Section 35. [34:] Reporter's Fees. With the exception of fees associated with depositions, fees for reporters for the original transcript [Reporter's fees] shall be paid [borne] by the review commission; except as provided in Section 33 of this regulation.

Section 36. [35:] Transcript of Testimony. (1) Hearings shall be transcribed verbatim.

(2) A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard.

(3) The hearing officer shall promptly serve notice of his receipt of the transcript upon each of the parties and intervenors [of such filing].

(4) Upon request to the official reporter and payment of associated fees, copies of the transcript may be obtained. [Participants desiring copies of such transcripts may obtain the same from the official reporter upon payment of fees fixed therefor.]

Section 37. [36:] Duties and Powers of Hearing Officers. (1) It shall be the duty of the hearing officer to:

(a) Conduct a fair and impartial hearing;

(b) [to] Assure that the facts are fully elicited; and

(c) [to] Adjudicate all issues and avoid delay.

(2) Between the time he is designated and the time his decision is issued, and subject to the provisions of this administrative regulation, the hearing officer shall have authority to control the [with respect to] cases assigned to him and shall include the authority [between the time he is designated and the time he issues his decision, subject to the rules and regulations of the commission,] to:

(a) [(1)] Administer oaths and affirmations;

(b) [(2)] Issue [authorized] subpoenas;

(c) [(3)] Rule upon petitions to revoke subpoenas;

(d) [(4)] Rule upon offers of proof and receive relevant evidence;

(e) [(5)] Take or cause depositions to be taken if [whenever] the needs of justice would be served;

(f) [(6)] Regulate the course of the hearing;

(g) Impose appropriate sanctions;

(h) [and, if appropriate or necessary,] Exclude persons or counsel from the hearing for contemptuous conduct;

(i) [and] Strike all related testimony of witnesses refusing to answer [any] proper questions;

(j) [(7)] Hold conferences for the settlement or simplification of the issues;

(k) [(8)] Dispose of procedural requests or similar matters including motions referred to the hearing officer by the review commission and motions to amend pleadings;

(l) [also to] Dismiss complaints or portions of complaints;

(m) [thereof, and to] Order hearings reopened or, upon motion, consolidated [prior to issuance of his decision];

(n) [(9)] Call and examine witnesses and [to] introduce into the

record documentary or other evidence;

(o) During the hearing, [(10)] request the parties [at any time during the hearing] to state their respective positions concerning an [any] issue in the case or theory in its support [thereof];

(p) [(11)] Adjourn the hearing as the needs of justice and good administration require;

(q) [(12)] Take [any other action] necessary and appropriate action [under the foregoing and] authorized by this administrative regulation [the published rules and regulations of the commission].

Section 38. [37:] Disqualification of Hearing Officer. (1) A hearing officer may withdraw from a proceeding if [whenever] he deems himself disqualified.

(2) Following designation of the hearing officer and before filing of his decision in the case, upon discovery of alleged facts which could constitute grounds of personal bias or disqualification, a [Any] party may request that the hearing officer [at any time following his designation and before the filing of his decision, to] withdraw from the case by promptly [on grounds of personal bias or disqualification, by] filing with him, [promptly upon the discovery of the alleged facts] an affidavit which shall set [setting] forth in detail the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the hearing officer the affidavit referred to in subsection (2) of this section is filed with due diligence and is sufficient on its face, the hearing officer shall forthwith disqualify himself and withdraw from the proceeding.

(4) If the hearing officer does not disqualify himself and withdraw from the proceedings, he shall so rule on [upon] the record, stating the grounds for his ruling and shall proceed with the hearing. [-or,] If the hearing has closed, he shall proceed with the preparation [issuance] of his recommended decision [and the provisions of Section 47 of this regulation shall thereupon apply].

Section 39. [38:] Examination of Witnesses. Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine [any] witness whose testimony is introduced by an adverse party.

Section 40. [39:] Affidavits. If the matters contained in an affidavit are otherwise admissible and the parties agree to its admission, an affidavit may be admitted as evidence in lieu of oral testimony [if the matters therein contained are otherwise admissible and the parties agree to its admission].

Section 41. [40:] Deposition in Lieu of Oral Testimony; Application; Procedures, Form; Rulings. (1) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth;

(a) The reasons a [such] deposition should be taken;

(b) The name and address of the witness;

(c) The matters about [concerning] which the witness [it] is expected to [he will] testify;

(d) [and] The time and place proposed for the taking of the deposition;

(e) together with The name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, [hereinafter] referred to as the officer).

(2) The [Such] application shall be filed with the review commission or with the hearing officer if the case has been assigned, [as the case may be,] and shall be served on all other parties and intervenors not less than seven (7) days [(when the deposition is to be taken elsewhere)] prior to the time the applicant desires [when it is desired] that the deposition be taken.

(3) Where good cause has been shown, the review commission or the hearing officer shall enter [make and serve on the parties and intervenors] an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. The [Such] officer may or may not be the officer specified in the application.

(4) The [(2)-Such] deposition may be taken before an [any] officer authorized to administer oaths by the laws of Kentucky or of the place where the examination is held.

(5) If the examination is held in a foreign country, it may be taken before a [any] secretary of embassy or legation, consul general, con-

sul, vice consul, or consular agent of the United States.

(6) [(3)-At the time and place specified in the order,] The officer designated to take the sworn [such] deposition of the witness shall permit the witness to be examined and cross-examined [under oath] by all parties appearing. [-and] The testimony of the witness shall be reduced to transcript form [typewriting] by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon objections [any objection], but [he] shall note them upon the deposition.

(7) The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating:

(a) [that] The witness was duly sworn by him;

(b) [that] The deposition is a true record of the testimony and exhibits given by the witness; and

(c) [that] The officer is not of counsel or attorney to a party [any of the parties] nor interested in the proceeding.

(8) If the deposition is not signed by the witness because he is ill, dead, cannot be found, [or] refuses to sign [it,] or will be unavailable to sign the typed deposition and it is so stated by agreement, this [such] fact shall be included in the certificate of the officer, and the deposition may be used as fully as though signed.

(9) The officer shall immediately deliver an original and three (3) copies of the transcript, together with his certificate, in person or by certified [registered] mail to the executive director, Kentucky Occupational Safety and Health Review Commission, #4 Millcreek Park, [Route #3,] Millville Road, Frankfort, Kentucky 40601.

(10) [(4)] The hearing officer shall rule upon the admissibility of the deposition or a [any] part of the deposition [thereof].

(11) If an irregularity or error is discovered, a motion to suppress all or part of the deposition shall be promptly filed with the hearing officer. Failure to promptly move to suppress a defect which could have been discovered through diligence shall result in waiver of the right of a party to move to suppress. [(5)-All errors or irregularities in compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is or with due diligence might have been discovered.]

(12) [(6)] If the parties so stipulate in writing, depositions may be taken before another person and at the time, place and upon the notice and in the manner so stipulated. When so taken, the deposition [any person at any time or place, upon any notice and in any manner, and when so taken] may be used as other depositions are used.

Section 42. [41:] Exhibits. (1) All exhibits offered in evidence shall be numbered and marked with a designation identifying the party or intervenor offering [by whom] the exhibit [is offered].

(2) Unless excluded by the hearing officer under Section 43 of this administrative regulation, in the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record[-unless excluded by the hearing officer pursuant to Section 42 of this regulation].

(3) Unless the hearing officer finds it impractical, a copy of each [such] exhibit shall be given to the other parties and intervenors.

(4) All exhibits offered but not admitted [denied admission] into evidence shall be identified as in subsection (1) of this section and shall be placed in a separate file designated for rejected exhibits.

(5) Unless a case is appealed to Franklin Circuit Court under KRS 338.091 or unless a party makes prior arrangements to claim an exhibit, exhibits shall be disposed of by the review commission sixty (60) days after resolution of the case.

Section 43. [42:] Rules of Evidence. To the extent practicable, hearings [before the commission and its hearing officers insofar as practicable] shall be governed by the rules of evidence applicable in the courts of the Commonwealth of Kentucky.

Section 44. [43:] Burden of Proof. (1) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the commissioner.

(2) In proceedings commenced by a request for extension or modification of the abatement period, the burden of establishing the necessity for an [such] extension or modification shall rest with the

petitioner.

(3) In all proceedings commenced by appealing from an adverse ruling on a variance application, the burden of proving the inequity of the ruling of the commissioner [of the Department of Workplace Standards] shall rest with [on] the petitioner-complainant.

Section 45. [44:] Objections. (1) ~~An objection regarding [Any objection with respect to] the conduct of the hearing, including an [any] objection to the introduction of evidence or a ruling of the hearing officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. An [No such] objection shall not be deemed waived by further participation in the hearing.~~

(2) ~~If [Whenever] evidence is excluded from the record, the party offering the [such] evidence may make an offer of proof, which shall be included in the record of the proceeding.~~

Section 46. [45:] Interlocutory Appeals; Special; as of Right. (1) ~~Except as provided in Section 12 of this administrative regulation or in subsection (3) of this section, [Unless expressly authorized by these rules;] rulings by the hearing officer may not be appealed directly to the review commission without [except by] its special permission. [Unless otherwise provided by these rules, all such rulings shall become a part of the record;]~~

(2) Request to the review commission for special permission to appeal from a [such] ruling shall be filed in writing within five (5) days following receipt of the ruling and shall state briefly the grounds relied on.

(3) Interlocutory appeal from a ruling of the hearing officer shall be allowed as of right where the hearing officer certifies that:

(a) The ruling involves an important question of law about [concerning] which there is substantial ground for difference of opinion; and

(b) An immediate appeal from the ruling will materially expedite the proceedings. ~~[Such appeal shall also be allowed in the circumstances set forth in Section 12 of this regulation;]~~

(4) ~~Unless a stay is specifically ordered by the review commission, neither the filing of a petition for interlocutory appeal nor the granting thereof, as provided in subsections (2) and (3) of this section, shall stay the proceedings before the hearing officer [unless such stay is specifically ordered by the commission].~~

(5) Rulings made under this section shall become a part of the record.

Section 47. [46:] Filing of Briefs and Proposed Findings with the Hearing Officer; Oral Argument at the Hearing. (1) Upon request, a [Any] party shall be entitled[; upon request;] to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

(2) ~~Upon request made before the close of the hearing, a [Any] party shall be entitled[; upon request made before the close of the hearing;] to file a brief, proposed findings of fact and conclusions of law, or both, with the hearing officer. The hearing officer may fix a reasonable period of time for such filing, but the initial period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing or thirty (30) days from the date the hearing officer notifies the parties [designates by order] of his receipt of the transcript.~~

(3) ~~Unless a shorter period is agreed on by all parties, the complainant shall have fifteen (15) days to file a brief, the respondent ten (10) days and the complainant five (5) days for reply[; unless a shorter period is agreed on by all parties].~~ Intervenor shall have until the 25th day of the thirty (30) day period in which to file briefs.

(4) ~~Briefs shall [(2)-All briefs must] be filed within the time fixed, [and] The hearing officer [or the commission] may refuse to consider an untimely [any] brief [filed thereafter]. Application for extension of time to file briefs shall [must] be made to the hearing officer [or commission] before whom the hearing was held.~~

(5) ~~[(3)] Briefs shall [must] be accompanied by a certificate [with notice], showing service upon all other parties. The original brief filed under this section shall be filed with the hearing officer, and [in addition to the original filed;] three (3) copies [of each such document] shall be served upon [furnished to] the review commission.~~

Section 48. [47:] Decisions of Hearing Officers. (1) The decision of the hearing officer (also called the recommended order) shall include findings of fact, conclusions of law, and a recommended order disposing of all issues before him.

(2) The hearing officer shall sign the decision and forward it to the executive director. The executive director shall ~~[then]~~ date and issue such decision, sending a copy to all parties of record and to each review commission member. Upon issuance of the decision ~~[recommended order]~~, jurisdiction shall rest solely with the review ~~[in the]~~ commission, and all motions, petitions and other pleadings filed after ~~[subsequent to]~~ such issuance shall be addressed to the review commission.

(3) The decision ~~[recommended order]~~ of the hearing officer may be called for further review by a review ~~[any]~~ commission member or by the review commission as a whole ~~[at any time]~~ within a fifty (50) ~~[forty (40)]~~ day period. If the decision ~~[recommended order]~~ is not ordered for further review under this section or under Section 49 of this administrative regulation, it shall become the final order of the review ~~[this]~~ commission fifty (50) ~~[forty (40)]~~ days after date of issuance. If a recommended order is called for review by a commission member ~~[commissioner]~~ or the review commission as a whole ~~[on its own order]~~, parties will be advised in order that briefs may be submitted if desired. The review commission will set the briefing time.

Section 49. [48:] Discretionary Review; Petition. (1) A party aggrieved by the decision of a hearing officer may submit a petition for discretionary review.

(2) The petition shall ~~[must]~~ be received by the review commission at its offices in Frankfort, Kentucky on or before the 25th day following issuance of the hearing officer's decision ~~[receipt]~~ by the review commission ~~[of the hearing officer's decision]~~.

(3) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The original and three (3) copies shall be filed with the review commission. Parties and intervenors shall not be required to serve the hearing officer with a copy of the petition for discretionary review.

(4) ~~If filed,~~ statements in opposition to petitions for discretionary review shall ~~[may]~~ be ~~[filed at any time during the review period; if]~~ received by the review commission on or before the 35th day from date of the issuance of the recommended order. Such statement shall contain a concise statement on each portion of the petition for discretionary review ~~[to] which it opposes [is addressed].~~

(5) ~~While reviewing a case, the review [The] commission [while reviewing a case] may request additional briefs on a particular [any] point, and shall set the time for such filings.~~

(6) The original and three (3) copies of all briefs or statements provided for under this section and Section 48 [47] of this administrative regulation shall be filed with ~~[furnished for use of]~~ the review commission.

(7) ~~If the review commission does not [Failure to] act on a [any] petition for discretionary review within [in] the review period, the petition shall be considered denied, and the hearing officer's decision shall automatically become the final order of the review commission fifty (50) days after issuance, appealable under KRS 338.091.~~

Section 50. Decisions of the Review Commission. (1) If the review commission sits for a hearing, the decision of the review commission shall become final and appealable under KRS 338.091 fifty (50) days following date of issuance.

(2) If a contest is dismissed or withdrawn by agreement before assignment to a hearing officer, the decision of the review commission shall become final and appealable under KRS 338.091 thirty-five (35) days following date of issuance.

(3) At the discretion of the review commission, the decision of the hearing officer may be reviewed under Section 48(3) or 49 of this administrative regulation.

(4) If a case is reviewed under Section 48(3) or 49 of this administrative regulation, the decision and order of the review commission shall become final and appealable under KRS 338.091 thirty-five (35) days following date of issuance.

(5) In appropriate circumstances, the review commission may remand a case to the hearing officer for further proceedings. Fol-

lowing a remand order, jurisdiction returns to the hearing officer.

Section 51. Motions for Reconsideration. (1) A motion for reconsideration may be filed by a party or intervenor but shall be received by the review commission within ten (10) days following issuance of the review commission's decision and order. The request shall state the findings of the review commission's order for which reconsideration is requested and shall contain a concise statement supporting the request.

(2) A motion in response to the motion for reconsideration may be filed by a party or intervenor but shall be received by the review commission within ten (10) days of the date the motion for reconsideration was filed with the review commission.

(3) If the review commission fails to act on a motion for reconsideration within thirty-five (35) days following issuance of its decision and order, the motion shall be considered denied, and appeal may proceed under KRS 338.091.

Section 52. [shall be deemed a denial thereof.]

Section 49.] Stay of Final Order. (1) While the matter is within the jurisdiction of the review commission, a [Any] party aggrieved by a final order of the review commission may, while the matter is within the jurisdiction of the commission, file a motion for a stay.

(2) The [Such] motion shall set forth the reasons a stay is sought and the length of the stay requested.

(3) The review [commission] may order a [such] stay for the period requested or for a [such longer or shorter] period determined by the review commission to be adequate or necessary under the circumstances of the case. [as it deems appropriate.]

Section 53. [50:] Oral Argument Before the Review Commission.

(1) Oral argument before the review commission will not ordinarily [will not] be allowed.

(2) In the event the review [commission] desires to hear oral argument on a matter before it, [with respect to any matter] it will advise the [all] parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least ten (10) days prior to the date set.

Section 54. [51:] Settlement or Dismissals. (1) If consistent with the provisions and objectives of the act, settlement is encouraged at any stage of the proceedings [where such settlement is consistent with the provisions and objectives of the Act].

(2) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order. The [Such] settlement agreement shall detail the basis for the [such] settlement, either by order or a stipulated agreement [properly] signed by all parties.

(3) If [Where] parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees [in the manner set forth in Section 9 of this regulation]. Proof of [such] service shall accompany the proposed settlement when submitted to the review commission or the hearing officer showing [such] notice to [such] employees or authorized employee representative ten (10) days before submission to the hearing officer or the review commission.

(4) If the commissioner moves for dismissal of an action arising from [in any action on] a citation [on motion of either party for dismissal], the motion shall state the reason for [such] dismissal and show posting for ten (10) days, as required for settlement agreements. If respondent moves for dismissal, the motion shall show posting for ten (10) days, abatement of the [in cases where dismissal is moved by the respondent, respondent shall also show abatement of] cited violation and payment of [any] penalty, if applicable.

Section 55. [52:] Expedited Proceeding. (1) Upon application of a [any] party or intervenor, or upon his own motion, a review [any] commission member may order an expedited proceeding.

(2) When such proceeding is ordered, the executive director shall notify all parties and intervenors.

(3) The hearing officer assigned in an expedited proceeding shall:

(a) Establish time periods for filing of pleadings and other matters, without regard to time periods established in this administrative regulation;

(b) [make necessary rulings, with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, shall] Order daily transcripts of the hearing; and

(c) Exercise diligence to assure [shall do all other things necessary to complete] the proceeding is completed with expedience and fairness to the parties. [in the minimum time consistent with fairness.]

Section 56. [53:] Standards of Conduct. [All] Persons appearing in a [any] proceeding shall conform to the standards of ethical conduct required in the courts of the Commonwealth of Kentucky.

Section 57. [54:] Ex Parte Communication. (1) There shall be no ex parte communication between a member, officer, employee or agent of the review commission and a party or intervenor about [with respect to] the merits of a [any] case that has not been resolved. [not concluded, between the commission, including any member, officer, employee, or agent of the commission who is employed in the decisional process, and any of the parties or intervenors.]

(2) If [in the event such] ex parte communication occurs, the review commission or the hearing officer may enter necessary [make such] orders or take remedial action to assure [such action as] fairness to the parties [requires]. Upon notice and hearing, the review commission may take appropriate [such] disciplinary action [as is appropriate in the circumstances] against a [any] person who knowingly and willfully makes or solicits [the making of a] prohibited ex parte communication.

Section 58. [55:] Restrictions as to Participation by Investigative or Prosecuting Officers. In a [any] proceeding authorized by this administrative regulation [noticed pursuant to the rules in this part], the commissioner shall not participate or advise with respect to the decision [report] of the hearing officer or the review commission [decision].

Section 59. [56:] Inspection and Reproduction of Documents. [(1)] Subject to the provisions of law restricting public disclosure of information, documents filed in a proceeding may be inspected [any person may,] at the offices of the review commission and may be copied, upon payment of costs [inspect and copy any document filed in any proceeding].

(2) Costs shall be borne by such person.

Section 60. [57:] Restrictions with Respect to Former Employees.

(1) No former employee of the review commission or the commissioner (including a member of the review commission or the executive director) shall appear before the review commission as an attorney or other representative for a [any] party in a [any] proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

(2) No former employee of the review commission or the commissioner (including a member of the review commission or the executive director) shall appear before the review commission as an attorney or other representative for a [any] party in a [any] proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless one (1) year has elapsed since the termination of his [such] employment.

Section 61. [58:] Amendments to Administrative Regulation. [Rules:] The review commission may [at any time] upon its own motion or initiative, or upon written suggestion of an [any] interested person setting forth sufficient reason, [reasonable grounds therefor,] amend or revoke this administrative regulation. Amendment to or revocation of this administrative regulation shall comply with [any of the rules contained herein, in compliance with] KRS Chapter 13A.

Section 62. [59:] Special Circumstances, Waiver of Rules. (1) If [in] special circumstances not contemplated by the provisions of this administrative regulation can be shown, a provision may be waived by [these rules, or for good cause shown,] the review commission [may, upon application by any party or intervenor, or on its own motion,] after three (3) days notice to all parties and intervenors [waive any rule or make such orders as justice or the administration of the Act requires].

(2) The review commission may order that an application for

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waiver filed by a party or intervenor shows sufficient cause; or

(3) The review commission may order waiver of a provision upon its own motion, based upon a determination of special circumstances exists which merit a waiver or that waiver is required in the interest of justice.

Section 63. [60.] Penalties. All penalties assessed by the review commission are civil.

Section 64. Sanctions. (1) Sanctions may be imposed by the review commission or its hearing officer upon a party or intervenor for violation of a procedural provision of this administrative regulation or for violation of an order of the review commission or hearing officer.

(2) Sanctions may include:

(a) Dismissal of a citation or notice of contest;

(b) Revocation of party or intervenor status;

(c) Striking all or part of a pleading or brief from the record.

Section 65. Publication of Decisions. (1) The review commission shall determine whether its decision or that of a hearing officer shall be published.

(2) If the review commission determines that a decision shall be published, the decision may be cited as authority in other cases. If the review commission determines that a decision of a hearing officer shall be published, the decision may be cited but shall not bind the review commission. If the review commission determines that a decision shall not be published, the decision shall not be cited or used as authority in another case.

(3) At its discretion, the review commission may publish its own decisions or allow its decisions to be published by another agency or private entity.

ROBERT M. WINSTEAD, Chairman

FREDERICK G. HUGGINS, Counsel

APPROVED BY AGENCY: November 13, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1998 at 1 p.m. ET at the office of the KOSH Review Commission, #4 Millcreek Park, Millville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Sue Ramsey, Assistant Director, KOSH Review Commission, #4 Millcreek Park, Millville Road, Frankfort, Kentucky 40601, telephone (502) 573-6892, fax number (502) 573-4619.

REGULATORY IMPACT ANALYSIS

Contact person: Sue Ramsey

(1) Type and number of entities affected: All employers in the Commonwealth of Kentucky, subject to the provisions of KRS Chapter 338, Occupational Safety and Health of Employees.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No impact.

(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 impact.

2. Second and subsequent years: No additional impact.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Negligible impact.

2. Continuing costs or savings: Negligible impact.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No additional impact.

(4) Assessment of anticipated effect on state and local revenues: No discernible impact.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Continued funding through federal occupational safety and health grant and state trust agency funds.

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

(a) Geographical area in which administrative regulation will be implemented: No additional effect.

(b) Kentucky: No additional effect.

(7) Assessment of alternative methods; reasons why alternatives were rejected: In this instance, the alternative to amendment of the regulation was not to amend the regulation and allow procedures for hearing and disposition of occupational safety and health contests to continue as adopted. With the benefit of twenty-five (25) years of experience, the review commission has been able to identify portions of its administrative regulation which need to "fine-tuned." Specifically, the review commission's regulation contained no reference to occupational safety and health discrimination cases, no provision for disposition of exhibits, no provision for imposition of sanctions, no provision for authority to decide which of its decisions was to be published or the authority to publish those decisions. In addition, although the authority to remand cases to a hearing officer is implied, there was no specific provision permitting remand. The time limits prescribed in the regulation for determining when a hearing officer or review commission order becomes final and appealable have proven to be insufficient, and this amendment will expand these dates. For the most part, amendments were made to replace stilted or outdated language with plainer, more understandable language.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No known 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. None.

(11) TIERING: Is tiering applied? This amendment did not lend itself to the application of tiering.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 29 CFR 1951, Grants for Implementing Approved State Plans; and 29 CFR 2200, Rules of Procedure of the Federal Occupational Safety and Health Review Commission.

2. State compliance standards. This amendment to administrative regulation establishes procedures for hearing and proper disposition of contested occupational safety and health discrimination cases and includes provisions for disposition of evidentiary exhibits, imposition of sanctions, remand of cases to a hearing officer, and publication of decisions. It also expands the time periods within which a hearing officer or review commission decision becomes final and clarifies stilted and obsolete language.

3. Minimum or uniform standards contained in the federal man-

date. The federal mandate requires that state occupational safety and health programs be as effective as the federal occupational safety and health program. 29 USC 651 et seq.

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. This amendment contains similar language to that of 29 CFR 2200, the rules of procedure of the federal occupational safety and health review commission.

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. Employees of local government are subject to the provision of KRS Chapter 338 governing the occupational safety and health of employees.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation relates to the right of employers and employees to contest occupational safety and health citations, notifications and variances.

4. Estimate the affect 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 amendment to administrative regulation will not impose additional requirements which would have a discernable fiscal impact on local government.

Revenues: See above.

Expenditures: See above.

Other Explanation:

CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

905 KAR 1:050. Approval of adoption assistance [subsidies].

RELATES TO: KRS 194B.050, 199.555, 199.557, 42 USC 673

STATUTORY AUTHORITY: KRS 194B.050 [194.050], 199.557(10), 42 USC 673, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is required by KRS 194B.050 and 199.557(10). It serves to set forth guidelines for the implementation of the law on state funded adoption assistance and federal [title IV-E] adoption assistance.

Section 1. The decision to pay adoption assistance [a subsidy] for the adoption of a particular child shall be the responsibility of the Secretary of the Cabinet for Families and Children [Human Resources] or his designated representative and shall be made in the best interest of the child. Adoption assistance [An adoptive subsidy] shall be construed as being primarily for the benefit of the child and not the adoptive parents. Adoption assistance [An adoptive subsidy] shall be limited to special needs children. Special needs children include those children for whom adoptive homes are difficult to find because of age, a sibling group of three (3) or more children, a physical disability, a mental condition, emotional problems requiring counseling, children who have suffered physical or sexual abuse, and children whose background includes mental illness which has proven to be hereditary in nature and the future impact is documented by a genetic evaluation.

Section 2. The child considered for state funded adoption assistance shall be committed to the Cabinet for Families and Children [Human Resources] and have [has] no parents with a legal claim to his custody. The child considered for federal [title IV-E] adoption assistance shall meet the eligibility criteria established in 42 USC 673 at the

time the adoption proceedings are initiated and have no parents with a legal claim to his custody.

Section 3. Parents receiving a child for [subsidized] adoption assistance shall meet the same standards as those applied to other adoptive applicants, ~~except as those standards relate to financial resources. Their financial situation shall be that they are able to meet the daily expenses of their existing family, but are unable to care for an additional child without a subsidy.~~

Section 4. An agreement [A contract] setting forth the scope and limits of the adoption assistance [subsidy] shall be signed by the adoptive parents and the Secretary of the Cabinet for Families and Children [Human Resources] or his designated representative. ~~The amount of the subsidy shall be determined according to the financial needs of the child and the ability of the adoptive parents to meet those needs.] The adoption assistance [adoptive subsidy] shall begin on the date the adoption judgment is entered and shall continue until the child reaches the age of majority, age nineteen (19) and is enrolled in a state or federal educational program, or age twenty-one (21) for disabled children who receive supplemental security income and are enrolled in a state or federal educational program ~~[-The adoption subsidy shall continue for disabled children who receive supplemental security income and are enrolled in a state or federal educational program until age twenty-one (21)].~~ The adoption assistance [subsidy] may be decreased or increased as changes occur in the family situation or in the needs of the child. The adoption assistance [but] shall not exceed the amount which may be paid for foster care for the same child, including the medically fragile and family treatment home rates established by the Department for Community-Based Services. When the amount of adoption assistance is greater than the special needs rate, at each agreement renewal there shall be:~~

(1) A review of the child's needs to determine if the child would receive the higher rate, if he were still in foster care; and

(2) Verification that the adoptive parents meet the same training requirements as foster parents to receive the higher rates. ~~[child and may include or consist entirely of payment for extraordinary medical care. The subsidy for disabled children who receive supplemental security income after age eighteen (18) is limited to extraordinary medical expenses not covered by Medicaid.]~~ The adoption assistance [subsidy] shall not be altered by the adoptive parents moving out of the state or country.

Section 5. Annual contact with the adoptive family shall be made by mail or home visit to determine if the level of adoption assistance continues to be appropriate to the needs of the child. ~~[make appropriate adjustments in the amount of the subsidy.]~~

Section 6. The number of adoption assistance cases [subsidized adoptions] shall be limited by available funds for the adoption assistance program. ~~[subsidy program.]~~

Section 7. 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.

VIOLA MILLER, Secretary
DIETRA PARIS, Commissioner
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 30, 1998

FILED WITH LRC: November 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1998, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend

the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (FAX).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The children in subsidized adoptive homes. There are 1,597 children in this type of placement as of the end of FY 98.

(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: Cost of \$326,000 for additional assistance payments.

2. Continuing cost or savings: Cost of \$417,200 for continuing additional assistance payments.

3. Additional factors increasing or decreasing costs: The provisions of this amended regulation simply codify current practice or extend benefits available in foster care to children receiving adoption assistance. In those cases there may be a shift in cost from foster care to adoptions but there is no increase in total cost foreseen. For older children currently receiving adoption assistance the total new cost on a continuing basis is estimated section 2 above.

(b) Reporting and paperwork requirements: The provisions of this amended regulation simply codify current practice or extend benefits available in foster care to children receiving adoption assistance. In those cases there may be a shift in cost from foster care to adoptions but there is no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: \$188,000 of the first year cost will be obtained from the state general fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funding split is \$188,000 from the state general fund, and \$138,000 obtained from federal foster care funds. Because 70% of the children affected are eligible for federal foster care funds and the federal government reimburses the state approximately 70% of allowable cost, the actual net increase to the state is only 50% of the total.

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the public hearing.

(b) Kentucky: To be determined after the public hearing.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered because these requirements are federal mandates from 42 USC 673 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health and environmental welfare in Kentucky.

(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: No detrimental effect would result.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There are no statutes, regulations or policies in conflict, overlapping or in duplication.

(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 changes in the adoption subsidy program pursuant to this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 673 et seq.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate, as well as KRS 199B.050, 199.555 and 199.557, this regulation is being amended to include:

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

b. The adjustment of the age of majority for disabled children to 21 years of age, if they receive supplemental security income and are enrolled in a state or federal educational program;

c. The clarification that adoption assistance may not exceed the family foster care rates including medically fragile and family treatment home foster care rates;

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

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 USC 673 et seq. the state agency responsible for the adoption program shall be required to adjust the age of majority as described in 2a and b above; clarify adoption assistance rates as in 2c above; and clarify the description of special needs child as in 2d above.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate. No, the above mentioned changes in policy will be applicable throughout the state for all children eligible for the adoption subsidy program. Therefore, no stricter requirements or responsibilities are imposed than those of the 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.

NEW ADMINISTRATIVE REGULATIONS RECEIVED AS OF NOON, NOVEMBER 13, 1998

**COUNCIL ON POSTSECONDARY EDUCATION
(New Administrative Regulation)**

13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 158.070, 164.020, 164.7911, 164.7927

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 575

NECESSITY, FUNCTION, AND CONFORMITY: The Council on Postsecondary Education has the responsibility to provide administrative oversight to the Kentucky Educational Excellence Scholarship (KEES) Program, adopted by the 1998 Kentucky General Assembly in 1998 Ky. Acts ch. 575. The council is to exercise its authority through promulgation of an administrative regulation. Specifically, the council is to: administer all funds appropriated to the trust fund for the program; develop and implement standards for high school curriculum as they relate to eligibility for participation in the program; determine eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; establish a table to convert an SAT score to an ACT standard; establish a method for local education agencies to calculate a grade point average; and establish a five (5) year postsecondary education program standard. The CPE will also establish the overall award levels for the program. The program was originally designated as The Commonwealth Merit Scholarship but was subsequently changed by executive order to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester at a postsecondary education institution and shall not include summer sessions.

(2) "Academic year" is defined in 1998 Ky. Acts ch. 575, sec. 2(2) and in KRS 158.070.

(3) "ACT" means the test administered to students for entrance to Kentucky postsecondary education institutions that is owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.

(5) "Authority" is defined in 1998 Ky. Acts ch. 575, sec. 2(4).

(6) "Award period" is defined in 1998 Ky. Acts ch. 575, sec. 2(5).

(7) "Award recipient" means an eligible student who subsequently enrolls in a participating institution.

(8) "Council" or "CPE" means the Council on Postsecondary Education established in KRS 164.011 and as referenced in 1998 Ky. Acts ch. 575, sec. 2(9).

(9) "Eligible student" is defined in 1998 Ky. Acts ch. 575, sec. 2(10).

(10) "Enrollment" means a student is enrolled and is attending a participating institution.

(11) "GED" means a general educational development diploma awarded to a student.

(12) "High school" is defined in 1998 Ky. Acts ch. 575, sec. 2(13) and as defined in KRS 156.160.

(13) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.070.

(14) "KEES" means the Kentucky Educational Excellence Scholarship Program approved by the 1998 Kentucky General Assembly in 1998 Ky. Acts ch. 575, originally designated as the Commonwealth Merit Scholarship and subsequently renamed by executive order.

(15) "Participating institution" is defined in 1998 Ky. Acts ch. 575, sec. 2(15).

(16) "SAT" means the Scholastic Assessment Test administered to Kentucky students seeking admission to Kentucky postsecondary education institutions.

(17) "Scholarship curriculum" is defined in 1998 Ky. Acts ch. 575, sec. 2(7).

Section 2. High School Grade Point Average Calculation and

Reporting. (1) Beginning August 1, 1999, and no later than June 30 for each year thereafter, each Kentucky local board of education shall report to the KDE the grade point average for an eligible student for the preceding academic year.

(2) An eligible student's grade point average for an academic year shall be calculated using each grade awarded for a course taken during an academic year.

(3) An eligible student's grade point average shall be calculated by:

(a) Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F;" and

(b) Adding the total number of points accumulated for an academic year; and

(c) Dividing the total number of points accumulated in paragraph (b) of this subsection by the total number of units for the academic year.

(d) Except that, for a student taking an advanced placement course during the academic year, the grade assigned in paragraph (a) of this subsection shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F."

(4) The grade point average reported for each student for each academic year shall include all information as set forth in 1998 Ky. Acts ch. 575, sec. 6(1) and in such manner as the KDE or the KHEAA shall require.

(5) The grade point average reported for each eligible student shall be based on the grade scale in place in that school during the 1997-98 academic year.

(6) During the 1998-99 fiscal year, the council shall request the assistance of the Kentucky Board of Education to develop minimum threshold levels for letter grades to be used in 1999-2000 for the purposes of this program.

Section 3. Scholarship Curriculum. (1) In addition to the requirements of Section 5 of this administrative regulation, a student shall complete the scholarship curriculum to qualify for the base scholarship award.

(a) The scholarship curriculum shall be:

1. The curriculum required in 704 KAR 3:305, Section 1 or 2 as appropriate without any restriction on the type of electives taken for a student enrolled in high school during the 1998-99 academic year; or

2. For a student enrolled in high school during the 1999-2000 and 2000-01 academic year and who is required to meet the curriculum standards in 704 KAR 3:305, Section 1, the eight (8) electives required by 704 KAR 3:305, Section 1, shall be taken in the following areas and shall meet the standards enumerated in subparagraph 4b of this subsection.

3. For a student enrolled in high school during 1999-2000 and for each year thereafter who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the following areas and shall meet the standards enumerated in subparagraph 4b of this paragraph.

4. The following subject areas and standards are established for electives:

a. An elective in social studies, science, mathematics, English/language arts, and arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

b. Physical education and health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.

c. Nonnative languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.

d. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways shall be a

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course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(b) A local board of education may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

1. The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document incorporated by reference titled, "Academic Expectations," dated July 1994; or

2. The course is an honors course, cooperative education course, advanced placement course, dual credit course, or is a course taken at a postsecondary education institution.

(2) A local board of education annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the scholarship curriculum.

Section 4. Eligible Postsecondary Education Programs. Pursuant to 1998 Ky. Acts ch. 575, Section 5(6), the following academic programs shall be approved as five (5) year baccalaureate degree programs:

(1) Architecture (04.0201);

(2) Landscape architecture (04.0601); and

(3) Engineering (14.0301, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1701, 14.1801, 14.1901, 14.2101, 14.9999.01).

Section 5. Base Scholarship Award. (1) Beginning after July 1, 1998, and thereafter, a Kentucky resident enrolled in a Kentucky public high school or a private, parochial, or church school that has been certified by the Kentucky Board of Education pursuant to KRS 156.160 shall be eligible for a base scholarship award under this program upon satisfying the following conditions:

(a) The student shall not be a convicted felon;

(b) The student shall have a grade point average of 2.5 or above on a 4.0 point scale at the close of any academic year of high school for all coursework taken at a Kentucky public high school or a private, parochial, or church school that has been certified by the Kentucky Board of Education pursuant to KRS 156.160;

(c) The student shall have completed the scholarship curriculum set out in Section 3 of this administrative regulation; and

(d) The student shall graduate from a Kentucky certified high school.

(2) A student satisfying the requirements of subsection (1) of this section shall be an eligible student and shall earn a base scholarship award for each academic year.

(3) The KHEAA shall calculate the base scholarship award amount for a student based on the schedule contained in this administrative regulation.

(4) For the academic year 1998-99, the base scholarship award amount shall be the amount specified in the 1998 Ky. Acts ch. 575, sec. 4(1).

(5) For the academic year 1999-2000 and thereafter, the CPE annually shall determine the amount of the base scholarship award for each grade point average and shall publish that schedule no later than June 30 of each year.

(6)(a) A base scholarship award shall be determined based upon the schedule in use for the academic year that the award is earned.

(b) A base scholarship award attributable to a past academic year shall not be increased.

Section 6. Supplemental Award for ACT and Equivalency; SAT Conversion Table. (1) An eligible student, as determined in Section 5(1) of this administrative regulation, shall receive a supplemental award if the student:

(a)1. Takes the ACT by the date of graduation from high school; and

2. Scores fifteen (15) or higher on the ACT; or

(b)1. Takes the SAT by the date of graduation from high school; and

2. Has a score equivalent to fifteen (15) or higher on the ACT.

(2) The highest ACT score or SAT score equivalency completed by the date of high school graduation shall be used for determining eligibility and the supplemental award amount due to an eligible student.

(3) The following SAT to ACT Conversion Table shall be used:

SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12
1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

(4)(a) For the academic year 1998-99, the amount of a student's supplemental award shall be the amount contained in the 1998 Ky. Acts ch. 575, sec. 4(3)(a) for the appropriate ACT score or SAT equivalency score.

(b) For the academic year 1999-2000, the amount of a student's supplemental award shall be the amount contained in the 1998 Ky. Acts ch. 575, sec. 4(3)(b) for the appropriate ACT score or SAT equivalency score.

(c) For the academic year 2001-02, and annually thereafter, the CPE shall determine the amount of a supplemental award after considering the availability of funds for each ACT score of fifteen (15) or higher and shall publish a schedule of those supplemental award amounts no later than June 30.

(5) The supplemental award amount shall be determined based upon the schedule in use for the academic year of a student's graduation from high school. The amount of a supplemental award shall not be increased or decreased because of an adjustment in the supplemental award schedule.

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award upon satisfying the following conditions:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by this administrative regulation; and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award upon satisfying the following conditions:

(a) The student is not a convicted felon;

(b) The student's eighteenth (18) birthday occurs during the 1999 calendar year or any year thereafter;

(c) The student takes and receives a GED diploma within five (5) years of attaining eighteen (18) years of age;

(d) The student takes the ACT or SAT and achieves a minimum score for eligibility as established by this administrative regulation; and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(4)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify KHEAA of such eligibility.

Section 8. Eligibility Requirements for Continuation of a Base Scholarship Award or a Supplemental Award; Duration of Award. (1) An eligible student shall be eligible to receive a base scholarship award or a supplemental award for a period not to exceed eight (8) academic terms if the student:

(a) Is enrolled in a participating postsecondary education institution in an eligible program;

(b)1. Has a 2.5 cumulative grade point average or higher at the close of the first academic award period that the award was granted as measured on a 4.0 point scale; or

2. Subsequent to the first academic award period, has a 3.0

cumulative grade point average on a 4.0 point scale at the close of each academic award period.

(c) Except that, an eligible student who has a cumulative grade point average between 2.5 and 3.0 on a 4.0 point scale after the first academic award period shall only be eligible to receive fifty (50) percent of the award in a subsequent award period.

(2) Pursuant to the 1998 Ky. Acts ch. 575, sec. 5(6), a student shall be eligible to receive a base scholarship award or a supplemental award for a period not to exceed ten (10) academic terms if a student is:

(a) Enrolled at a participating institution and in an eligible five (5) year baccalaureate degree program as described in Section 4(2) of this administrative regulation; and

(b) Meets the requirements of subsection (1)(b) and (c) of this section.

(3)(a) Eligibility to receive a base scholarship award or a supplemental award shall be limited to a maximum of five (5) years beyond a student's date of graduation from high school.

(b) Except that, a student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

(c) Except that, a student who enrolls in an eligible five (5) year baccalaureate degree program shall have a maximum of six (6) years of eligibility from the date of graduation from high school.

(4) A student's eligibility shall be extended by KHEAA if a student qualifies for an extension under the provisions of the 1998 Ky. Acts ch. 575, sec. 5(5).

(5) A student who fails to maintain a 2.5 grade point average in any academic award period shall not be eligible for continuation of a base scholarship award or supplemental award in the subsequent academic award period.

(6) A student who is not eligible for continuation of a base scholarship award or supplemental award because of a failure to maintain a grade point average as stated in subsection (1) of this section shall have their award reinstated if, in the academic award period subsequent to the academic term resulting in the loss of the award, a student reestablishes a 2.5 grade point average or higher.

(7) A student enrolled part-time and who meets the requirements of subsection (1) of this section shall have the amount of an initial base scholarship award or of an initial supplemental award, or the amount of a continuing base scholarship award or of a continuing supplemental award reduced on a proportionate basis as required by 1998 Ky. Acts ch. 575, sec. 5(4)(b) and in a manner set out in 11 KAR 15:040. Commonwealth Merit Scholarship Award Determination Procedure.

(8) Continuation of a base scholarship award or a supplemental award shall be subject to all provisions of the 1998 Ky. Acts ch. 575, sec. 6(6).

Section 9. Administrative Responsibilities and Expenses of Program. (1) The CPE annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Commonwealth Merit Scholarship Trust Fund" described in 1998 Ky. Acts ch. 575, sec. 3(1) and pursuant to sec. 3(3).

(2) The KDE and the authority annually, by April 1, shall provide to the CPE, in a format prescribed by the CPE, a budget proposal indicating the amount of funds that are necessary to operate the program.

(3) The CPE shall notify the KDE and the authority of the amount of funds available for the next fiscal year no later than April 30 of the fiscal year preceding the fiscal year that funds are to be made available.

(4) The CPE shall develop an allotment schedule for the release of the administrative funds and shall notify the KDE and the KHEAA

of that schedule.

LEONARD V. HARDIN, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: November 9, 1998

FILED WITH LRC: November 13, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:090, Kentucky Educational Excellence Scholarship (KEES) Program, will be held on December 21, 1998, at 9 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Postsecondary Education in writing by December 14, 1998. 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 administrative regulation. A transcript of the public hearing will not be made unless requested in writing. 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 new administrative regulation to: Ms. Norma Northern, Director of Finance, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: 8 public universities, 16 private colleges, 28 public technical and community colleges, the Kentucky Department of Education and the Kentucky Higher Education Assistance Authority.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. Local school districts will have to report on grades of students to the Kentucky Department of Education. KDE will report student eligibility to KHEAA who in turn will notify students.

2. Second and subsequent years. Postsecondary education institutions will have to report on continuing eligibility of students receiving award.

(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. Negligible on the promulgating body.

(b) Reporting and paperwork requirements. No additional 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 funds appropriated funds through the Kentucky Lottery.

(6) Economic impact in Kentucky on:

(a) Geographical area in which administrative regulation will be implemented. College-going rate should increase. Some possibility of long-term impact on state economy if college graduation rate increases.

(b) On Kentucky. Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected. None

(8) Assessment of expected benefits.

(a) Impact on public health and environmental welfare. Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Same as (a).

(c) If detrimental effect would result, explain detrimental effect.

Same as (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. Not applicable.

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

(10) Any additional information or comments. No additional comments are offered.

(11) TIERING: Is tiering being applied. Tiering is not being applied and is not appropriate for this administrative regulation.

GENERAL GOVERNMENT CABINET Kentucky Board of Barbering (New Administrative Regulation)

201 KAR 14:180. License fees, examination fees, renewal fees and expiration fees.

RELATES TO: 1998 Ky. Acts ch. 193, sec. 2

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 193

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 193, sec. 1 requires the Board of Barbering to establish fees for licenses within the limits established by 1998 Ky. Acts ch. 193, sec. 2. This administrative regulation establishes fees relating to barbering licenses.

Section 1. Initial licensing fees shall be as follows:

(1) Apprentice license: thirty (30) dollars.

(2) Barber license: thirty (30) dollars.

(3) Barber shop license: thirty (30) dollars.

(4) Barber school license: \$150.

(5) Teacher of barbering license: fifty (50) dollars.

Section 2. Examination fees shall be as follows:

(1) Apprentice examination: \$100.

(2) Barber examination: \$100.

(3) Teacher of barbering examination: \$100.

Section 3. Renewal fees shall be:

(1) Apprentice renewal: thirty (30) dollars.

(2) Barber renewal: thirty (30) dollars.

(3) Teacher of barbering renewal: thirty (30) dollars.

(4) Barber shop renewal: thirty (30) dollars.

(5) Barber school renewal: thirty (30) dollars.

Section 4. (1) The late fee for renewal of a license that has been expired for more than thirty-one (31) days and not more than five (5) years from the expiration date of last license issued by the board shall be as follows:

(a) Apprentice late fee: twenty-five (25) dollars.

(b) Barber late fee: twenty-five (25) dollars.

(c) Teacher of barbering late fee: twenty-five (25) dollars.

(d) Barber shop late fee: twenty-five (25) dollars.

(e) Barber school late fee: twenty-five (25) dollars.

(2) The total cost of renewal of a license governed by subsection (1) of this section shall include the renewal fee and the:

(a) Late fee established by subsection (1) of this section; and

(b) Lapse fee defined by KRS 317.4410(6) and authorized by 1998 Ky. Acts ch. 193, sec. 2(9).

C. IVAN PAYNE, Chair

CHERYL LALONDE MOONEY, Legal Council

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: November 4, 1998

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on December 21, 1998 at 10 a.m. at the State Board's Office, 9114 Leesgate Road, Suite 6, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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: Bill Maggard, Jr., Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, Phone (502) 429-8841, Fax (502) 429-5223.

REGULATORY IMPACT ANALYSIS

Contact person: Bill Maggard, Jr.

(1) Type and number of entities affected: Approximately 3150 barbers 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No direct or indirect costs or savings 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: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect cost or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect cost or savings for the first year.

2. Continuing costs or savings: No continuing cost or savings.

3. Additional factors increasing or decreasing costs: No additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No effects on reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

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

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternatives were deemed appropriate. 1998 Ky. Acts ch. 193, sec. 1 requires that the Kentucky Board of Barbering establish fees for licenses within the limits established by 1998 Ky. Acts ch. 193, sec. 2.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: Regulation is

not in conflict.

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

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was applied because we have fees for apprentice barbers, barbers, instructors, schools, and shops.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 63:105. Requirements for control technology determinations for major sources in accordance with Clean Air Act sections 112(g) and 112(j).

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.40 to 63.56, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.40 to 63.56, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes methods and procedures for determining emissions limitations for constructed or reconstructed major sources of hazardous air pollutants for which a maximum achievable control technology (MACT) determination has not been made.

Section 1. Definitions. (1) "Administrator", as used in 40 CFR 63.51, means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) "Permitting authority" means the Natural Resources and Environmental Protection Cabinet.

Section 2. Incorporation by Reference. (1) 40 CFR 63.40 to 63.56 (40 CFR Part 63, Subpart B), "Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112 (g) and 112 (j)", as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky, 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary
BARBARA A. FOSTER, General Counsel

VOLUME 25, NUMBER 6 – DECEMBER 1, 1998

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on December 21, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five work days prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Carl Millanti

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j), as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants which are subject to a Maximum Achievable Control Technology (MACT) standard which has not yet been finalized when a source applies for a construction or reconstruction permit.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: This administrative regulation will increase compliance, reporting, and paperwork requirements and costs for affected sources. The increased costs will be associated with the technology required to meet the reduced emissions standards.

2. Second and subsequent years: The increased compliance, reporting, and paperwork requirements will continue into the future. Second and subsequent year expenditures should only involve routine maintenance and operation costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Indirect costs will increase. However, the Division for Air Quality reviews permit applications as part of its routine activities. Existing staff resources will be used to review any applications submitted pursuant to this administrative regulation.

2. Continuing costs or savings: The indirect costs will continue into the future.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: No significant agency reporting or paperwork requirements will result from this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63.40 to 63.56 (40 CFR Part 63, Subpart B). This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal regulation, and its adoption is a requirement of the Cabinet's delegated Title V permitting program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The administrative regulation will apply state-wide and it will benefit public health and the environment by reducing hazardous air pollutant emissions.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, administrative regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63.40 to 63.56 (40 CFR Part 63, Subpart B), so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.40 to 63.56 (40 CFR Part 63, Subpart B). The adoption of the federal regulation is necessary for Kentucky to have the authority to enforce the federal provisions. This adoption is also a requirement of Kentucky's delegated Title V permitting program.

2. State compliance standards. The state compliance standards are found in KRS Chapter 224.

3. Minimum or uniform standards contained in the federal mandate. The provisions of the federal regulation require case-by-case Maximum Achievable Control Technology (MACT) determinations for: (1) major sources of hazardous air pollutants which apply for a construction or reconstruction permit and no MACT has yet been developed for that source category; (2) major sources of hazardous

air pollutants for which the federal Environmental Protection Agency's deadline for MACT development is eighteen months past due.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

JUSTICE CABINET Department of Juvenile Justice Division of Quality Assurance, Evaluation and Program Development (New Administrative Regulation)

505 KAR 1:010. Definitions.

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 15A.300, the Department of Juvenile Justice is required to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein. This administrative regulation sets forth definitions that apply to this chapter.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Juvenile Justice.

(2) "Council" means the local juvenile delinquency prevention council whose members are appointed by the Commissioner of the Department of Juvenile Justice.

(3) "Department" means the Department of Juvenile Justice.

(4) "Local community" means the area represented by the council.

(5) "Juvenile Justice Advisory Board" means the board created by KRS 15A.065.

(6) "Juvenile Justice Advisory Committee" means the advisory committee created pursuant to executive order that is responsible for grant programs funded under the Juvenile Justice Delinquency Prevention Act of 1974.

(7) "Plan year" means the period beginning on the first day of the month in which the commissioner approves a council's comprehensive three (3) year plan, and ending on the last day of the month immediately prior to the month in which the plan year started.

(8) "Regional director" means the Department of Juvenile Justice Regional Director for the area in which the council is based.

(9) "Community Juvenile Justice Partnership Grant Program" means the grant program utilizing state general funds for local communities to support the development of prevention programs.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 12, 1998

FILED WITH LRC: November 12, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on December 29, 1998, at 10 a.m. in the conference room at the Department of Juvenile Justice Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to: Michael Keith Horn, Office of General Counsel, Department of Juvenile Justice, Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type of entities affected are families, children and adults who reside in communities with juvenile delinquency prevention councils. The number of entities affected will vary based on the population of those communities and the number of youth served by the community-based prevention and intervention programs funded by the department as recommended by the councils.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

2. Second and subsequent years: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect costs during the first year the regulations are implemented include personnel expenses for DJJ staff to provide administrative support to each council. Besides salary and fringe benefits, these costs include travel, training, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives.

2. Continuing costs or savings: Continuing costs include personnel expenses for DJJ staff to provide ongoing administrative support to each council. These costs include salary and fringe benefits, training, travel, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives, as well as the funding of community-based delin-

quency prevention and intervention programs as recommended by the councils.

3. Additional factors increasing or decreasing costs: There are no additional factors regarding the implementation of this regulation that will affect costs.

(b) Reporting and paperwork requirements: Although reporting requirements are imposed upon each council, DJJ staff provide administrative support and have the primary responsibility of ensuring that all reporting requirements are met. Reports and documentation include minutes of all meetings, a community resource identification and needs assessment, a three year plan, an annual report which includes updates to the three year plan.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received, however, a significant impact is not anticipated.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received, however, a significant impact is not anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since Kentucky Acts Chapter, Section 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health and environmental welfare. However, this regulation will assist communities with addressing their unique needs regarding delinquency prevention by enhancing public safety via the implementation of community-based programming for youth and their families.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no direct detrimental effects on public health or environmental welfare. However, this regulation will assist communities in developing community-based delinquency prevention programs related to each community's specific needs with the intended result of decreasing youth violence.

(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 government 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: The Department of Juvenile Justice will target prevention funding toward programs that address issues related to youth staying in school, keeping busy, living violence-free and getting a job. These program areas must be identified as needed and supported by each council to be served. These areas will provide the guidance and framework for DJJ in the planning and development of grant-funded and contracted prevention, diversion and early intervention services. Within each of the prevention focus areas, the department will concentrate on program

development, funding initiatives, and coordinating and collaborating with other state and local agencies, particularly law enforcement, school systems, community-based services, and the courts.

(11) TIERING: Is tiering applied? No. Tiering is not necessary because this administrative regulation sets forth definitions that will apply to all communities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice
Division of Quality Assurance, Evaluation
and Program Development
(New Administrative Regulation)

505 KAR 1:050. Local juvenile delinquency prevention councils: formation procedure.

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.300 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs operated in conjunction with the local juvenile delinquency prevention councils. This administrative regulation sets forth the procedure for forming councils.

Section 1. A council may be formed by the department or by a county or by two (2) or more contiguous counties for the purpose of encouraging the initiation of, or supporting ongoing, cooperation and collaboration in addressing juvenile crime.

Section 2. Council Membership. (1) The membership of a council shall include, at a minimum, the following:

- (a) A representative from a local law enforcement agency;
- (b) A representative from the local school system;
- (c) A representative from the Department for Social Services;
- (d) A representative from the Court of Justice;
- (e) The Commonwealth's Attorney or the Commonwealth Attorney's designee;
- (f) The county attorney or the county attorney's designee;
- (g) A representative from a county juvenile detention facility, if the area in which the council is being formed has a juvenile detention facility;
- (h) A representative from the Department for Public Advocacy; and

(i) In cities of the first class and urban county governments, the county judge executive and the mayor or their appointed designees.

(2) Councils may include members representing groups or individuals interested in juvenile delinquency and prevention not specifically listed above, including juvenile justice agencies, religious, fraternal, nonprofit, or social service organizations involved in juvenile crime prevention, the business community, youth, local government, mental health agencies, and interested citizens.

(3) If the group seeking to establish or certify a council represents more than one (1) county, proposed council membership shall

reflect representation from all participating counties. Representation from each participating county in each mandatory area is not required.

(4) Council membership shall not exceed eighteen (18) members unless:

(a) The group seeking designation as a council is an existing group with existing membership that exceeds eighteen (18) members or the group demonstrates that additional members are needed to provide adequate representation of interested and involved individuals and entities.

(b) Any group seeking to expand council membership beyond eighteen (18) members shall submit a letter to the commissioner explaining why the membership should be expanded. The commissioner shall determine whether to permit a waiver, and shall communicate his or her response to the group in writing.

(5) The Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee may appoint one (1) or more of their members to serve as ex officio members of a local council. Ex officio members shall not be included in determining the size of the council under subsection (4) of this section.

Section 3. Council Formation and Approval. (1) Recommended names and addresses of individuals and entities who have agreed to serve on the council shall be submitted to the regional director.

(2) The regional director shall verify that the proposed council meets the representation requirements established by KRS Chapter 15A and this administrative regulation, and shall submit the verified list of proposed council members to the commissioner for final approval.

(3) The commissioner shall certify approval of each council and its representatives. Individual council members approved by the commissioner shall receive a commission designating the term of appointment.

(4) If the council is newly formed, initial appointments shall provide for staggered terms of two (2), three (3), or four (4) years. Members appointed thereafter shall serve for a term to be determined by the commissioner, however a term cannot be longer than four (4) years. Council members may be reappointed to successive terms. The procedure for the appointment of individual council members after the initial certification of the council shall be the same as set forth in this subsection and subsections (1) and (2) of this section. Appointments for elected officials shall be for their term of office.

RALPH E. KELLY, Ed.D., Commissioner
MICHAEL KEITH HORN, Office of General Counsel
APPROVED BY AGENCY: November 12, 1998
FILED WITH LRC: November 12, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on December 29, 1998, at 10 a.m. in the conference room at the Department of Juvenile Justice Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to: Michael Keith Horn, Office of General Counsel, Department of Juvenile Justice, Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type of entities affected are families, children and adults who reside in communities with juvenile delinquency prevention councils. The number of enti-

ties affected will vary based on the population of those communities and the number of youth served by the community-based prevention and intervention programs funded by the department as recommended by the councils.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

2. Second and subsequent years: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect costs during the first year the regulations are implemented include personnel expenses for DJJ staff to provide administrative support to each council. Besides salary and fringe benefits, these costs include travel, training, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives.

2. Continuing costs or savings: Continuing costs include personnel expenses for DJJ staff to provide ongoing administrative support to each council. These costs include salary and fringe benefits, training, travel, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives, as well as the funding of community-based delinquency prevention and intervention programs as recommended by the councils.

3. Additional factors increasing or decreasing costs: There are no additional factors regarding the implementation of this regulation that will affect costs.

(b) Reporting and paperwork requirements: Although reporting requirements are imposed upon each council, DJJ staff provide administrative support and have the primary responsibility of ensuring that all reporting requirements are met. Reports and documentation include minutes of all meetings, a community resource identification and needs assessment, a three year plan, an annual report which includes updates to the three year plan.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received, however, a significant impact is not anticipated.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received, however, a significant impact is not anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since Kentucky Acts Chapter, Section 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate administrative regula-

tions that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health and environmental welfare. However, this regulation will assist communities with addressing their unique needs regarding delinquency prevention by enhancing public safety via the implementation of community-based programming for youth and their families.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no direct detrimental effects on public health or environmental welfare. However, this regulation will assist communities in developing community-based delinquency prevention programs related to each community's specific needs with the intended result of decreasing youth violence.

(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 government 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: The Department of Juvenile Justice will target prevention funding toward programs that address issues related to youth staying in school, keeping busy, living violence-free and getting a job. These program areas must be identified as needed and supported by each council to be served. These areas will provide the guidance and framework for DJJ in the planning and development of grant-funded and contracted prevention, diversion and early intervention services. Within each of the prevention focus areas, the department will concentrate on program development, funding initiatives, and coordinating and collaborating with other state and local agencies, particularly law enforcement, school systems, community-based services, and the courts.

(11) TIERING: Is tiering applied? No. Tiering is not necessary because this administrative regulation sets forth the procedures relating to the formation of the councils and will apply to all communities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

JUSTICE CABINET

Department of Juvenile Justice
Division of Quality Assurance, Evaluation
and Program Development
(New Administrative Regulation)

505 KAR 1:060. Local juvenile delinquency prevention councils: operation and duties.

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.300 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs operated in conjunction with the local juvenile delinquency prevention councils. This administrative regulation relates to the operation and duties of these councils.

Section 1. The Operation of Councils. (1) Each council shall adopt by-laws, which shall be submitted to the commissioner for review and approval. The by-laws may provide for such officers and committees as the council deems necessary, and shall specify the qualifications, method of selection, and term for each office created, and comply with state laws and local ordinances.

(2) The council shall meet at least four (4) times each calendar year.

(3) Meetings shall be open to the public and the council shall be subject to all open meetings and open records laws.

(4) Minutes shall be taken at all council meetings, and shall be forwarded to the commissioner within thirty (30) days of the meeting date.

(5) Each council shall submit the following to the commissioner:

(a) The resource identification and needs assessment and three (3) year plan, as required by Section 2 of this administrative regulation;

(b) An annual report to include updates to the three (3) year plan shall be submitted by September 1 of each year detailing the activities of the council for the prior fiscal year, as provided in Section 2 of this administrative regulation.

Section 2. Duties of Councils. (1) Each council shall:

(a) Conduct a resource identification and needs assessment every three (3) years. The assessment shall include the collection and analysis of data and a comprehensive review of services available to the community in order to identify local community strengths and needs. The analysis shall identify and discuss barriers to accessing services. The resource identification and needs assessment shall specifically address, at a minimum, the following areas:

1. The existence of or need for alternatives to secure detention;
2. The impact of gangs on the local community;
3. Educational and school related needs;
4. Gender specific services available for the prevention and treatment of delinquency;
5. Community safety needs;
6. Substance abuse education and treatment needs;
7. Mental health services needs;
8. Early childhood prevention programs; and
9. Overrepresentation of minority youth in the juvenile justice system.

(b) Develop a comprehensive three (3) year plan based upon the resource identification and needs assessment conducted under this subsection in order to capitalize on the local community strengths identified, and to address the needs and service gaps identified. The following information shall be included in the comprehensive plan for each identified need:

1. A statement of the identified need;
2. A proposed plan of action to address the identified need;
3. Expected outcomes;
4. Technical assistance needed to accomplish the proposed plan.

(2) Notwithstanding the provisions of subsection (1) of this sec-

tion, if a newly certified council is a previously existing group that already has a comprehensive plan, the council may submit the existing plan to the commissioner for review. If the commissioner determines that the existing plan adequately addresses delinquency and prevention issues, and that it provides clear goals, action plans, and measurable outcomes, the commissioner may approve the existing plan, even though the plan does not meet the specific requirements established in subsection (1) of this section. Any council submitting a plan for review under this paragraph shall also submit a status report that includes a proposed budget and funding sources for programs or plan elements already in operation. The total planning cycle for an alternative plan approved by the commissioner under this paragraph shall not exceed three (3) years from the time of its initial adoption by the council. Annual plan updates and status reports shall be filed by each council. All subsequent plans submitted by a council initially operating under an alternative plan shall meet the requirements established by subsection (1) of this section.

(3) Notwithstanding the provisions of subsection (1) of this section, the commissioner may authorize the council in its first year of operation to conduct an abbreviated resource identification and needs assessment and to file a plan covering less than three (3) years if the commissioner determines that it is in the best interest of the local community to do so. Councils that receive written authorization to conduct an abbreviated assessment or file a plan covering less than three (3) years shall be eligible to apply for and receive grant funding in accordance with subsection (4) of this section.

(4) A council shall not be eligible to apply for or receive grant funding from the department until the resource identification and needs assessment and three (3) year plan or alternative plan has been filed with and approved by the commissioner. Thereafter, for the remaining two (2) years of each planning cycle, the council shall file an annual report with the commissioner, which shall include:

(a) A summary of the status of each plan of action identified in the three (3) year plan;

(b) Three (3) year plan revisions; and

(c) Technical assistance necessary to accomplish the goals established in the three (3) year plan.

(5) Councils shall enter into written local interagency agreements specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan and their commitment to the sharing of information useful in carrying out the goals of the interagency agreement to the extent authorized by law. Copies of these agreements shall be included as a part of the comprehensive three (3) year plan.

(6) Councils may apply for and receive public or private grants, to be administered by a local unit of government, that support one (1) or more components of the comprehensive three (3) year plan.

(7) Councils shall foster the sharing of information as authorized by law.

(8) Councils shall provide a forum for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreements.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 12, 1998

FILED WITH LRC: November 12, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on December 29, 1998, at 10 a.m. in the conference room at the Department of Juvenile Justice Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed admin-

istrative regulation to: Michael Keith Horn, Office of General Counsel, Department of Juvenile Justice, Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type of entities affected are families, children and adults who reside in communities with juvenile delinquency prevention councils. The number of entities affected will vary based on the population of those communities and the number of youth served by the community-based prevention and intervention programs funded by the department as recommended by the councils.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

2. Second and subsequent years: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect costs during the first year the regulations are implemented include personnel expenses for DJJ staff to provide administrative support to each council. Besides salary and fringe benefits, these costs include travel, training, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives.

2. Continuing costs or savings: Continuing costs include personnel expenses for DJJ staff to provide ongoing administrative support to each council. These costs include salary and fringe benefits, training, travel, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives, as well as the funding of community-based delinquency prevention and intervention programs as recommended by the councils.

3. Additional factors increasing or decreasing costs: There are no additional factors regarding the implementation of this regulation that will affect costs.

(b) Reporting and paperwork requirements: Although reporting requirements are imposed upon each council, DJJ staff provide administrative support and have the primary responsibility of ensuring that all reporting requirements are met. Reports and documentation include minutes of all meetings, a community resource identification and needs assessment, a three year plan, an annual report which includes updates to the three year plan.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received, however, a significant impact is not anticipated.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received, however, a significant impact is not anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since Kentucky Acts Chapter, Section 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health and environmental welfare. However, this regulation will assist communities with addressing their unique needs regarding delinquency prevention by enhancing public safety via the implementation of community-based programming for youth and their families.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no direct detrimental effects on public health or environmental welfare. However, this regulation will assist communities in developing community-based delinquency prevention programs related to each community's specific needs with the intended result of decreasing youth violence.

(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 government 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: The Department of Juvenile Justice will target prevention funding toward programs that address issues related to youth staying in school, keeping busy, living violence-free and getting a job. These program areas must be identified as needed and supported by each council to be served. These areas will provide the guidance and framework for DJJ in the planning and development of grant-funded and contracted prevention, diversion and early intervention services. Within each of the prevention focus areas, the department will concentrate on program development, funding initiatives, and coordinating and collaborating with other state and local agencies, particularly law enforcement, school systems, community-based services, and the courts.

(11) TIERING: Is tiering applied? No. Tiering is not necessary because this administrative regulation sets forth the procedures relating to the operation and duties of the councils and will apply to all communities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal

mandate.

JUSTICE CABINET Department of Juvenile Justice Division of Quality Assurance, Evaluation and Program Development (New Administrative Regulation)

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

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300

NECESSITY, FUNCTION, AND CONFORMANCE: In accordance with, KRS 15A.300, the Department of Juvenile Justice is required to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs operated in conjunction with the prevention councils. This administrative regulation relates to the administration and operation of the grant programs.

Section 1. The Community Juvenile Justice Partnership Grant Program. (1) To the extent funds are available, the department shall operate the Community Juvenile Justice Partnership Grant Program for the purpose of offering grant funding to local communities to support the development of prevention programs, projects and systems identified by the council through the local community planning process.

(2) Within the Community Juvenile Justice Partnership Grant Program, the department may offer several types of grant opportunities, including but not limited to formula grants, competitive grants, or grants of limited scope that focus on specific programs, issues or geographic locations. The department may require a local match as a condition for participation in a grant program.

(3) Specific criteria for each grant program solicitation shall be developed by the department and shall be disseminated by the department to councils that meet the following eligibility requirements at the time the solicitation is issued:

(a) The council shall have its resource identification and needs assessment and three (3) year plan or alternative plan on file with and approved by the department;

(b) The council shall be current on all required reports and filings with the department;

(c) The council shall have designated a city or county government, or the Department of Juvenile Justice to administer the grant;

(d) The council shall have on file with the department copies of interagency agreements entered into pursuant to the provisions of Section 1 of 98 HB 455; and

(e) The membership of the council shall meet the requirements established by the department.

(4) All solicitations issued under the Community Juvenile Justice Partnership Grant Program shall be issued by the department. All solicitations shall include a complete description of the program, the problem or need to be addressed by the program, program goals and objectives, the dollar amount available and duration of program, eligibility criteria, program application requirements, procedures and criteria for selection, audit requirements, and submission requirements.

(5) All responses to solicitations issued by the department shall be submitted initially to the local council for review, unless the solicitation issued by the department specifically requires the proposal to be submitted directly to the department. The council shall review each proposal submitted to it to determine the extent to which the proposal addresses a need identified in the council's plan and the extent to which the proposal meets the requirements established in the solicitation issued by the department.

(a) Each council shall develop a written process for reviewing and ranking proposals. The review shall include, at a minimum, the extent to which the proposal meets the needs identified in the council's plan; the degree to which diverse groups are involved in the

program; the existence of interagency agreements; the number of youth to be served by the program; and the likelihood that the program, if successful, can be replicated.

(b) The council shall rank the proposals received and shall submit all proposals received, along with the ranked list, and a recommendation for funding to the department.

(c) Council members who are affiliated with any agency, public or private, which is applying for Community Juvenile Justice Partnership Grant funds, shall not participate in the review, ranking, or funding recommendations that include the consideration of a proposal submitted by the affiliated agency. A council member is affiliated if he or she or an immediate member of his or her family is an employee or board member of the agency submitting the funding request.

(6) The department shall review the proposals submitted and the recommendations of the council. The department shall present the recommendations of the council and recommendations of the department to the Juvenile Justice Advisory Board for review. The final funding decision shall be made by the commissioner.

(7) All grants and subgrants shall be administered by a city or county government, or the Department of Juvenile Justice. The department shall monitor and audit all grants and subgrants awarded under the Community Juvenile Justice Partnership Grant Program.

(8) The department shall make awards directly to the administering city, county or grant recipient. The award notification shall include a list of subgrants to be funded, and the amount of funding for each subgrant. The administering city or county government shall notify subgrant award recipients in writing of the subgrant within ten (10) days of the administering city's or county's receipt of the grant award notification from the department. The subgrant award recipient shall accept the subgrant award in writing within ten (10) days of the receipt of the subgrant award notice from the administering city or county. The administering city or county shall notify the department of its acceptance of the grant award within thirty (30) days of receipt of the grant award notice.

(9) Community Juvenile Justice Partnership Grants and subgrants shall be awarded for an initial twelve (12) month period, with overall project periods from twelve (12) months to thirty-six (36) months. To receive continuation funding, the grantees and subgrantees shall submit a continuation proposal. Funding after the initial year will be contingent upon satisfactory performance in the prior year and the availability of funds.

(10) Local prevention programs funded by the department during fiscal year 1998-99 must submit a proposal to the local council under the same terms and conditions as other local service providers applying for initial funding. These continuation programs will be evaluated and ranked along with proposals submitted by other local service providers. These continuation programs are eligible for up to an additional twenty-four (24) months of funding.

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 12, 1998

FILED WITH LRC: November 12, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on December 29, 1998, at 10 a.m. in the conference room at the Department of Juvenile Justice Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by December 18, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request is made for a transcript. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to: Michael Keith Horn, Office of General Counsel, Department of Juvenile Justice, Capital Complex East, 1025 Capital Center Drive, Building #3, Third Floor, Frankfort, Kentucky 40601, (502) 573-2738, FAX: (502) 573-4308

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Keith Horn

(1) Type and number of entities affected: The type of entities affected are families, children and adults who reside in communities with juvenile delinquency prevention councils. The number of entities affected will vary based on the population of those communities and the number of youth served by the community-based prevention and intervention programs funded by the department as recommended by the councils.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be received.

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

1. First year following implementation: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

2. Second and subsequent years: Implementation of this regulation will not affect compliance, reporting and paperwork requirements in the areas served, nor will it affect any costs therein.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect costs during the first year the regulations are implemented include personnel expenses for DJJ staff to provide administrative support to each council. Besides salary and fringe benefits, these costs include travel, training, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives.

2. Continuing costs or savings: Continuing costs include personnel expenses for DJJ staff to provide ongoing administrative support to each council. These costs include salary and fringe benefits, training, travel, supplies and equipment for each staff. Additional costs include the reimbursement of travel expenses for council representatives, as well as the funding of community-based delinquency prevention and intervention programs as recommended by the councils.

3. Additional factors increasing or decreasing costs: There are no additional factors regarding the implementation of this regulation that will affect costs.

(b) Reporting and paperwork requirements: Although reporting requirements are imposed upon each council, DJJ staff provide administrative support and have the primary responsibility of ensuring that all reporting requirements are met. Reports and documentation include minutes of all meetings, a community resource identification and needs assessment, a three year plan, an annual report which includes updates to the three year plan.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice General Funds.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received, however a significant impact is not anticipated.

(b) Kentucky: A public hearing has been scheduled during which

public comments may be received, however a significant impact is not anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered since Kentucky Acts Chapter, Section 1 of 98 HB 455 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health and environmental welfare. However, this regulation will assist communities with addressing their unique needs regarding delinquency prevention by enhancing public safety via the implementation of community-based programming for youth and their families.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no direct detrimental effects on public health or environmental welfare. However, this regulation will assist communities in developing community-based delinquency prevention programs related to each community's specific needs with the intended result of decreasing youth violence.

(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 government 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: The Department of Juvenile Justice will target prevention funding toward programs that address issues related to youth staying in school, keeping busy, living violence-free and getting a job. These program areas must be identified as needed and supported by each council to be served. These areas will provide the guidance and framework for DJJ in the planning and development of grant-funded and contracted prevention, diversion and early intervention services. Within each of the prevention focus areas, the department will concentrate on program development, funding initiatives, and coordinating and collaborating with other state and local agencies, particularly law enforcement, school systems, community-based services, and the courts.

(11) TIERING: Is tiering applied? No. Tiering is not necessary because this administrative regulation sets forth the provisions relating to the grants program for the councils and will apply to all communities equally.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Since there is no federal mandate, there are no state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate.

TRANSPORTATION CABINET
Department of Highways
Division of Multimodal Programs
Department of Vehicle Regulation
Division of Motor Vehicle Enforcement
(New Administrative Regulation)

603 KAR 7:080. Human service transportation delivery.

RELATES TO: KRS Chapters 96A, 151B, 157, 163, 194, 195, 202A, 202B, 205, 209, 210, 216, 273, 281, 645, 49 USC Chapter 53
 STATUTORY AUTHORITY: KRS 96A.095, 281.600, 281.605, 49 USC Chapter 53

NECESSITY, FUNCTION, AND CONFORMITY: 49 USC Chapter 53 authorizes the formation and funding of human service transportation deliveries to transportation providers in urban, urbanized, and nonurbanized areas. KRS 96A.095 allows the Transportation Cabinet to accept funding from any source and to use the funding to promote and develop mass transportation services in Kentucky. For the purpose of providing efficient, effective, safe, and coordinated transportation delivery to clients of the program groupings the Empower Kentucky Transportation Delivery work group recommended that a single agency be responsible for the transportation component of the programs. The function of this administrative regulation is to implement the procedures required to administer this program. Since many of the transportation providers are required by federal law or regulation to comply with safety and accountability procedures and the Transportation Cabinet is authorized in KRS 281.600 to establish safety criteria for a commercial transportation provider, all of the transportation providers, except a volunteer transportation provider, which receive funding under the provisions of this administrative regulation shall be required to comply with the same safety and accountability requirements.

Section 1. Definitions. (1) "Human service transportation" means the provision of mass transportation and taxi services to transport an individual who is eligible to receive state services from one (1) or more of the programs listed in Section 3 of this administrative regulation.

(2) "Mass transportation" means as defined in KRS 96A.010.

(3) "Mileage reimbursement" means a fixed rate per mile a motor vehicle is operated. The rate shall not exceed the expense of operating the motor vehicle. Mileage reimbursement is not considered to be a benefit or payment of wages.

(4) "Subcontractor" means a transportation provider who contracts with the regional transportation broker/provider to provide human service transportation.

(5) "Transportation broker/provider" means the entity awarded a contract to provide human service transportation in a specified region.

(6) "Volunteer transportation" means transportation provided by a person or entity as a charitable act without the expectation of receiving a benefit or being paid a wage.

Section 2. Human Service Transportation Regions. The Transportation Cabinet shall divide the state into sixteen (16) human service transportation regions. The regions shall consist of the following counties:

(1) Region 1:

- (a) Ballard;
- (b) Calloway;
- (c) Carlisle;
- (d) Fulton;
- (e) Graves;
- (f) Hickman;
- (g) Marshall; and
- (h) McCracken.

(2) Region 2:

- (a) Caldwell;
- (b) Christian;
- (c) Crittenden;
- (d) Hopkins;
- (e) Livingston;

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(f) Lyon;
(g) Muhlenberg;
(h) Todd; and
(i) Trigg.
(3) Region 3:
(a) Daviess;
(b) Hancock;
(c) Henderson;
(d) McLean;
(e) Ohio;
(f) Union; and
(g) Webster.
(4) Region 4:
(a) Breckinridge;
(b) Grayson;
(c) Hardin;
(d) Larue;
(e) Marion;
(f) Meade; and
(g) Nelson.
(5) Region 5:
(a) Adair;
(b) Allen;
(c) Barren;
(d) Butler;
(e) Edmonson;
(f) Green;
(g) Hart;
(h) Logan;
(i) Metcalfe;
(j) Taylor;
(k) Simpson; and
(l) Warren.
(6) Region 6: Jefferson.
(7) Region 7:
(a) Bullitt;
(b) Henry;
(c) Oldham;
(d) Shelby;
(e) Spencer; and
(f) Trimble.
(8) Region 8:
(a) Anderson;
(b) Boyle;
(c) Casey;
(d) Franklin;
(e) Garrard;
(f) Jessamine;
(g) Lincoln;
(h) Mercer;
(i) Scott;
(j) Washington; and
(k) Woodford.
(9) Region 9:
(a) Boone;
(b) Campbell;
(c) Carroll;
(d) Gallatin;
(e) Grant;
(f) Kenton;
(g) Owen; and
(h) Pendleton.
(10) Region 10: Fayette.
(11) Region 11:
(a) Bourbon;
(b) Clark;
(c) Estill;
(d) Harrison;
(e) Madison;
(f) Montgomery;
(g) Nicholas; and
(h) Powell.
(12) Region 12:

(a) Bell;
(b) Clinton;
(c) Cumberland;
(d) Knox;
(e) Laurel;
(f) McCreary;
(g) Monroe;
(h) Pulaski;
(i) Rockcastle;
(j) Russell;
(k) Wayne; and
(l) Whitley.
(13) Region 13:
(a) Breathitt;
(b) Clay;
(c) Harlan;
(d) Jackson;
(e) Knott;
(f) Lee;
(g) Leslie;
(h) Letcher;
(i) Owsley;
(j) Perry; and
(k) Wolfe.
(14) Region 14:
(a) Floyd;
(b) Johnson;
(c) Magoffin;
(d) Martin; and
(e) Pike.
(15) Region 15:
(a) Bath;
(b) Boyd;
(c) Carter;
(d) Elliott;
(e) Greenup;
(f) Lawrence;
(g) Menifee;
(h) Morgan; and
(i) Rowan.
(16) Region 16:
(a) Bracken;
(b) Fleming;
(c) Lewis;
(d) Mason; and
(e) Robertson.

Section 3. Service Programs. (1) Human service transportation delivery shall be made available to each eligible participant in the following program groupings:

(a) Nonemergency medical transportation pursuant to KRS Chapter 205 and 907 KAR 3:065, excluding nonemergency ambulance stretcher transportation;

(b) Mental health, mental retardation, development disabilities, or substance abuse services pursuant to KRS Chapters 202A, 202B, 210, or 645;

(c) Kentucky Works Program pursuant to KRS Chapters 194 or 195 and 904 KAR 2:018;

(d) Aging pursuant to KRS Chapters 205, 209, 216, or 273;

(e) Vocational rehabilitation pursuant to KRS Chapters 151B or 157; and

(f) Vocational rehabilitation for the blind pursuant to KRS Chapter 151B or 163.

(2) The state government agency responsible for implementing the programs set forth in subsection (1) of this section shall provide to the Transportation Cabinet:

(a) A list of the persons eligible to receive human services transportation pursuant to the programs set forth in subsection (1) of this section;

(b) The address of each person on the list;

(c) The program for which each person on the list is eligible; and

(d) The administrative regulation setting forth the human service transportation requirements of the program.

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(3) In order to deal with this program in an orderly manner and so as not to overwhelm the administrative functions of the transportation provider/brokers and the participating cabinet, the Transportation Cabinet may phase in the implementation of this administrative regulation by region or program.

Section 4. Transportation Broker/Provider. (1) Pursuant to KRS Chapter 45A, the Transportation Cabinet shall select and contract with a transportation broker/provider in each of the sixteen (16) regions set forth in Section 2 of this administrative regulation.

(2) The transportation broker/provider shall operate the human service transportation delivery service pursuant to the Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan." This shall include:

- (a) Recruiting transportation providers;
- (b) Making payment to transportation providers;
- (c) Verifying recipient's eligibility;
- (d) Determining the appropriate type of transportation for each recipient;
- (e) Establishing a reservation confirmation system for recipients; and
- (f) Maintaining all records for five (5) years.

(3) The transportation broker/provider shall not enter into an agreement with a subcontractor without the prior written approval of the Transportation Cabinet.

(4) If requested, the transportation broker/provider shall provide mileage reimbursement to a volunteer transportation provider.

(5) The Transportation Cabinet shall conduct monitoring activities to ensure compliance with the requirements of the human service transportation delivery programs.

Section 5. Financing. (1) Funding for the human services transportation program shall be provided to the Transportation Cabinet from the following cabinets:

- (a) Health Services;
- (b) Families and Children; and
- (c) Workforce Development.

(2) The level of funding shall be annually determined by considering the following:

- (a) Historical amounts the provision of transportation services has cost the agency;
- (b) Number of persons projected to be eligible for human service transportation;
- (c) Services needed; and
- (d) Negotiations between the cabinets.

Section 6. Program Administration Contracts. (1) Each funding cabinet shall enter into a program administration contract with the Transportation Cabinet.

(2) A program administration contract shall set forth the following provisions:

- (a) Amount of funding for each program;
- (b) Monitoring of a transportation broker/provider;
- (c) Reimbursement through either a capitated rate or fee for service for transportation brokers/providers;
- (d) Recordkeeping, accounting, and reporting procedures to be maintained by the Transportation Cabinet; and
- (e) Annual renegotiation of funding amounts for each program.

Section 7. Safety and Accountability. (1) Each transportation broker/provider and subcontractor shall comply with the safety and operational provisions of the Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan."

(2) The following federal regulations are adopted as part of this administrative regulation and shall govern each transportation broker/provider and subcontractor:

- (a) 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," effective October 1, 1997;
- (b) 49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)," effective October 1, 1997; and
- (c) 49 CFR 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," effective October 1, 1997.

(3) Each transportation broker/provider and subcontractor subject to the provisions of 601 KAR 1:005 shall comply with the provisions of the administrative regulation.

(4) Each transportation broker/provider and subcontractor not subject to the provisions of 601 KAR 1:005 shall comply with the provisions of the following federal regulations:

- (a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations," effective October 1, 1997; and
- (b) 49 CFR 654, "Prevention of Alcohol Misuse in Transit Operations," effective October 1, 1997.

(5)(a) Each transportation broker/provider and subcontractor who operates a motor vehicle which is not subject to the provisions of 601 KAR 1:005 shall maintain each of the vehicles in a safe operating condition.

(b) Each motor vehicle being operated pursuant to the provisions of this administrative regulation and which is not subject to the provisions of 601 KAR 1:005 shall be inspected on an annual basis by an automotive technician who has an automotive service excellence (ASE) certification.

(c) Prior to being operated pursuant to this administrative regulation, the transportation broker/provider shall have proof that the motor vehicle has passed a safety inspection by an automotive technician who has an ASE certification.

Section 8. Operating Authority. Except for a volunteer provider, each transportation provider shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A.

Section 9. Adoption and Incorporation by Reference. (1) The Kentucky Transportation Cabinet's "Kentucky Coordinated Human Service Transportation Delivery Network Plan," as effective March 1998, is hereby incorporated by reference as a part of this administrative regulation.

(2) The following federal regulations are adopted in this administrative regulation:

- (a) 49 CFR 653, "Prevention of Prohibited Drug Use in Transit Operations," effective October 1, 1997;
- (b) 49 CFR 654, "Prevention of Alcohol Misuse in Transit Operations," effective October 1, 1997;
- (c) 49 CFR 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," effective October 1, 1997;
- (d) 49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)," effective October 1, 1997; and
- (e) 49 CFR 38, "Americans With Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," effective October 1, 1997.

(3) The documents and materials adopted or incorporated by reference in this section may be viewed, copied, or obtained in the Division of Multimodal Programs, 3rd Floor, State Office Building Annex, 125 Holmes Street, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 on weekdays. The telephone number is (502) 564-7433.

ED LOGSDON, Commissioner
J.M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL, III, Secretary
GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on December 21, 1998 at 1:30 p.m. local prevailing time in the Transportation Cabinet, Fourth Floor Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by December 14, 1998, so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your require-

ments by December 14, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on December 21, 1998. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5328.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: There are between 500,000 and 600,000 individual citizens of Kentucky who are eligible for Human Services Transportation under the provisions of this administrative regulation. There will be 16 transportation broker/providers governed by the provisions of this administrative regulation once it is implemented statewide. There are approximately 275 transportation providers (entities such as taxicab companies, transit operators, and community action agencies) who will be affected by this administrative regulation. There are four state government cabinets involved in the Human Services Transportation 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: Both the Kentucky Workforce Development Cabinet and the Cabinet for Families and Children are affected by this administrative regulation. It is anticipated that more of their clients will have ready access to transportation to work and work-related training in each region as the implementation of this administrative regulation is phased in across the state. While that will have no impact on the cost of living, it should slightly increase the number of persons available for 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: There will be an increase in the cost of doing business for some of the transportation providers who will provide service under the provisions of this administrative regulation. Many of the current commercial transportation providers are operating virtually without oversight, i.e., for passenger vehicles with a seating capacity of less than 15 persons, there is no requirement that the vehicle be inspected; there are no established vehicle safety requirements, and there are no driver qualification standards. Since these entities will now either be contracting with the state or subcontracting to a broker/provider contract, they will have to meet minimum safety requirements and prove that they have. This will increase the operating cost for those companies which have been operating without the appropriate regard to safety.

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

1. First year following implementation: Since there has not been a transportation broker/provider before, all of the costs, reporting, and paperwork requirements incurred by this entity will be new. The transportation broker/provider will be required to ensure that each of the transportation providers operating under the umbrella of his contract meets the safety requirements set forth in the administrative regulation. In addition, the broker/provider will have to routinely submit reports to the Transportation Cabinet detailing, among other things, the number of persons requesting transportation in the region, the number of persons provided transportation, the number of requests not complied with or not complied with in a timely manner. Records relating to the recipients of the service who are being transported on behalf of the Workforce Development Cabinet's Departments for the Blind and Vocational Rehabilitation will have to be separately maintained since the cost of transporting these persons will be paid on a "fee for service" basis. All transportation providers will be required to maintain records regarding the driving history of their vehicle operators and the maintenance and inspection of their

motor vehicles. Reports on this information will be required to be furnished periodically to the transportation broker/provider.

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

(3) Effects on the promulgating administrative body: The Transportation Cabinet has created a new branch within the Division of Multimodal Programs to oversee this program.

(a) Direct and indirect costs or savings: The anticipated administrative cost of operating this branch is expected to be approximately \$1 million each year. In addition, the cost of operating the transportation program, i.e., payment to the transportation broker/providers is expected to be almost \$50 million each year, approximately 5% less than the current cost.

1. First year: \$1 million administrative cost + \$47 million operating cost.

2. Continuing costs or savings: \$1 million administrative cost + \$49 million operating cost

3. Additional factors increasing or decreasing costs: The overall cost of operating the state-supported/supplied transportation is expected to decrease. Since the program is set up to pay to the broker/provider a flat fee per number of eligible recipients of the Medicaid and Temporary Assistance for Needy Families (TANF) programs, the Cabinets for Health Services and Families and Children will have a significant reduction in administrative duties. Approximately 156 persons across the state will have their transportation duties removed, thus allowing them to focus more on the social services which are their primary responsibilities. In addition, the cost of the transportation of the eligible recipients will decrease with a unified approach from all of the programs. Overall, by 2002, the Commonwealth expects to see a \$12.5 million savings, primarily through cost avoidance savings.

(b) Reporting and paperwork requirements: The Transportation Cabinet will be required to provide each of the other participating state agencies information, such as the reports identified in (2)(c)1, above as well as an accounting of the Transportation Cabinet's cost of administering the program.

(4) Assessment of anticipated effect on state and local revenues: By the year 2002, there should be a savings of \$12.5 million in the combined transportation programs. However, no effect is anticipated on state or local revenues. Tax revenues could increase if employment rolls increase.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The agencies responsible for providing the transportation will transfer funds to the Transportation Cabinet each year. These are Health Services \$30 million/year for Medicaid; Families and Children \$12.6-\$15 million/year for TANF; Workforce Development \$600,000 for Vocational Rehabilitation and Department for the Blind. The remaining funds are included in the 1998-2000 Biennial Budget.

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

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in a specific area of Kentucky.

(b) Kentucky: Kentucky's workforce should be enforced through an improved access to job training and new jobs. The revenues are expected to increase and the welfare rolls are expected to decrease.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative, i.e., each agency continue to provide transportation, was rejected because of the high cost, relative ease of submitting fraudulent claims or abusing the system in other ways, use of unsafe vehicles, and pockets of the state having insufficient transportation for the recipients. Further, the removal of transportation duties from case workers will allow them to concentrate more on their prime responsibilities relating to client eligibility and social services to the clients.

(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 statewide effect, when fully implemented. However, the first geographical regions chosen for implementation will experience the benefits first. Public health will be improved by providing 24-hour nonemergency health care trans-

portation throughout the state. In addition, the safety requirements being imposed on the transportation providers will insure that all eligible recipients are offered sufficient and safe transportation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be a detrimental effect on public health if this program is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this program is not implemented, a negative effect on public health would be anticipated. With the ever-rising costs associated with Medicaid and the federal welfare reform mandate that Kentucky reduce its Medicaid costs, without this program there would be far fewer medical services offered to Kentucky's eligible participants. In addition, the number of unsafe motor vehicles being operated in providing this transportation would likely continue to increase if this program were not implemented.

(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:

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all of the transportation provider/brokers and subcontractors who are subject to its requirements. Disparate treatment of any 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. However, by allowing each broker/provider to establish the transportation network for that particular region, the differing needs of the regions and the differing capabilities of the transportation providers will be addressed.

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. A local government unit which is currently providing nonemergency health transportation, or transportation for K-TAP (Kentucky Transitional Assistance Program), such as transit authorities, will have to contract with either the Transportation Cabinet or the transportation broker/provider in the region instead of the Department of Medicaid Services or the Cabinet for Families and Children.

3. State the aspect or service of local government to which this administrative regulation relates. Nonemergency health transportation providers and Kentucky Transitional Assistance Program transportation providers. These are almost always a transit authority or unit of local government funded in part through the Transportation Cabinet by the Federal Transit Administration to provide needed transportation services.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There will not likely be a fiscal impact on the local government. Transportation providers will be reimbursed a capitated payment per eligible recipient per month as negotiated in the contract with the transportation broker/provider instead of the a payment based on the current mileage reimbursement per trip. This payment will be based on historical cost data and therefore should not have a dramatic effect on revenue.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (New Administrative Regulation)

806 KAR 14:130. Electronic applications, forms, and signatures.

RELATES TO: KRS 304.14-120, 304.38-050, 806 KAR 2:070, 1998 Ky. Acts ch. 363

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 363 permits the use of electronic records and signatures. Technological advances and the general acceptance of electronic records and signatures have led to a need for the Commissioner of Insurance to establish guidelines for the use of and the Department's procedure regarding electronic applications, forms, and signatures. This administrative regulation will enable the Department of Insurance to regulate the use of electronic insurance applications, electronic forms, and signatures obtained by electronic means.

Section 1. Definitions. (1) The definition of "electronic" shall be governed by 1998 Ky. Acts ch. 363, sec. 2(1).

(2) "Electronic application" means an electronic or digital representation of an application for insurance that is generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one (1) information system to another.

(3) "Electronic form" means an electronic or digital representation of any form required to be filed pursuant to KRS 304.14-120 or 304.38-050 that is generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one (1) information system to another.

(4) The definition of "electronic signature" shall be governed by 1998 Ky. Acts ch. 363 Section 2(3).

(5) The definition of "insurance" shall be governed by KRS 304.1-030.

(6) The definition of "person" shall be governed by KRS 304.1-020.

Section 2. Application of this Administrative Regulation. (1) This administrative regulation shall apply to any person that completes or assists in the completion of any electronic application for insurance or any electronic form required to apply for insurance coverage.

(2) This administrative regulation shall not apply to applications for insurance made available by way of the internet.

Section 3. Electronic Applications and Electronic Signatures. (1) Any person that completes or assists in the completion of an electronic application for insurance requiring the electronic signature of an insurance applicant shall deliver a hard copy of the electronic application to the insurance applicant:

(a) At the point-of-sale; or

(b) At the time the insurance policy is issued and delivered to the applicant.

(2) Any person that completes or assists in the completion of an electronic application that does not require an electronic signature shall, at the point of sale:

(a) Print a hard copy of the application;

(b) Obtain the signature of the applicant upon the application;

and

(c) Provide a hard copy of the application to the applicant.

(3) If a person who completes or assists in the completion of an electronic application for insurance is unable to comply with the printing and endorsement requirements in subsection (2) of this section, the person shall verify the information contained in the electronic application by some other reliable method. If another reliable method is used, the person shall provide the following to the department as a component of the form filing required by KRS 304.14-120 and 304.38-050:

(a) A statement indicating the means by which the insurance applicant may verify that all data is properly entered on the electronic application and that the data is correct; and

(b) A statement indicating the means by which the data is se-

cure from tampering or alteration.

Section 4. Form and Application Approval. (1) An insurer that uses an electronic application or form shall file the application and form with the department in accordance with KRS 304.14-120 and 304.38-050.

(2) The department may approve an electronic application that requires an electronic signature if the insurer filing the application pursuant to KRS 304.14-120 and 304.38-050 provides a sworn statement to the department verifying that the electronic signature is:

(a) Linked to the data on the electronic application in a manner that the electronic signature is invalidated if any of the data on the application is changed; and

(b) Not capable of being affixed to or duplicated on any other document.

Section 5. Transmission of an Electronic Application or Form. (1) An electronic application shall be secure for transmission from one (1) information system to another.

(2) An insurer shall implement security measures that:

(a) Ensure the integrity of the data transmitted from the person completing the electronic application or form; and

(b) Identify any intentional or accidental alteration or corruption of the transmitted data.

Section 6. Modification or Alteration of an Electronic Application.

(1) No person may modify or alter an electronic application or form after the applicant's information has been entered into the electronic system and verified by the applicant unless:

(a) The modification is made due to or as a result of a patent or obvious error; or

(b) The applicant, within a reasonable time after the modification or alteration is complete, verifies in writing that the modified or altered data is correct.

(2) An electronic application that has been identified as having been modified or altered, other than as permitted in subsection (1) of this section, shall not be used to invalidate coverage.

Section 7. Preservation of Records. (1) An insurer shall retain each electronic application and form in accordance with the preservation-of-records requirements established by 806 KAR 2:070.

(2) For examination purposes, an insurer shall record:

(a) The date on which the application or form was completed;

(b) Any modification or alteration of the application or form made pursuant to Section 6(1) of this administrative regulation; and

(c) The date of any modification or alteration of the electronic application or form made pursuant to Section 6(1) of this administrative regulation.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: October 16, 1998

FILED WITH LRC: October 28, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1998, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by December 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Phone: (502) 564-6032, Fax: (502) 564-

1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect all insurers and agents licensed to solicit and negotiate insurance contracts in the state of Kentucky. Currently, there are approximately 1600 insurers and 66,000 agents licensed 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: Insurers that intend to use electronic application and forms will be required to file a hard copy of the application and forms with the Department of Insurance in accordance with KRS 304.14-120 and 304.38-050. This administrative regulation specifies what is required for the commissioner's approval of these documents. Also, this administrative regulation requires specific procedures depending upon whether or not an electronic signature is obtained. The agent may be required to print the application at the point of sale if an electronic signature is not obtained.

2. Second and subsequent years: Any change in the forms filed pursuant to KRS 304.14-120 and 304.38-050 must be filed with the Department of Insurance. All requirements of this administrative regulation will continue for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will incur only nominal costs associated with reviewing the filings submitted in accordance with this administrative regulation. In addition, the department may incur costs associated with the enforcement of this administrative regulation.

2. Continuing costs or savings: The department will continue to enforce this administrative regulation and review the filings required by this administrative regulation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There are no reporting requirements associated with this administrative regulation. The department will be responsible for reviewing the application and form filings to determine if they comply with the requirements of this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used for the 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: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department considered providing the information regarding electronic applications, forms, and signatures in bulletin format. There were, however, several requirements for persons who will be completing electronic applications. In order to en-

force these requirements, the department determined that an administrative regulation was necessary.

(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 department does not anticipate that this administrative regulation will have any effect on public health or environmental welfare in the geographical area in which implemented or on Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented. If this administrative regulation were not implemented, the department does not anticipate a detrimental effect on environment or public health.

(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 is not applied since this administrative regulation applies to all persons who solicit or negotiate contracts of insurance in the state of Kentucky.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(New Administrative Regulation)**

902 KAR 8:019. Repeal of 902 KAR 8:020.

NECESSITY, FUNCTION, AND CONFORMITY: 902 KAR 8:020 is no longer required because new administrative regulations (902 KAR 8:022-8:028) governing board of health and local health department operations have been promulgated by the Department for Public Health.

Section 1. 902 KAR 8:019, Repealer regulation for 902 KAR 8:020, Policies and procedures for local health department operations, is hereby repealed.

JOHN H. MORSE, Secretary

RICE C. LEACH, M.D., Commissioner

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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: Patrick Rickard

(1) Type and number of entities affected: 54 local public health departments.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested on the Notification of Intent, however, there is no impact on the cost of living or on employment from the proposed

regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested on the Notification of Intent, however, there is no impact on the cost of doing business in the Commonwealth.

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

1. First year following implementation: No additional requirements.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Not applicable. The proposed regulation merely repeals an existing regulation. A series of new regulations which have been proposed will streamline and consolidate the Department for Public Health's requirements for local health departments.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: No impact on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

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

(a) Geographical area in which administrative regulation will be implemented: There was no hearing requested on the Notification of Intent, however, there is no economic impact.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable; since there is no impact on economics, 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: Positive impact on public health in that an outdated local health department regulation will be repealed.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on public health or the environment.

(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: N/A

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? No. Tiering was not applied as this regulation applies to all local public health departments.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(New Administrative Regulation)**

902 KAR 8:022. Board of health requirements.

RELATES TO: 212.020, 212.210, 212.230, 212.245, 212.855, 212.860, 212.880

STATUTORY AUTHORITY: KRS 194A.030, 211.025

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.025, 211.090, and 212.230 mandate that the Cabinet for Health Services establish policies and standards of operation for the local health departments of Kentucky. This administrative regulation establishes minimum administrative and operational requirements for a county, district, and city-county board of health. The administrative regulation does not apply to the Lexington-Fayette and Louisville-Jefferson

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County Boards of Health and the Northern Kentucky Independent District Board of Health.

Section 1. Functions of a Local Board of Health. (1) A local board of health shall:

(a) Assure that the services provided by the agency meet the needs of the local citizenry and protect and promote public health;

(b) Establish priorities and objectives for:

1. Service delivery considering federal and state disease prevention and health promotion objectives;

2. Specific health and safety needs of the community, and resources of the agency;

(c) Assure that adequate financial controls and program evaluation measures are ongoing to facilitate effective and efficient agency services and operations;

(d) Interview and hire a chief executive officer in accordance with 902 KAR 8:040 through 8:140;

(e) Communicate board policies and priorities to the chief executive officer;

(f) Evaluate the performance of the chief executive officer; and

(g) Review information and data provided by the chief executive officer to assess the effectiveness and efficiency of the agency in complying with public health laws, regulations, and board policies.

(2) A county board of health within a district board of health shall:

(a) Maintain membership on the county public health taxing board;

(b) Prepare the annual public health tax resolution;

(c) Maintain trusteeship of the county public health tax;

(d) Provide for maintenance and upkeep of the county health department building and determine the appropriate use of the facility by community groups and agencies; and

(e) Provide the district board with specific public health needs and concerns of the county board of health.

Section 2. Composition of the Board of Health. (1) Except for a county judge executive, a mayor, or a city manager of a second class city, no other ex officio member shall be permitted to serve on the county or district board of health.

(2) A person eligible for membership as a lay member shall not be currently licensed and practicing as a physician, dentist, nurse, optometrist, engineer or veterinarian.

(3) A retired physician, dentist, nurse, optometrist, engineer or veterinarian may serve as a lay member.

(4) An employee of a local health department shall not serve as a member of a county, city, county, or district board of health.

(5) Except in instances where alternative medical care providers are unavailable, a person shall not serve on a county, city-county, or a district board and receive in excess of \$2,000 per year in contract payments.

Section 3. Meetings of the Local Board of Health. (1) The local board of health shall elect a chairperson from the board's membership.

(2) The chairperson shall serve for at least a one (1) year term. A chairperson may serve more than one (1) consecutive term.

(3) Except for the board secretary, all elected or appointed officers shall be members of the local board of health.

(4) A simple majority or quorum of the members of the board shall be present in order to conduct the business of the board of health. A vacant position shall be counted when determining a quorum.

(5) A telephone poll vote shall not be permitted on any issue considered by the board of health.

(6) Except for a county judge executive, a mayor or a city manager of a second class city, a member of a board of health shall not be represented by a proxy at a board meeting.

(7) A proxy representing a county judge executive, a mayor or a city manager of a second class city shall have full voting privileges.

(8) All meetings of a local board of health, an executive committee of the board, or other established committees of the board of health shall comply with the Kentucky Open Meetings Law, KRS 61.805 to 61.850.

(9) All meetings of a board of health shall be held at specified times and places convenient to the public. The board of health shall provide a schedule of regular meetings which shall be available to the public and published in a local newspaper of general circulation.

(10) Special called meetings and closed session meetings shall conform to the requirements of the Kentucky Open Meetings Laws.

(11) Board meetings shall be held in locations accessible to an individual with a disability. A qualified interpreter for the deaf and hard of hearing shall be made available upon at least seventy-two (72) hour notification to the board chairperson or chief executive officer.

(12) A local board of health may establish an executive committee for the execution of specific tasks.

(13) The executive committee shall be subordinate to the local board of health.

(14) All matters that are delegated to an executive committee by the board of health, shall be specifically set forth in the minutes of the board.

(15) The executive committee shall report its actions at the next regular meeting of the board and all actions of the executive committee shall be confirmed by the board and reflected in the minutes.

Section 4. Minutes of Local Board of Health Meetings. (1) Each official action approved by a majority of a full quorum of the board of health present and voting shall be made a part of the minutes maintained by the local board of health.

(2) Minutes shall be signed by the secretary and chairperson of the board of health.

(3) If there is no health officer available to serve as secretary to the local board of health, the chief executive officer may serve as secretary. The chief executive officer of a district health department may serve as secretary to the district board and to the county boards of health within the district; or the chief executive officer may designate an employee to serve as secretary of a county board of health. If a health department employee serves as secretary to the board of health, the employee shall not have voting powers.

(4) Minutes shall include the following information:

(a) Name of the board of health;

(b) Date, time, and location of the board of health meeting;

(c) Listing of board of health members present and absent;

(d) Listing of employees and other guests present;

(e) Acknowledgment of a quorum;

(f) Review and approval or correction of the minutes of the last meeting;

(g) Presentation of old business;

(h) Presentation of new business;

(i) Statement of each motion made, identification of members moving and seconding each motion, and tabulation of the vote by the members voting for and against each motion;

(j) Date of next meeting; and

(k) Motion to adjourn.

(5) Board minutes shall be available in an alternative format within a reasonable period of time when requested by a member of the public who is in need of these accommodations.

(6) A permanent copy of the official minutes shall be maintained and kept on file by the agency.

(7) A signed, first copy of the minutes of each board of health meeting shall be submitted to the department within two (2) weeks after the date of the board of health meeting.

Section 5. Conflicts of Interest. (1) A member of a board of health shall avoid conflicts of interest and the appearance of a conflict of interest in the activities and decisions of the board.

(2) A board member or a member of his family may be considered for a contract, lease or bid for services only if the services of the board members are in the best public interest and have the approval of the department.

(3) A member approved to provide services to the agency shall:

(a) Not participate in discussions related to the services;

(b) Shall leave the board meeting when services are discussed; and

(c) Not be allowed a vote on the services to be provided.

(4) The board of health minutes shall reflect that the board

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member was absent from the discussion because of a conflict of interest and was not permitted a vote.

Section 6. Training for Board of Health Members. (1) A new member appointed to the board of health shall receive training from the chief executive officer or other appropriate agency representatives.

(2) The training shall include discussion and written materials on the following topics:

- (a) Statutory responsibilities and functions of the Cabinet for Health Services, local health department, and the board of health;
- (b) Board of health laws, regulations, and local ordinances;
- (c) Board members' responsibilities and functions;
- (d) Agency service sites and the services provided at these sites;
- (e) Agency staff by discipline;
- (f) Review of agency medical and environmental services, budget, and annual report;
- (g) Board of health minutes for the last calendar year; and
- (h) Tour of the health department's main facility or, if feasible, a tour of satellite or remote sites.

Section 7. Local Board of Health Regulations. (1) Local board of health regulations and ordinances shall be indexed and placed in a "Local Board of Health Policy Manual".

(2) Policies shall be placed in the manual no later than thirty (30) days after approval by the board of health and the department, if applicable.

Section 8. Legal Advice. (1) A district board of health may employ counsel as needed to act as legal advisor for the district board and to represent the board in litigation involving the board or the district health department.

(2) A county or city-county board of health may employ counsel in litigation involving the board or the county department of health as specified in KRS 212.270.

JOHN H. MORSE, Secretary
RICE C. LEACH, M.D., Commissioner
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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: Patrick Rickard

(1) Type and number of entities affected: 118 county boards of health and 15 district boards of health.

(2) Direct and indirect costs or savings to those affected: None, the proposed regulation does not impose any requirements on boards of health which would add costs or result in any significant savings.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public hearing was requested on the Notification of Intent. However, the proposed regulation will not have an effect on the cost of living or on employment in the 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 comment received: No public hearing was requested on the Notification of Intent. However, the regulation will not have an effect on the cost of doing business in the state.

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

1. First year following implementation: This administrative regulation would not require any additional paperwork or reporting.

2. Second and subsequent years: No additional compliance and reporting requirements are mandated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs are already incurred by the promulgating agency and are related to the ongoing costs of policy development, provision of technical assistance, and supervision of local boards of health with which the department is statutorily charged.

2. Continuing costs or savings: Continuing operational costs which are already covered in the Department for Public Health's budget.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements which would impact on cost.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues. Source if revenue to be used for implementation and enforcement of administrative regulation: General funds as approved in the Department for Public Health's budget.

(5) Is tiering applied? Yes, tiering was used; this regulation applies to all boards of health with the exception of Lexington-Fayette and Louisville-Jefferson County Boards of Health and the Northern Kentucky Independent District Board of Health. These boards of health have specific enabling legislation which allows them to establish their own policies and procedures.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing on the Notification of Intent was not requested. However, this regulation will not create any additional economic impact on the public.

(b) Kentucky: No economic impact on Kentucky or Kentuckians.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation specifically addresses only the operations and activities of local boards of health.

(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 sets forth the Department for Public Health's requirements relative to the operation of Kentucky's local boards of health. Therefore the impact on public health is positive.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This administrative regulation is necessary to protect and promote public health in that it specifies certain functions, procedures, and administrative requirements of Kentucky's local boards of health.

(c) If detrimental effect would result, explain detrimental effect: The Department for Public Health would not have the ability to regulate certain operations of Kentucky's local boards of health if the regulation were not promulgated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: 902 KAR 8:020 which is being repealed in conjunction with the promulgation of this and other proposed regulations relative to health department operations.

(a) Necessity of proposed regulation if in conflict: This proposed regulation updates and consolidates administrative requirements of Kentucky's local boards of health.

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

tion incorporates and modernizes the provisions of 902 KAR 8:020 which is being repealed concurrently with the promulgation of this and other regulations dealing with health department operations.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes, tiering was used; this regulation applies to all boards of health with the exception of Lexington-Fayette and Louisville-Jefferson County Boards of Health and the Northern Kentucky Independent District Board of Health. These boards of health have specific enabling legislation which allows them to establish their own policies and procedures.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations
(New Administrative Regulation)**

902 KAR 8:023. Local health department operations requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890

STATUTORY AUTHORITY: KRS 194A.030, 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 mandates that the Cabinet for Health Services establish policies and standards of operation for the local health departments of Kentucky. This administrative regulation establishes minimum administrative and operational requirements for Kentucky's fifty-four (54) local public health departments.

Section 1. Employee Conflicts of Interest. (1) An agency employee shall avoid situations that are or appear to be a conflict of interest.

(2) An agency employee shall not:

(a) Sell, recommend or promote a specific brand of product or equipment which is subject to inspection or evaluation by an agency and its employees;

(b) Recommend or express preference for health related professional services or products of an individual or firm;

(c) Be engaged in a business or have financial interests which affect the employee's professional relationship with the agency or the department or which detract from the effectiveness of the employee;

(d) Hold an additional full-time or part-time position in an agency;

(e) Individually, enter into a contract with another agency to provide services to that agency. If an agency requires the services of an employee from another agency, the respective health department may, after determining that no conflict of interest exists, enter into a contract for the provision of the services in question;

(f) Represent another party in a legal action against the agency or participate as a party in an action against agency;

(g) Be an owner or part owner of a business that contracts or is regulated by the agency unless approved by the department; or

(h) Accept appointment or be employed as a dog warden.

(3) A health department employee shall not conduct the following services for himself, his spouse, child, parent, grandparent, mother-in-law, father-in-law, sister-in-law, or brother-in-law:

(a) Determine eligibility for any agency service;

(b) Issue Women, Infants, and Children (WIC) food instruments or prescribe food packages; or

(c) Conduct an inspection or monitor compliance with the agency's medical or environmental standards and regulations.

(4) An employee or former employee shall not be permitted to receive monetary payment or compensation for the following purposes:

(a) Severance pay or compensation whether cash, benefits, goods or services;

(b) To secure the employee's, or former employee's agreement to waive or not pursue legal action against the agency or board of health for matters related to the individual's employment; or

(c) Out of court settlements between the agency or board of health and the employee or former employee.

Section 2. Employee Tuition Assistance. (1) An agency may pay the tuition of a regular full-time or designated part-time 100-hour employee to attend courses of study provided by a college or university, correspondence school, vocational school or other training institution.

(2) The approved coursework shall be related to the work of the agency and to the employee's current position or a position which the employee can reasonably aspire in the agency.

(3) The chief executive officer may approve tuition assistance for an unrelated course if:

(a) The course is a requirement for a degree or certification program; and

(b) The degree is determined to be necessary to the function and purpose of the agency.

(4) Payment of tuition assistance shall come from funds of the agency budget.

(5) Restricted funds used for payment of tuition assistance shall receive prior written approval from the funding authority.

(6) The board of health shall approve tuition assistance requests of the chief executive officer.

(7) An employee approved to receive tuition assistance shall sign a payroll deduction authorization permitting the agency to recover all or part of the tuition paid on his behalf if:

(a) The employee fails to provide the agency, or board of health, evidence of satisfactory completion of the training within thirty (30) working days after scheduled completion of the training;

(b) The employee receives a grade of less than a "C" for an undergraduate course and a "B" for a graduate course. A grade of "I" or Incomplete shall not be accepted as satisfactory completion;

(c) The employee is voluntarily terminated prior to completion of the course.

(d) The employee fails to complete the training regardless of cause without prior approval by the chief executive officer; or

(e) The employee received duplicate payment for the same training from another institutional source.

(8) With the exception of an employee identified in subsection (7) of this section, tuition assistance shall be paid back at the rate of one (1) month employment for each semester hour of tuition paid by the agency following completion of the course for which tuition assistance was provided.

(9) If an agency directs the employee to undertake course work, the employee shall not be required to reimburse the department for tuition expended.

(10) The employee is required to be in paid work status for the agency while taking courses. Employee work schedules may be revised to accommodate educational courses if a revised schedule will not adversely affect agency services or the employee's work performance.

(11) The employee may be allowed to use accumulated annual leave or compensatory time as necessary to attend classes.

(12) The maximum allowable hours an employee may take in a semester are:

(a) Six (6) graduate hours;

(b) Nine (9) undergraduate hours;

(c) Nine (9) classroom hours per week for vocational school training; or

(d) Three (3) hours for a summer session, intersession, or minisemester, tuition.

(13) Tuition assistance shall be granted for:

(a) Tuition and routine registration fees, and special fees;

(b) Laboratory and examination fees; and

(c) Required textbooks.

(14) Payment shall not be granted for:

(a) Late registration or graduation fees;

(b) Parking or transportation;

(c) Records or transcripts;

(d) Supplies, or assessments; or

(e) Courses taken previously by the employee for which the employee received a passing grade.

(15) Tuition shall be paid directly to the college or training institution.

(16) An agency shall maintain files and records to ensure the proper administration of the employee tuition assistance program.

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Files shall include copies of all completed forms for tuition assistance and a record of training completed for each employee requesting or receiving tuition assistance.

(17) Records shall be subject to audit by the department or other state, federal, or contracted auditors.

(18) The local board of health and the department may approve additional requests from an agency.

Section 3. Educational Leave Program. (1) The chief executive officer may approve educational leave for a regular full-time or designated part-time 100-hour employee.

(2) The educational leave may be taken on a full-time or part-time basis with or without pay for periods not to exceed fifty-two (52) pay periods to attend a college, university, business school, or other training institution.

(3) Educational leave shall be for the purpose of coursework or training related to the duties and responsibilities of the employee and that will benefit the agency.

(4) Agency funds shall be used to pay for educational leave.

(5) Educational leave costs charged to restricted funding projects shall receive prior written approval from the state funding authority.

(6) The number of employees approved for educational leave by an agency shall not exceed three (3) percent of the total number of permanent full-time employees.

(7) Educational leave without pay may be full time or part time.

(8) The local board of health and the department may approve additional requests of an agency.

(9) An agency approving an employee for educational leave with pay shall:

(a) Place the employee on full- or part-time educational leave at the employee's regular rate of pay;

(b) Reimburse the employee's tuition, routine registration fees, laboratory fees and other fees approved by the board of health;

(c) Restore the employee to the position he formerly held, to a position of like status and pay, or promote the employee to a higher position upon the employee's successful completion of educational leave; or

(d) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the minimum established by the educational institution.

(10) An employee on full-time leave with pay shall be a full-time student as defined by the institution in which the employee is enrolled.

(11) An agency directing an employee to be placed on full-time or part-time educational leave shall:

(a) Pay for the following:

1. The employee's regular rate of pay;

2. Tuition and registration fees;

3. Required textbooks and course supplies;

4. Necessary fees required by the institution;

5. Dormitory or housing costs; and

6. Transportation costs to the school at the rate of one (1) round trip per semester.

(b) Restore the employee to the position he formerly held, to a position of like status and pay, or promote the employee to a higher position, if qualified, following completion of educational leave;

(c) Cancel the employee's educational leave and restore the employee to the same or like position if the academic standing of the employee falls below the minimum established by the educational institution.

(12) An employee approved for educational leave without pay shall not incur any service obligation to the agency.

(13) An employee shall meet the following requirements to participate in educational leave:

(a) The employee shall be a regular full-time or designated part-time 100-hour employee;

(b) The employee's proposed area of study has a clear and direct relationship to the work of the agency;

(c) The employee has been formally accepted by the educational institution;

(d) The employee has been approved for educational leave by

the chief executive officer;

(e) With the exception of an employee identified in Section 2(9) of this administrative regulation, the employee agrees to continue employment with the agency after satisfactorily completing the educational leave as follows:

1. One (1) day for each full day of leave used if tuition and other fees are not paid by the agency; and

2. One and one-half (1 1/2) days for each full day of leave used if tuition and other fees are paid by the agency.

(f) Be required to repay the agency at the rate of 100 percent of the employee's daily pay or an average of the employee's daily pay during leave, multiplied by the number of obligated days remaining if an employee terminates employment with the agency;

(g) Forfeit all leave rights if the employee accepts public or institutional financial assistance other than that provided by the agency unless prior approval to receive this funding has been granted by the agency. If not approved, the agency shall reduce an amount equal to the additional assistance received by the employee; and

(h) Maintain the minimum academic standards established by the educational institution. The employee who fails to maintain minimum academic standards may be required to reimburse the agency for all or part of the expenses paid including tuition, fees, books, supplies, dormitory, housing and transportation;

(i) Not accrue sick leave, annual leave, compensatory time or overtime; and

(j) Observe the holiday and vacation time of the institution during the educational leave period.

(14) An agency shall maintain an educational leave file on each employee requesting or receiving educational leave. This file shall include copies of all forms and a record of satisfactory or unsatisfactory completion of training received in conjunction with educational leave.

Section 4. Employment of Relatives. (1) Except as provided in subsections (3) and (4) of this section, an agency shall not employ an individual that is immediately related to the chief executive officer or to an immediate supervisor.

(2) An individual immediately related to the chief executive officer or immediate supervisor shall include:

(a) Spouse;

(b) Parent;

(c) Child;

(d) Brother or sister or the spouse of either of them;

(e) Grandparent;

(f) Grandchild;

(g) Mother or father-in-law; or

(h) Daughter or son-in-law.

(3) If a current employee is in a supervisory relationship with an immediate relative, the employee shall be transferred to another site within the agency with the same job duties, or assigned a different supervisor.

(4) The department may approve the employment of an immediate relative in cases determined to be in the public interest and approved by the local board of health.

Section 5. Lost Time Due to Inclement Weather and Disasters.

(1) If an agency office is closed for business due to inclement weather or natural or man-made disasters, an employee shall be given this time with pay.

(2) The chief executive officer shall attach a statement to the attendance reports indicating the period covered and the reason the leave was granted.

Section 6. Agency Facility Ownership. (1) An agency shall not pay rent to the fiscal court if the facility is owned by the fiscal court and was constructed with state funds, agency funds, or local public health tax appropriations.

(2) The agency shall be permitted to remain in the facility rent-free for a minimum of twenty (20) years or for the useful life of the facility.

Section 7. Capital Construction Requirements. (1) If a local

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health department requests state capital construction funds from the department for new construction, building expansion or renovation the agency shall:

- (a) Submit one (1) copy of the plans and specifications for the project to the department for review and approval;
 - (b) Submit one (1) copy of the plans and specifications, if appropriate, to the Department of Housing, Buildings, and Construction to assure compliance with building and safety codes;
 - (c) Provide written assurance to the department that the facility will be constructed in accordance with approved plans and specifications;
 - (d) Provide written assurance to the department that any cost overrun or financial commitment above the state grant will be borne by the agency;
 - (e) Submit architectural and contractor agreements or contracts to the department for review prior to implementation;
 - (f) Provide written assurance to the department that the agency will be allowed to use the facility for a minimum of twenty (20) years rent free;
 - (g) Provide written documentation to the department that the board of health has approved the awarding of the architectural and contractor agreements;
 - (h) Provide quarterly progress reports to the department on the status of the project;
 - (i) Submit a closing report upon completion or close-out of the project; and
 - (j) Maintain a comprehensive construction file for the useful life of the building which includes:
 1. Documents and correspondence relative to the project;
 2. Written contracts or agreements; and
 3. Progress reports, and financial transactions.
- (2) An agency's facilities whether owned or leased by the agency shall comply with applicable state and local building, fire and safety codes and ordinances.
- (3) Prior to construction or modification of an x-ray room, the plans and specifications for the construction or modification shall be evaluated by a qualified expert. The Radiation Health and Toxic Agents Branch of the department shall be contacted regarding compliance requirements.
- (4) The department shall not provide more than fifty (50) percent of the total amount of funds necessary for the agency's construction project.

Section 8. Agency Insurance Requirements. (1) An agency shall maintain adequate and current insurance on any building owned by the agency or board of health and on the contents of both owned and leased facilities.

- (2) An agency shall maintain:
 - (a) Public officials' liability insurance on board members;
 - (b) General liability insurance for agency staff; and
 - (c) Fidelity bonding on staff and board members who handle public funds.
- (3) An agency shall assure that all licensed health care employees have malpractice liability insurance.
- (4) Contracted providers shall be required to attest to current liability coverage under the terms of their contract with the agency.
- (5) Contractors with capital construction projects in excess of \$10,000 shall be required to post bid and performance bonds and to carry appropriate liability insurance.

Section 9. Quality Assurance. (1) An agency shall establish a process to assure the quality of services provided.

- (2) The quality assurance process shall include all public health services provided by the agency.
- (3) The quality assurance process shall include:
 - (a) An audit of patient medical records and service reports at least quarterly to ensure that quality is being maintained and that quality assurance requirements are being met.
 - (b) Annual patient satisfaction surveys which address:
 1. Patient waiting time for appointments and services;
 2. Agency hours of operation; and
 3. Patient satisfaction with provision of care by employees.
- (4) Results and recommendations of the quality assurance as-

essment shall be provided to the board of health.

Section 10. Hours and Days of Operation. (1) An agency shall be open a minimum of forty-two and one-half (42.5) hours per week, excluding holidays.

(2) An agency shall receive approval by the department to be closed during the lunch hour.

(3) An agency or a board of health may provide extended services in addition to regular hours when feasible. Extended hours may include, early morning, late afternoon, evening, and weekend hours. The decision regarding extended hours shall be noted in the minutes of the board of health.

(4) An agency shall post the hours of operation near the main entrance to the agency and this posting shall be plainly visible from the outside.

(5) Except in emergency situations, an agency shall be required to publicize in advance if the agency is to be closed during regular working hours. The notice shall:

- (a) Be prominently displayed at the main entrance to the agency;
- (b) Indicate where and how staff may be reached; and
- (c) Indicate when offices are expected to reopen.

Section 11. Grievance Policies. (1) An agency shall establish an internal grievance procedure to assure the timely and equitable resolution of complaints alleging discrimination, unfair or inappropriate treatment of a member of the public or a patient.

(2) An agency grievance procedure shall:

- (a) Protect the rights of the complainant;
- (b) Meet due process requirements;
- (c) Assure compliance with applicable federal laws and regulations governing equal opportunity, and participation in certain federal grant programs;
- (d) Designate an employee to coordinate the grievance process; and

(e) Provide for written, verbal, or anonymous complaints.

(3) A complaint shall be filed within sixty (60) days of the alleged incident after the complainant becomes aware of the alleged violation.

(4) An agency shall conduct an investigation of the complaint to afford interested or affected parties an opportunity to submit evidence or testimony relevant to the complaint.

(5) A written determination as to the validity of the complaint and a description of the resolution shall be issued by the grievance coordinator and a copy forwarded to the complainant and the chief executive officer no later than forty-five (45) calendar days after filing of the complaint.

(6) The grievance coordinator shall maintain files and records of the agency relating to complaints filed.

(7) The complainant may request reconsideration if he is dissatisfied with the resolution. The request for reconsideration shall be made within thirty (30) calendar days to the agency's chief executive officer, the grievance coordinator, or the board of health.

(8) The complaint shall continue through the agency's grievance process even though the complainant is pursuing other state or federal agency remedies.

JOHN H. MORSE, Secretary
RICE C. LEACH, M.D., Commissioner
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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

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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: Patrick Rickard

(1) Type and number of entities affected: 16 district health departments and 38 independent county health departments.

(2) Direct and indirect costs or savings to those affected: None; the proposed regulation does not impose any requirements on local health departments which would add additional costs or expense nor result in any significant savings.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None. No public hearing was requested on the Notification of Intent. However, the proposed regulation will not have an effect on the cost of living or on employment in the 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 comment received: No public hearing was requested on the Notification of Intent. However, the regulation will not have an effect on the cost of doing business in the state.

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

1. First year following implementation: This administrative regulation would not require any additional paperwork or reporting.

2. Second and subsequent years: No additional compliance or reporting requirements are mandated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs are already incurred by the promulgating agency and are related to the ongoing costs of policy development, provision of technical assistance, and supervision of local public health departments with which the department is statutorily charged.

2. Continuing costs or savings: Continuing operational costs which are already covered in the Department for Public Health's budget.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements which would impact on cost.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds as approved in the Department for Public Health's budget.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing on the Notification of Intent was not requested. However, this regulation will not create any additional economic impact on the public.

(b) Kentucky: No economic impact on Kentucky or Kentuckians.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation specifically addresses only the operations and activities of local public health departments.

(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 sets forth the Department for Public Health's requirements relative to the operation of Kentucky's local public health departments. Therefore the impact on public health is positive.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This administrative regulation is necessary to protect and promote public health in that it specifies certain functions, procedures, and administrative requirements of

Kentucky's local health departments.

(c) If detrimental effect would result, explain detrimental effect: The Department for Public Health would not have the ability to regulate certain operations of Kentucky's local health departments if the regulation were not promulgated.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative: 902 KAR 8:020 which is being repealed in conjunction with the promulgation of this and other proposed regulations dealing with health department operations.

(a) Necessity of proposed regulation if in conflict: This proposed regulation updates and consolidates administrative and operational requirements of Kentucky's local health departments.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation incorporates and modernizes the provisions of 902 KAR 8:020 which is being repealed concurrently with the promulgation of this and other regulations dealing with health department operations.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as this regulation pertains to all local public health departments.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Resource Management (New Administrative Regulation)

902 KAR 8:024. Local health department accounting/auditing requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890

STATUTORY AUTHORITY: KRS 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 mandates that the Cabinet for Health Services establish policies and standards of operation for Kentucky's local public health departments. This administrative regulation establishes minimum accounting and auditing requirements for Kentucky's local public health departments.

Section 1. Accounting and Auditing Requirements. (1) All recording by health departments in the books of account and all financial reporting shall be performed in accordance with this administrative regulation, cash accounting procedures, the Office of Management and Budget (OMB) Circular A-87 (Revised 5/4/95), incorporated by reference, and Generally Accepted Accounting Principles (GAAP). When Generally Accepted Accounting Principles conflict with these policies, local health departments shall follow these policies.

(2) The Cabinet for Health Services, Department for Public Health, requires that each local health department be audited annually by a certified public accountant for each fiscal year. Reports issued by auditors shall include: a management letter, a statement on internal accounting control, specific financial statements and reports, and any reports required by OMB Circular A-133 (Revised 6/24/97), incorporated by reference.

(3) Standards for audit of local health departments consist of the following:

(a) The auditor's report shall be prepared in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" published by the Comptroller General of the United States; OMB Circular A-133 (Revised 6/24/97) for Audits of States, Local Governments, and Nonprofit Organizations; and Generally Accepted Auditing Standards;

(b) The auditors shall notify the Department for Public Health within five (5) working days if records are determined to be unaudit-able;

(c) The auditors shall immediately notify the Cabinet for Health Services, Department for Public Health, if evidence of possible fraud is discovered, and shall proceed only in accordance with instructions provided by the Cabinet for Health Services;

(d) Final audit reports shall be distributed to the Department for Public Health and the local health department's board of health;

- (e) Audits of health departments shall be finalized no later than 120 calendar days after the close of each fiscal year;
- (f) The working papers shall be made available to authorized federal or state audit agencies or the Department for Public Health, if requested; and
- (g) The local health department shall enter into a written agreement with the audit firm selected using a standard audit contract without any changes which may be approved by the Department for Public Health.

Section 2. Internal Control Procedures. (1) A local health department shall have adequate written internal control procedures that shall be followed by the local health department. The Department for Public Health is available to assist departments in establishing appropriate procedures. The chief executive officer or other staff shall immediately notify the Department for Public Health if evidence of possible fraud is discovered.

(2) A local health department shall use a payroll accounting system that is approved by the Cabinet for Health Services.

(3) A local health department shall use a vendor payment expenditure distribution accounting system approved by the Cabinet for Health Services.

(4) Local health departments shall submit all financial reports to the Department for Public Health which are listed in the annual accounting instructions distributed to all local health departments.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) A-87 - Cost Principles for State, Local and Indian Tribes Government.

(b) A-133 - Audits of States, Local Governments and Nonprofit Organizations.

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Public Health, Division of Resource Management, Financial Management Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN H. MORSE, Secretary
RICE C. LEACH, M.D., Commissioner
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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: J.R. Nash

(1) Type and number of entities affected: 16 district health departments and 38 independent county health departments.

(2) Direct and indirect costs or savings to those affected: None; the proposed regulation does not impose any requirements on local health departments which would add additional costs or expense nor result in any significant savings.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None; no public hearing was requested on the Notification of Intent. However, the proposed regulation will not have an effect on the cost of living or on employment in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested on the Notification of Intent. However, the regulation will not have an effect on the cost of doing business in the Commonwealth.

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

1. First year following implementation: This administrative regulation would not require any additional paperwork or reporting.

2. Second and subsequent years: No additional compliance or reporting requirements are mandated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs are already incurred by the promulgating agency and are related to the ongoing costs of policy development, provision of technical assistance, and supervision of local public health departments with which the department is statutorily charged.

2. Continuing costs or savings: Continuing operational costs which are already covered in the Department for Public Health's budget.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements which would impact on cost.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: General funds as approved in the Department for Public Health'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:

(a) Geographical area in which administrative regulation will be implemented: A public hearing on the Notification of Intent was not requested. However, this regulation will not create any additional economic impact on the public.

(b) Kentucky: No economic impact on Kentucky or Kentuckians.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation specifically addresses only the operations and activities of local public health departments.

(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 sets forth the Department for Public Health's requirements relative to the operation of Kentucky's local public health departments. Therefore, the impact on public health is positive.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This administrative regulation is necessary to protect and promote public health in that it specifies certain functions, procedures, and administrative requirements of Kentucky's local health departments.

(c) If detrimental effect would result, explain detrimental effect: The Department for Public Health would not have the ability to regulate certain operations of Kentucky's local health departments if the regulation were not promulgated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplicative: 902 KAR 8:020 which is being repealed in conjunction with the promulgation of this and other proposed regulations dealing with health department operations.

(a) Necessity of proposed regulation if in conflict: This proposed regulation updates and consolidates administrative and operational requirements of Kentucky's local health departments.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation incorporates and modernizes the provisions of 902 KAR 8:020 which is being repealed concurrently with the promulgation of this and other regulations dealing with health department operations.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as

this regulation pertains to all local public health departments.

**CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Resource Management
(New Administrative Regulation)**

902 KAR 8:025. Local health department financial management requirements.

RELATES TO 211.180, 212.230, 212.240, 212.245, 212.890

STATUTORY AUTHORITY: KRS 194A.030, 211.170, 211.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 mandates that the Cabinet for Health Services establish policies and standards of operation for Kentucky's local public health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's local public health departments.

Section 1. Budgeting Requirements. Local health departments shall prepare a fiscal year budget in accordance with annual budgeting instructions developed and distributed by the Department for Public Health:

(1) Local health departments shall have a balanced budget in which receipts at least equal expenditures and local health departments shall operate within their annual budgets;

(2) Projects operated by local health departments shall operate within the budgeted expenditures approved for each project;

(3) Local health department annual budgets shall be approved by both the local board of health and the Department for Public Health;

(4) Local health department budgets shall include all estimated receipts and all estimated expenditures;

(5) Local health departments shall be responsible for making any budget changes necessary because of changes in financial status, changes in project status or the addition or deletion of new projects. These changes shall be subject to review and approval by the Department for Public Health. Budget changes shall also require a corresponding change in plans when required by the Department for Public Health;

(6) Actual capital expenditures of local health departments for furniture and equipment, data processing equipment and vehicles shall not exceed the approved budgeted amount without prior notification and approval by the Department for Public Health;

(7) Actual use of a local health department's unrestricted fund balance in excess of the amount included in the approved budget shall be approved by the local board of health and the Department for Public Health and shall be used solely for the operation and maintenance of the local health department;

(8) An actual deficit in a local health department's financial operations for a fiscal year wherein cash expenditures and payroll related liabilities exceed all available cash receipts (including approved use of the unrestricted fund balance) shall not be allowable. Local health departments with a deficit are out of compliance with the standards of the Cabinet for Health Services; and

(9) If the Department for Public Health determines that a local health department is receiving fewer receipts than are budgeted or is making expenditures in excess of the approved budget or, if through any other circumstances a deficit condition is probable at the end of the fiscal year, the Department for Public Health shall notify the local health department in writing of the determination. Within fifteen (15) working days of receipt of the notification, the local health department shall inform the Department for Public Health in writing of the reasons that the determination may be in error. If the reasons and corrective actions listed by the local health department are not sufficient in the department's opinion to prevent a deficit condition from occurring at the end of the fiscal year, the Department for Public Health shall direct the local health department to institute a hiring freeze on employees, a freeze on meritorious, promotional or other salary increments, or a reduction in contractual and other expenditure categories, or other actions deemed necessary to correct the deficit situation. Such directives shall be followed

by the local health department.

Section 2. Use of Receipts. (1) Receipts from any source shall be used in accordance with laws, policies, regulations, and contracts governing the use of the receipts. Receipts shall be used only for the operation and maintenance of the health department for necessary, reasonable, and proper purposes that protect and improve the health of the people of the Commonwealth.

(2) Local support shall be comprised of unrestricted receipts from local government agencies and special districts, receipts from public health taxing districts, and unrestricted donations from other local sources. (Local restricted and unrestricted fund balance amounts and school board contracts shall be specifically excluded from local support.) The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health, Cabinet for Health Services.

(3) The state allotment to a local health department shall be decreased if a local health department:

(a) Decreases its budgeted amount of local support below the minimum acceptable level. The state allotment shall be decreased by the same percentage in the year of the decrease;

(b) Receives less local financial support than the required level. The state allotment shall be decreased by a percentage amount equal to the percentage that the actual local support was less than the required local support. This decrease shall apply to the fiscal year following the shortage; or

(c) Accumulates an unrestricted fund balance, as of June 30 of a fiscal year, in excess of 16.67 percent, two (2) month's funding of that year's expenditures for non-fee programs plus forty (40) percent of that year's expenditures for fee for service programs (programs in which service fees, excluding program administration contract fees, are greater than fifty (50) percent of funding) or \$80,000 whichever is greater. The state allotment shall be decreased by the amount of the excess. This decrease shall apply to the subsequent fiscal year(s) following accumulation of the excess balance.

(4) Requests for local health departments to charge fees shall be sent to the Department for Public Health for approval by the Secretary of the Cabinet for Health Services. Requests to charge fees shall conform to the following requirements:

(a) Requests may include documentation of the proposed full amount of the fee, the estimated annual cost of the service and the estimated net fee income for the service. Charges for medical supplies and equipment may be requested as a percentage of the acquisition cost of the supply or equipment item or may be requested as charges for individual items;

(b) Patient fees which are charged to self-pay patients with a family income up to 250 percent of the most recent poverty guidelines published annually by the Department of Health and Human Services shall be based on a schedule of discounts from 101 percent to 250 percent of poverty, with full charge (based on cost) assessed for individuals above 250 percent of poverty. Except that nominal fees up to five (5) dollars may be charged for specified services;

1. Inability to pay the assessed fee shall not be a barrier to services;

2. Refusal to pay shall place the patient in a low priority for services, and may constitute a reason to deny services;

3. Local health departments shall bill obligated third-party payors for covered services provided to individuals;

(c) If third-party governmental payors are billed for services rendered to eligible patients, the regulations of the third-party payor shall be followed for any part of the fee that is charged directly to the patient;

(d) Medicaid "spend down" patients shall be billed at 100 percent of charges;

(e) A patient who has health insurance coverage shall be billed at 100 percent of charges. A balance not paid by health insurance shall be charged to the patient except that the amount charged shall not exceed the amount that a patient without health insurance coverage would be charged using standard fee adjustments as applied to total charges for services rendered;

(f) Fees regardless of the source of the fee or the funding of the project shall be applied to the project that generates the fee in ac-

cordance with income procedures of the Federal Office of Management and Budget (OMB) Circular A-102 (Revised 8/29/97). Third-party cost reimbursement payments and interim payments shall be recorded in the same project where the costs were recorded in proportion to the expenditures of each project that were reimbursed by the third party; and

(g) A central administrative charge may be made to health departments which operate preventive services program, primary care centers, or home health agencies or have contracts with the Veteran's Administration. This charge shall be equal to the total of costs paid to each local health department by third-party payors for Department for Public Health central support services as determined by the Department for Public Health's cost allocation plan.

(5) A matching requirement for any source of receipts shall be the sole responsibility of each local health department.

(a) A copy of all proposed grants, program administration contracts or other requests for project restricted funding applied for by each local health department from agencies other than the Department for Public Health shall be sent to the Department for Public Health when submitted to the grantor agency;

(b) Receipts shall be recorded in the appropriate account as defined in the department's annual accounting and budgeting instructions;

(c) The Department for Public Health reserves the right to determine the correct receipt account for the recording of all funds in all cases.

(6) The following policies shall be consistently applied in closing receipt accounts for the local health department fiscal year (July 1 to June 30):

(a) Receipts earned and received during a fiscal year by June 30 shall be recorded as a receipt of that fiscal year;

(b) Receipts earned in one (1) fiscal year and received after June 30 shall be recorded as new year receipts; and

(c) The Department for Public Health may provide additional instructions as necessary on an annual basis.

Section 3. Expenditure Policies. Policies and procedures required by the federal Office of Management and Budget (OMB) Circular A-87 (Revised 5-4-95) shall be followed by local health departments for all expenditures in all projects regardless of the source of funds for the project. The following policies concerning allowable expenditures and their proper documentation shall be followed by all local health departments:

(1) Only those salaries and wages for positions specified under the merit system administrative regulations for local health departments (902 KAR 8:040 and 8:060-8:140) are allowable unless specifically approved by the Department for Public Health. In addition, these positions and related expenditures shall be included in the approved budget or approved budget revisions of the local health department. Other salary, wage, or bonus payments shall not be allowable, unless specifically approved by the Department for Public Health. Uniform pay dates shall be determined annually by the Department for Public Health.

(2) Expenditures shall also be authorized for payment of all employer paid fringe benefits required or allowed by policies of the Cabinet for Health Services.

(a) Required benefits are payments of the single coverage amount for health insurance and life insurance that are part of the state negotiated plans.

(b) Allowed benefits shall be the single coverage amount for a dental insurance plan selected by the local health department and a flexible spending account program with the same provisions as the plan available to state employees.

(c) Part-time less than 100 hour employees and personal services contract employees shall not be eligible for any employer-paid fringe benefits.

(d) Other payment to or on behalf of any employee for any other direct or fringe benefit shall not be made unless specifically allowed or approved by the Department for Public Health.

(3) Disbursements for services of contract employees or independent contractors shall be made in accordance with the terms of the written contract. Contract payments shall not be made without proper written documentation that services have been rendered.

(4) Capital expenditures are allowable for necessary capital equipment, land and buildings.

(a) The equipment in this category shall cost more than \$5,000 and have an expected useful life of one (1) year or more

(b) The same purchasing policies apply to capital items as apply to noncapital purchases.

(c) Before purchasing land or buildings or contracting for the construction or remodeling of a building, the local health department shall contact the Department for Public Health for specific instructions on the requirements that apply to land and building purchases and construction.

(5) Proposed leases for land or buildings shall be submitted to the Department for Public Health for review before they are entered into by the local health department.

(a) Local health departments shall not enter into a lease until the review process has been completed by the Department for Public Health and written notice of the completion of the review received by the local health department.

(b) All proposed leases shall cover a one (1) year period only with an option to renew if desired.

(6) Vendor payments shall be made by local health departments within thirty (30) working days of the receipt of the service or goods, or within thirty (30) working days of the receipt of the invoice or bill from the vendor, whichever is later, unless the health department and the vendor have agreed in writing to a longer period of time; and

(7) Local health departments shall not make cash donations to any individual or organization.

Section 4. Travel Policies. (1) Disbursements for employee travel shall be made in accordance with the following reimbursement policies:

(a) The local health department's chief executive officer shall be responsible for insuring that all travel expenses are economical; and

(b) All persons who travel on official local health department business shall state on the expense voucher the purpose of each trip (except vicinity mileage) and shall maintain records to support their claims;

1. Local health departments may provide employees with credit cards to cover their travel expenses;

2. Due care shall be taken to assure that use of local health department credit cards is not abused;

3. Local health departments shall not provide employees with cash to pay travel expenses; and the chief executive officer who is responsible for insuring that all travel reimbursement conforms to this policy, may disallow, reduce or strike from expense vouchers any claims contrary to these administrative regulations and may also require written justification for amounts claimed;

(2) With the specific exceptions cited in this policy, reimbursement shall not be claimed for expenses of any person other than employees, or other persons in the official service of the local health department. Only necessary expenses of official travel shall be reimbursed;

(3) Interpretations of this policy shall be made by the Department for Public Health and these interpretations shall be final;

(4) Each day's vicinity travel shall be listed on separate lines on the expense voucher from other trips which shall also be listed separately. It is the supervisor's or chief executive officer's responsibility to monitor vicinity mileage claimed by employees on travel status;

(5) Travel vouchers shall be signed and dated by the employee submitting the claim, and an employee designated in writing by the chief executive officer. The chief executive officer's travel voucher shall be signed by one (1) or more board of health members who have been designated at a board of health meeting to perform this function;

(6) The official work station of employees shall be the street address where the health department facility is located;

(a) In health departments with more than one (1) facility, the employee's official work station shall be the facility that he works at most often;

(b) The official work station of employees shall be established in the best interest of the health department and not for the employee's convenience;

(c) The designation of work station shall not be for the purpose

of allowing additional mileage reimbursement for the employee;

(7) A standard travel expense voucher or another voucher approved by the Department for Public Health shall be used to claim all reimbursement for travel expenses;

(a) Each travel expense voucher shall show the claimant's identifying number, name, address and official work station. The travel voucher may be typed, prepared by computer, or legibly prepared in ink;

(b) All receipts shall be stapled to the travel voucher;

(c) If leave interrupts official travel, the travel voucher shall show the dates of leave;

(8) A travel expense shall not be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia may be approved by the chief executive officer;

(b) Budgeted out-of-state travel funds shall be available in the amounts required for the out of state travel; and

(c) Attendance by employees, board of health members, or other persons in the official service of the health department at the same out-of-state meeting shall be limited to two (2) persons, unless prior approval for additional attendees has been obtained from the Department for Public Health;

(9) Health department employees traveling on health department business shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the employee;

(10) Health department-owned vehicles and gasoline credit cards shall be used for health department business travel when available and feasible;

(a) Mileage payment shall not be claimed by an individual when health department vehicles are used;

(b) Routine personal use of a health department vehicle, including commuting use, is not an allowable public expenditure;

(c) An assignment of a vehicle to an employee who takes the vehicle home shall be minimal and limited to direct service personnel providing:

1. On-call direct services; or a majority of services in the field;

2. Substantial direct services on the way to and from the employee's workstation;

3. In these circumstances, some personal commuting mileage may be unavoidable. Local health departments shall develop a written policy to address these situations. These policies shall conform to current federal and state tax requirements for income and travel and shall be forwarded to the Department for Public Health for review and approval;

(11) Mileage claims for use of privately-owned vehicles may be disallowed if a health department vehicle was available and feasible;

(12) An employee on official travel status whose private or agency automobile breaks down more than forty (40) miles from the employee's official work station or home may continue in travel status for one (1) day if approval is obtained from the chief executive officer;

(13) Employees on official travel status may be granted annual leave during which travel expenses shall not be reimbursed;

(a) An employee on official travel status may be continued on travel status for a period of seven (7) calendar days if he becomes incapacitated due to illness or injury that qualifies as official sick leave;

(b) Medical expenses shall not be allowable travel costs;

(14) On nonworking days, an employee on official travel status shall cease to be so considered if:

(a) The employee returns to his official work station or domicile; or

(b) The nonworking day is immediately preceded by or followed by a period of annual leave;

(15) Reimbursement shall not be paid for travel between the employee's residence and official work station;

(16) For city travel, employees are encouraged to use buses and subways. Taxi fare may be allowed when more economical transportation is not feasible;

(17) Commercial airline travel shall be coach or tourist class and

on United States airlines. Additional expense for first-class travel shall not be reimbursed;

(18) Mileage for each in-state trip shall be based on the Department of Transportation's official mileage map or on the Finance and Administration Cabinet's mileage chart if available. Out-of-state mileage shall be based on Rand McNally mileage maps. If point-of-origin is the claimant's residence, mileage shall be paid between his residence and travel destination or between his work station and travel destination, whichever is shorter;

(19) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed only with acceptable written justification. Privately-owned aircraft may be used only when it is to the advantage of the health department as evidenced by a reduction in both travel costs and travel time;

(20) Lodging costs shall be the most economical;

(a) Facilities providing special government rates or commercial rates shall be used where feasible;

(b) State-owned facilities shall be used for meeting rooms and lodging where available, practical, and economical;

(21) A claimant who attaches the hotel's or motel's preprinted, receipted bill shall be reimbursed for the claimant's actual cost of lodging, subject to the following provisions:

(a) Reimbursement that is in excess of the state's approved standard lodging rate per day plus taxes (except at a Kentucky state park) shall have individual written justification and prior approval from the chief executive officer. The written justification and approval shall be attached to the travel voucher;

(b) Reimbursement at any Kentucky state park shall be at the park's actual rate;

(c) The local health department shall not pay for lodging within forty (40) miles of claimant's residence or work station; and

(d) Lodging accommodations shared with another person or persons, not a local health department employee, shall be reimbursed at the rate for a single room. Lodging accommodations shared with other local health department employees shall be reimbursed on a pro-rata basis;

(22) Mileage reimbursement for official use of privately-owned vehicles shall be at the mileage reimbursement rate determined annually by the Department for Public Health. For out-of-state travel, mileage reimbursement for privately-owned vehicles shall not exceed airplane coach fare;

(23) With receipts, actual commercial transportation costs shall be reimbursed; and

(24) Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare or the privately-owned vehicle rate whichever is less; and

(25) Claimants using camping vehicles for lodging shall not be reimbursed more than ten (10) dollars per night, plus parking or camping charges. A receipt for parking or camping charges shall be submitted; and

(26) Actual parking, bridge and toll charges are reimbursable. Toll receipts shall not be required for in-state travel by two (2) axle vehicles;

(27) Reasonable expenses are allowed for baggage handling, for delivery to or from a common carrier or lodging, and for storage. Charges for overweight baggage may be allowed if the excess was for official business;

(28) Registration fees required for admittance to meetings shall be allowed. If the registration fee entitles registrants to one (1) or more meals, then subsistence (meal expense) shall not be claimed. A notation shall be made on the travel voucher that the registration fee included the cost of meals. Reimbursement for registration fees and other job related training may be claimed as other expenses on the travel voucher and charged to the appropriate expenditure accounts. Receipts for these fees shall be attached to the travel voucher;

(29) Telephone and telegraph costs for necessary official business shall be allowed. Calls to agency central offices shall be made collect or telephone credit cards or similar telephone cards shall be used;

(30) Where justified, other necessary miscellaneous expenses associated with official travel may be allowed by the chief executive officer. Receipts shall be attached to the travel voucher;

(31) Receipts shall be required for all travel expenses over two (2) dollars except for subsistence expense items;

(32) Subsistence shall include amounts determined to have been spent for meals, taxes, and tips. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work shall require overnight accommodations at a destination more than forty (40) miles from both work station and home and shall also require absence from the work station and home during mealtime. (The claimant shall attach to his travel voucher either his lodging receipts or other credible documentation sufficient for audit.);

(33) Health department employees assigned to attend a function of an organization not under their control may be reimbursed for actual meal costs charged or arranged for by the organization. Receipts for meals shall be attached to the travel voucher;

(34) The health department may pay for subsistence and related expenses at staff meetings not to exceed four (4) meals per year for an employee. The subsistence expense shall not exceed the department's standard meal reimbursement amount. Travel status shall not be required for staff meeting meals.

(35) Other allowable travel expense reimbursements shall consist of the following:

(a) Expenditures are allowed to pay the actual and reasonable cost of meals provided for district and county board of health members for official board functions. Payment is allowed for meals of guests who have been invited to participate in the official business conducted at these functions;

(b) Travel expenditures of board of health members attending official board of health functions shall be allowed. Reimbursement shall be in accordance with travel policy provisions;

(c) Travel expenditures incurred by board members other than the chairperson shall be approved by the chairperson or have full board approval. Travel expenditures incurred by the chairperson shall be approved by the vice-chairperson or have full board approval;

(d) Expenditures shall be allowed to pay for meals and transportation expenses of local health department advisory committee members attending official local health department functions; and

(e) Local health departments may pay for travel expenses of persons applying for a position that will designate the applicant as the public health director for the department or as the medical director. Allowable travel expenses shall be subject to the limits applicable to local health department employees but no more than one (1) round trip for each applicant shall be reimbursed;

(36) Expenditures shall be authorized for employee morale and welfare items in an amount not to exceed twenty-five (25) dollars per employee per fiscal year;

(37) Expenditures shall be allowed for other necessary items for the maintenance and operation of the local health department if the expenditure is made in accordance with statutes and administrative policies;

(a) The Department for Public Health may require a local health department to provide adequate justification for any expenditure made by the local health department;

(b) If the justification is determined to be inadequate, appropriate corrective action shall be taken by the Cabinet for Health Services.

Section 5. Purchasing Policies. (1) Each local health department shall develop and follow formal procedures for authorizing purchases made on behalf of the local health department.

(a) These procedures shall be outlined in the local health department's written internal control procedures.

(b) Written purchase orders (service authorizations for independent contractors) and receiving reports or service verifications shall be used except when paying utility bills and when purchase orders are not standard business practice.

(2) Local health departments shall use at least the following minimum procedures for purchasing and advertisement for bids:

(a) If an expenditure for a single type of good or service not covered by contract policies is more than \$10,000 in a fiscal year, advertisements for bids shall be made in accordance with KRS 424.110-424.150.

1. The Department for Public Health may be contacted for as-

sistance in determining whether an expenditure is for a single type of good or service.

2. Automobile leases shall be advertised for bids if the total payments for all leased similar vehicles exceed \$10,000 in a fiscal year.

3. The bid selected shall be the lowest and best bid.

(b) If the expenditure for a single type of good or service is more than \$5,000 but less than \$10,000 in a fiscal year, local health departments shall:

1. Obtain three (3) or more price quotations from qualified sources of supply, if available, in the department's normal trade area; and

2. The price quotations received, a tabulation of prices offered, and reasons concerning the basis for selecting and placing the order (if the lowest price item was not purchased) shall be recorded in writing by the local health department and maintained for review by the Department for Public Health.

(c) When a single type of good or service purchased is for less than \$5,000 annually, purchases may be made by local health departments from any available source of supply as long as the maximum value for each purchase is obtained;

(d) The requirements for competitive bidding shall not apply to any purchases made under the provisions of a state price contract;

(e) A physician who is the health officer for more than one (1) local health department may purchase supplies and services or technical services on a cooperative purchasing basis for local health departments in accordance with these purchasing administrative regulations for local health departments; and

(f) Local health departments shall not enter into lease or purchase agreements for nonprofessional services with a local health department employee or a business entity in which a local health department employee owns or control more than five (5) percent interest.

Section 6. Contracting for Services. (1) The purpose of this policy shall be to establish uniform contract standards for local health departments in accordance with KRS 211.170 and 212.245. Local health departments shall not contract with providers that have been debarred or suspended by a federal funding agency or by a licensure board within Kentucky.

(2) This policy applies to personal services contracts for services of a professional or technical nature not available through the Local Health Department Merit System.

(3) Services of a professional or technical nature, including audit services, legal services, and computerized data processing services, shall be contracted for in writing in accordance with this policy except that:

(a) Medical laboratory testing services do not require a written contract unless specifically directed by a Department for Public Health program;

(b) Medical services for independent contractors that do not exceed \$5,000 in a fiscal year shall not require a written contract;

(c) Nonprofessional emergency repair services of skilled tradesmen shall not require written contracts. Nonemergency services of skilled tradesmen shall be procured in accordance with purchasing policies; and

(d) Administrative or management services, financial management services, data processing services or consulting services or studies shall not be contracted for if these services can be provided to the local health department by the Cabinet for Health Services.

(4) Allowable services.

(a) The service desired to be contracted for shall be an essential service which is necessary for carrying out public health services.

(b) Health departments shall not use a personal services contract to substitute for establishing a full-time position in the local health department.

(c) A personal service contract is not appropriate for an individual who works 1200 hours or more in a year.

(5) At least two (2) potential providers, if available, shall be contacted before a provider is selected. Selection shall be based on the lowest and best bid.

(6) In determining acceptable rates of reimbursement, consideration shall be given to the type of service to be provided; the

availability of providers; the duration of services to be performed; rates being paid to regular employees for similar services; and comparable rates being paid in the area and other parts of the state for similar services. A provider shall not be paid in excess of a standard hourly rate determined annually by the Cabinet for Health Services.

(7) A contract shall not be entered into with a provider when a conflict of interest, real or apparent, will occur.

(a) Conflicts of interest fall into the following categories:

1. Constitutional;
2. Statutory;
3. Common-law; and
4. Cabinet for Health Services policies.

(b) Contracts shall not be entered into with local health department employees nor with governing local board of health members.

(c) County board of health members who are not members of the district board of health shall not incur a conflict of interest when the district health department contracts for the county board of health member's services.

(d) Written or oral independent contracts exceeding \$5,000 in a fiscal year shall not be entered into with professional service corporations (PSCs) which have employees or governing board members as constituents.

(8) In drafting a contract, a determination shall be made concerning whether the provider of the service is an "independent contractor".

(a) If it is determined that the individual is not an independent contractor, the local health department shall withhold applicable federal, state, and local taxes and Social Security (FICA), and use a standard local health department personal services contract.

(b) If it is determined that the provider is an independent contractor, standard local health department independent contracts shall be used.

(9) Contracts shall not exceed one (1) year in duration and shall not contain a clause which indicates the contract is automatically renewable at the end of the fiscal year.

(a) Contracts shall expire on or before June 30 of each fiscal year.

(b) A contract may be extended into the new fiscal year by filing a formal contract extension which shall be approved by the Cabinet for Health Services.

(10) Either party shall have the right to terminate a contract at any time upon notice to the other party.

(a) A local health department shall have the discretion to add a clause to any contract indicating that up to a ninety (90) day notice shall be required prior to termination.

(b) Confirmation of all terminations shall be in writing and a copy of the notice of termination shall be provided to the Department for Public Health.

(11) For contracts exceeding \$10,000, contract payments shall not be made to a proposed contractor until the Department for Public Health has reviewed the contract and the contract has been returned to the local health department.

(a) If the Department for Public Health questions the legality, propriety, necessity, rate of compensation, or description of services, in a contract, the department shall notify the local health department of its concerns.

(b) A contract for which clarification is requested by the Department for Public Health shall be put on hold until a review has been completed.

(12) Contracts may be modified at any time.

(a) A proposed change requires a formal contract amendment.

(b) Amendments shall be submitted to the Department for Public Health for review prior to implementation.

(13) Local health departments may enter into contracts with public and nonprofit agencies to provide needed health services and to receive payment for their services. Standard contract forms may be used for these types of contracts.

(a) Contracts shall end on or before June 30 of each fiscal year.

(b) Contracts to provide services shall be uniquely numbered by the local health department.

(14) One (1) copy of the proposed contract shall be submitted to the Department for Public Health for review at least thirty (30) days prior to the effective date of the contract. Contracting parties shall

not sign a proposed contract until the contract has been reviewed by the Department for Public Health and returned to the local health department.

Section 7. Disposition of Assets. If one (1) or more counties withdraw from a district health department, the following policies shall apply to the disposition of surplus receipts, assets, and liabilities:

(1) All project restricted surplus receipts or supplies, inventories or equipment shall be retained by the district health department except in the case of complete dissolution of the district. In this instance, project restricted surplus receipts and items shall be returned to the Department for Public Health;

(2) Unrestricted surplus receipts shall be divided among the district and the withdrawing county boards of health according to the ratio of unrestricted receipts provided by each party in the year preceding the withdrawal;

(a) The amount of the state allotment used in determining this ratio shall be assigned to each party based on the annual state allotment each party received in the preceding year according to funding formula and policy;

(b) Receipts that are a result of contracts with boards of education are restricted service fees and shall not be included in the ratio;

(3) Unrestricted supplies and inventories shall be divided among the district and the withdrawing county boards of health according to the ratio of unrestricted receipts provided by each party in the year preceding the withdrawal. The Department for Public Health shall approve the disposition of all supplies and inventories;

(4) Deficits shall be charged to the district and withdrawing county boards of health according to the ratio of unrestricted receipts provided by each party in the year preceding the withdrawal;

(5) Equipment purchased by withdrawing county boards of health prior to the organization of the district shall be returned to the board which originally purchased the equipment;

(6) Equipment purchased during the operation of the district shall be divided among the district and the withdrawing boards of health according to the ratio of unrestricted receipts provided by the withdrawing county boards of health to the total unrestricted receipts of the district in the year preceding the withdrawal.

(a) The net inventoried book value of the equipment shall be used in determining the distribution.

(b) The Department for Public Health shall approve the final disposition of all equipment.

(7) Buildings owned by the district board of health shall remain the property of the district health department. If total dissolution of a district health department occurs, buildings owned by the district shall be sold according to the policies of the Department for Public Health and the proceeds shall be added to the surplus receipts of the district to be divided according to the procedures listed in subsection (2) of this section; and

(8) The Department for Public Health shall approve the disposition of all assets and liabilities.

Section 8. Disposition of Surplus or Excess Property. (1) A local health department may sell or dispose of any real or personal property including intangible property which is not needed or has become unsuitable for use.

(2) The funding source shall be contacted for the exact requirements. Property purchased with restricted funds may have disposal requirements in addition to or instead of the following requirements:

(a) A written determination as to need or suitability of any property of the local health department shall be made, and such determination shall fully describe the property; its intended at the time of acquisition, and the reasons why it is in the public interest to dispose of the item;

(b) Surplus or excess property may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bids. The highest bid shall be accepted. Other methods of disposition of surplus or excess property shall not be allowable;

(c) If a local health department receives no bids for surplus or excess property, either at public auction or by sealed bid, or reasonably determines that the aggregate value of the item is less than

\$500, the property may be disposed of, consistent with the public interest, in any manner determined appropriate by the local health department. In these instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made; and

(d) Any compensation resulting from the disposal of surplus or excess property shall be deposited in the local health department's bank account. If the property was purchased with restricted funds, appropriate accounting of the compensation received shall be made as required by OMB Circular A-87, incorporated by reference.

Section 9. Bank Accounts and Investments. (1) Fidelity bonding shall be obtained on all local health department employees and board of health members who handle funds of the local health department.

(a) An individual who makes deposits or signs checks or other instruments on local health department checking or investment accounts or certificates shall be bonded.

(b) Employees or board members shall be bonded in an amount sufficient to cover the total amount of funds to which they have access at any one (1) time.

(2) Local health departments may invest and reinvest money subject to their control and jurisdiction in the following investments:

(a) Obligations of the United States and of its agencies and instrumentalities. These investments may be accomplished through repurchase agreements reached with national or state banks chartered in Kentucky; and bonds or certificates of indebtedness of the state of Kentucky and of its agencies and instrumentalities; and

(b) A savings and loan association insured by an agency of the government of the United States up to the amount so insured; and

(c) Interest-bearing deposits in national or state banks chartered in Kentucky and insured by an agency of the government of the United States up to the amount so insured, and in larger amounts if the bank shall pledge as security, obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to uninsured deposits.

(3) A local health department may hold funds in its local bank account in a federally insured bank at the minimum level necessary for efficient operations.

(4) Local health department funds shall not be transferred to a public health taxing district account or to an account not reported in the local health department financial statements.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CH-51 - Local Health Department Personal Service Contract.

(b) CH-53M - Local Health Department Personal Service Contract with an Independent Contractor.

(c) OMB-87 - Cost Principles for State, Local and Indian Tribes Government.

(d) OMB-A-102 - Grants and Cooperative Agreement with State and Local Government.

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Public Health, Division of Resource Management, Financial Management Branch, 275 East Main Street, Frankfort, Kentucky Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN H. MORSE, Secretary

RICE C. LEACH, M.D., Commissioner

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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: J.R. Nash

(1) Type and number of entities affected: 16 district health departments and 38 independent county health departments.

(2) Direct and indirect costs or savings to those affected: None; the proposed regulation does not impose any requirements on local health departments which would add additional costs or expense nor result in any significant savings.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None; no public hearing was requested on the Notification of Intent. However, the proposed regulation will not have an effect on the cost of living or on employment in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested on the Notification of Intent. However, the regulation will not have an effect on the cost of doing business in the Commonwealth.

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

1. First year following implementation: This administrative regulation would not require any additional paperwork or reporting.

2. Second and subsequent years: No additional compliance or reporting requirements are mandated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs are already incurred by the promulgating agency and are related to the ongoing costs of policy development, provision of technical assistance, and supervision of local public health departments with which the department is statutorily charged.

2. Continuing costs or savings: Continuing operational costs which are already covered in the Department for Public Health's budget.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements which would impact on cost.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds as approved in the Department for Public Health'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:

(a) Geographical area in which administrative regulation will be implemented: A public hearing on the Notification of Intent was not requested. However, this regulation will not create any additional economic impact on the public.

(b) Kentucky: No economic impact on Kentucky or Kentuckians.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation specifically addresses only the operations and activities of local public health departments.

(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 sets forth the Department for Public Health's requirements relative to the operation of Kentucky's local public health departments. Therefore, the impact on public health is positive.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This administrative regulation is necessary to protect and promote public health in that it specifies certain functions, procedures, and administrative requirements of

Kentucky's local health departments.

(c) If detrimental effect would result, explain detrimental effect: The Department for Public Health would not have the ability to regulate certain operations of Kentucky's local health departments if the regulation were not promulgated.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative: 902 KAR 8:020 which is being repealed in conjunction with the promulgation of this and other proposed regulations dealing with health department operations.

(a) Necessity of proposed regulation if in conflict: This proposed regulation updates and consolidates administrative and operational requirements of Kentucky's local health departments.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation incorporates and modernizes the provisions of 902 KAR 8:020 which is being repealed concurrently with the promulgation of this and other regulations dealing with health department operations.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as this regulation pertains to all local public health departments.

**Cabinet for Health Services
Department for Public Health
Division of Resource Management
(New Administrative Regulation)**

902 KAR 8:026. Public health taxing district requirements.

RELATES TO: 212.720, 212.725, 212.740, 212.750, 212.755

STATUTORY AUTHORITY: KRS 65.070, 211.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.070 permits state agencies to establish policies and procedures governing taxing districts which are affiliated with agencies under their supervision; KRS 211.170 requires the cabinet to establish policies governing the financial operations of local health departments. This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local public health taxing districts.

Section 1. Operating, Receipt and Expenditure Requirements.

(1) Taxing districts shall adopt a formal annual budget. The budget shall be approved by the county board of health and the Cabinet for Health Services;

(2) Taxing district expenditures shall not exceed any budgeted line item amount without the approval of the county board of health and the Department for Public Health;

(3) The public health tax rates shall be set at levels necessary to generate the receipts listed in the approved budget of the taxing district; and

(4) The taxing district budget shall be in standard format approved by the Cabinet for Health Services. The budget shall be submitted to the Department for Public Health and shall serve as the official budget of the taxing district.

Section 2. Bookkeeping Functions. (1) Staff of the local health department may perform the routine bookkeeping functions for the taxing district; however, one (1) or more board members shall be responsible for initiating and approving all transactions of the taxing district and signing all checks; and

(2) Two (2) board members' signatures shall be required on checks and fund transfers of the taxing district.

Section 3. Expenditure Policies. (1) All expenditures shall be in accordance with the required expenditure policies.

(2) Taxing district funds shall only be used for the following purposes:

(a) Appropriation to the county or district health department for its operation;

(b) Building maintenance and repair; acquiring land and buildings, improvements to existing buildings;

(c) Procuring property insurance;

(d) Audit of taxing district funds;

(e) Legal services procured on behalf of the taxing district;

(f) Annual financial statement publication;

(g) Bank and check charges;

(h) Fidelity bonding which is required to cover the maximum balance of taxing district funds; and

(i) Board members' meeting expenses.

(3) All expenditures listed in subsection (2)(b) through (i) of this section may be made by the local health department on behalf of the taxing district.

Section 4. Disbursements. Disbursements shall adhere to the following procedures:

(1) Taxing district funds shall not be directly paid by the taxing district for employment or independent contract expenditures, rent, utilities, janitorial services and supplies; and

(2) The capital fund shall only be used for building maintenance and repair, acquiring land and buildings, and improvements to existing buildings. Capital funds shall not be transferred to the operating fund without the prior approval of the Department for Public Health.

Section 5. Investments. (1) If a taxing district invests or reinvests funds, a written investment policy shall be developed in accordance with KRS 66.480.

(2) The policy shall be included in the internal control procedures of the local health department.

(3) The policy shall include the following information:

(a) Designation of one (1) or more investment officers;

(b) List of permitted investments;

(c) Procedures to secure the district's financial interest in investments;

(d) Standards for written agreements;

(e) Procedures for monitoring, control, deposit, and retention of investments and collateral;

(f) Standards for diversification of investments;

(g) Standards for the qualifications of investment agents or firms; and

(h) Periodic reporting requirements to the fiscal court and the Board of Health.

(4) A copy of the department's investment policy shall be forwarded to the Department for Public Health for review.

Section 6. Accounting, Auditing and Reporting Requirements.

(1) Accounting and auditing requirements are as follows:

(a) The taxing district shall have accounting records that are auditable under Generally Accepted Auditing Standards and shall keep all records of the taxing district for six (6) years;

(b) Taxing districts shall be audited according to the schedule and other requirements of KRS 65.065(4)(5)(6); and

(c) All funds of the county board of health shall be included in the accounting records of the taxing district and shall be reported and expended in accordance with this policy.

(2) The annual financial statement, on a cash basis, of each public health taxing district shall be published in accordance with KRS 65.070. The annual financial statement shall also be submitted to the Department for Public Health, the county judge executive and the state and local finance officer within sixty (60) days after the end of the fiscal year. All funds of the taxing district and the county board of health regardless of fund or depository institution or financial instrument shall be included in the publication.

Section 7. The special ad valorem public health tax of public health taxing districts not complying with the provisions of this policy shall not be approved by the Cabinet for Health Services, Department for Public Health.

JOHN H. MORSE, Secretary

RICE C. LEACH, M.D., Commissioner

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be

held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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: J.R. Nash

(1) Type and number of entities affected: 16 district health departments and 38 independent county health departments.

(2) Direct and indirect costs or savings to those affected: None; the proposed regulation does not impose any requirements on local health departments which would add additional costs or expense nor result in any significant savings.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: None; no public hearing was requested on the Notification of Intent. However, the proposed regulation will not have an effect on the cost of living or on employment in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested on the Notification of Intent. However, the regulation will not have an effect on the cost of doing business in the Commonwealth.

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

1. First year following implementation: This administrative regulation would not require any additional paperwork or reporting.

2. Second and subsequent years: No additional compliance or reporting requirements are mandated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The costs are already incurred by the promulgating agency and are related to the ongoing costs of policy development, provision of technical assistance, and supervision of local public health departments with which the department is statutorily charged.

2. Continuing costs or savings: Continuing operational costs which are already covered in the Department for Public Health's budget.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements which would impact on cost.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: General funds as approved in the Department for Public Health'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:

(a) Geographical area in which administrative regulation will be implemented: A public hearing on the Notification of Intent was not requested. However, this regulation will not create any additional economic impact on the public.

(b) Kentucky: No economic impact on Kentucky or Kentuckians.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation specifically addresses only the operations and activities of local public health departments.

(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 sets forth the Department for Public Health's requirements relative to the operation of Kentucky's local public health departments. Therefore, the impact on public health is positive.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This administrative regulation is necessary to protect and promote public health in that it specifies certain functions, procedures, and administrative requirements of Kentucky's local health departments.

(c) If detrimental effect would result, explain detrimental effect: The Department for Public Health would not have the ability to regulate certain operations of Kentucky's local health departments if the regulation were not promulgated.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicative: 902 KAR 8:020 which is being repealed in conjunction with the promulgation of this and other proposed regulations dealing with health department operations.

(10) Necessity of proposed regulation if in conflict: This proposed regulation updates and consolidates administrative and operational requirements of Kentucky's local health departments.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, this regulation incorporates and modernizes the provisions of 902 KAR 8:020 which is being repealed concurrently with the promulgation of this and other regulations dealing with health department operations.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied as this regulation pertains to all local public health departments.

CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

902 KAR 8:027. Local health department unique personal and community services.

RELATES TO: KRS 211.180, 42 CFR Subpart A, Part 59, Title V of the Social Security Act, Sections 1615(c) and 510, Public Health Service Act Sections 316, 1101, 1121, 1131, Population Research Act of 1970 (PL 91-572), PL 94-63, 95-613, 95-626, 104-193 sec. 510.

STATUTORY AUTHORITY: KRS 194A.030, 211.090, 211.180, 213.161, 214.155, 214.160, 214.185, 42 CFR Subpart A Part 59

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 requires the cabinet to adopt such administrative regulations necessary to protect and maintain the health and welfare of the citizens of the Commonwealth. KRS 211.180 requires the cabinet to supervise and assist Kentucky's local health departments and boards of health in carrying out public health functions and responsibilities.

Section 1. Definitions. (1) "Department" means the Department for Public Health.

(2) "Division" means the Division of Adult and Child Health.

(3) "Locals" means the local health departments.

(4) "Personal health services" means any preventive health service which is an organized medical, nursing, nutrition, social, or educational intervention designed to assist individuals and communities in obtaining and maintaining an optimal level of wellness.

Section 2. Target Population. (1) Individuals served by personal health services funded by the Division of Adult and Child Health, and provided by locals shall be low-income.

(2) Low-income individuals are those with a family income at or below 100 percent of the most recent federal poverty guidelines published by the Department of Health and Human Services.

(3) Target population individuals shall not be billed for any personal health services provided by the locals.

Section 3. Eligible Population. (1) Individuals, regardless of

income, requesting personal health services shall be eligible, and when applicable, individuals who have received prior authorization from their health insurer are eligible.

(2) Services shall be provided to individuals without regard to race, color, religion, sex, national origin, marital status, disability, citizenship status, and age.

Section 4. Family Planning Services. (1) Services shall be provided without discrimination or coercion and without the imposition of a residency requirement or physician referral. Unemancipated minors who wish to receive services on a confidential basis shall be considered on the basis of their own financial resources.

(2) Required services.

(a) All medically approved methods of contraception shall be available directly or through referral.

1. The methods offered shall be only Food and Drug Administration (FDA) approved drugs and devices.

2. Funds shall not be used to purchase experimental or ineffective drugs.

3. Services shall not include abortions as a method of family planning.

(b) Sterilizations provided with federal funds shall meet all requirements pursuant to Chapter 1, Public Health Service Act 43 CFR 52165, Subpart B. 50.201-50.209.

1. Consent for the sterilization must be filed in the individual's medical record with the operative report.

2. Administrative files shall be sufficient to verify compliance with federal regulations.

3. A quarterly report of sterilizations provided shall be submitted quarterly to the state family planning office.

(3) Staff requirements. Services shall be under the general direction of a physician with reproductive health management experience.

(a) Required medical services shall be provided by physicians or midlevel practitioners (advanced registered nurse practitioners or physician assistants) with both training and experience in reproductive health management.

(b) Follow-up services, education and counseling may be provided by professional staff with experience or continuing education in reproductive health including contraceptive management.

(4) Advisory committee.

(a) An informational and educational review (ICE) committee of five (5) to nine (9) members who are representative of each community (county or district), shall review and approve all informational and educational materials developed, or made available.

(b) The committee shall assure that materials are suitable for the population and community.

(c) The committee shall maintain a file of the written record of the considerations of the materials.

(d) The committee shall meet at least annually.

(e) The committee may be appointed by the Board of Health, and designated solely for the purpose of reviewing I&E materials, or may be a subcommittee of the Board of Health. The committee shall:

1. Review materials; and

2. Ensure community participation in the development, implementation and evaluation of family planning services.

Section 5. Maternity Services. (1) Pregnant women without a source of prenatal care shall be assured that services are available to them either on-site or through referral.

(2) A pregnant woman who conceives prior to her 21st birthday and lives at home with her parent or guardian, and whose parent or guardian is not providing financial support for maternity care shall be counted as a separate family.

(3) Required services.

(a) Comprehensive maternity services shall be available on site or by referral by staff of locals or contracted physicians, and shall consist of:

1. Prenatal visits, optimally beginning in the first trimester, and at the appropriate intervals;

2. Delivery of the infant including Caesarian section, when indicated;

3. Initial newborn examination by a physician within twenty-four (24) hours of delivery;

4. Anesthesia for delivery;

5. Laboratory tests;

6. Ultrasound and other procedures; and

7. Postpartum care of the mother.

(b) Appropriate services provided by a physician shall be available either on-site or through referral for women with complications of pregnancy, such as spontaneous abortion.

(4) Staff requirements.

(a) The medical care of the pregnant woman shall be initiated and managed by a physician or certified nurse midwife.

(b) Staff of locals, or contracted physicians and certified nurse midwives, shall provide comprehensive prenatal services, delivery and newborn care.

(c) Midlevel practitioners (advanced registered nurse practitioners or physician assistants) with both training and experience in maternity services may provide routine prenatal visits.

(d) If prenatal care is not under the direction of an obstetrician, an obstetrician should be available for consultation.

(e) Registered nurses, who have completed a state-sponsored or approved continuing education course in the care of the pregnant woman, may provide support services, education and counseling at routine prenatal visits.

(5) Special requirements. Facilities, supplies, and equipment shall comply with ambulatory obstetrical care standards.

Section 6. Personal Health Services for Children and Adolescents. (1) Children birth through twenty (20) years of age shall be assured of the full range of preventive health care either on-site or through referral.

(2) Required services.

(a) Preventive health services for children and adolescents shall include:

1. Complete preventive health screenings;

2. Identification of health problems and further diagnosis and treatment of minor acute health problems within the capability of staff of locals. If staff are not able to further diagnose and treat an acute condition found in the preventive check-up, the child shall be referred to a contracted or consulting physician, and payment shall be authorized for at least one (1) visit and pharmaceuticals, if indicated, when another source of payment is unavailable; and

3. A dental visit may be covered for the alleviation of pain and infection.

(b) If conditions require in-depth diagnosis, treatment or ongoing health care, staff of locals shall make every effort to identify sources of care. Utilization of other existing agencies and service systems must be considered.

(c) Concerning newborn screening, staff of locals shall:

1. Provide initial newborn screening of an infant whose parent requests to register the birth (primarily home births);

2. Provide repeat screening when requested by a physician, hospital, or the state laboratory; upon request from a diagnostic center;

3. Provide blood specimen collection for children under treatment for Phenylketonuria (PKU);

4. Assist in ordering special formula;

5. Provide nutritional advice for other agencies where the PKU patient may be receiving care; and

6. Assist physicians, hospitals, or the department, upon request, to locate infants with positive screening results.

(3) Staff requirements.

(a) Personal health services for children shall be under the general direction of a physician with experience in health care of children.

(b) Preventive health services may be provided by physicians and midlevel practitioners (advanced registered nurse practitioners or physician assistants) with both training and experience in providing health care for children.

(c) Registered nurses who have attended a state sponsored or approved continuing education course in pediatric assessment followed by a preceptorship defined by the state may provide child health preventive services.

(d) Components of personal health preventive services for children (vision and hearing screening, anthropomorphic measurements, and obtaining some laboratory specimens) may be provided by ancillary personnel, if the professional staff providing the medical component of the service reviews and interprets the findings.

(4) Special requirements. Personal health services may be provided at a school site.

(a) When locals provide a full-time (five (5) days a week) clinic that is a school-based site the locals shall have on file an annual agreement with the school. The agreement shall clearly define the agency responsible for:

1. Maintaining the site;
2. Providing medical supplies; and
3. Ownership of patient records.

(b) Personal health services shall not be provided without prior written permission of parents or legal guardians. The permission may be obtained and kept on file for the entire school year.

(c) Full-time school-based sites shall have an active local advisory committee. If a site is linked with a family resource and youth services center (FRYSC), the same advisory committee may be used. In this case, a letter of agreement from the chairman of the FRYSC advisory committee shall be on file at the local. The committee shall assist in:

1. Outreach and marketing;
2. Developing community support;
3. Assisting program staff in designing services to fit the needs of the population to be served; and
4. Evaluating progress.

(d) The school site advisory committee membership shall include:

1. Parents;
2. Local staff;
3. Representatives from the local medical community;
4. Representatives from the schools; and
5. Adolescents.

Section 7. Personal Health Services for Adults. (1) Adults, ages twenty-one (21) and above, who request preventive health services, and who are not receiving these services in another locals' program that provides a full range of preventive services, shall be eligible for preventive health screening.

(2) Breast cancer screening, diagnosis and follow-up shall be available to women, ages forty (40) and above, or to younger women with either a first-line family history of premenopausal breast cancer or a clinical breast examination result that is suspicious for cancer.

(3) Required services.

(a) Preventive health services for adults made available upon request, shall include:

1. Complete preventive health screenings;
2. Health screening for chronic diseases such as cardiovascular conditions and diabetes; and
3. Breast and cervical cancer screening for women.

(b) Follow-up education and case management shall be provided within the staffing and fiscal capabilities of the locals.

(c) Further diagnosis and follow-up of abnormal breast examinations, mammograms, and Pap tests shall be provided to women screened for cancer. Further diagnosis of abnormal Pap tests may be provided on-site by colposcopists, or by referral. The division shall compile an annual list of diagnostic and follow-up services that shall be used by locals to determine the scope and extent of follow-up services to be offered.

(4) Staff requirements.

(a) Adult preventive health services shall be provided by physicians, certified nurse midwives, or midlevel practitioners (advanced registered nurse practitioners or physician assistants) with both training and experience in providing health care for adults. Registered nurses who have completed the state provided or approved adult physical assessment continuing education course, followed by a state-defined preceptorship/practicum may provide preventive health services for adults.

(b) Breast and cervical cancer screening, including a pelvic examination, shall be provided by physicians or midlevel practitioners

(advanced registered nurse practitioners or physician assistants) with both training and experience in these services. Registered nurses who have completed the state provided or approved breast, cervical cancer, Pap smear and pelvic examination education course, followed by a state-defined preceptorship/practicum may provide these services.

(5) Special requirements.

(a) Locals shall enter into contracts for cytology/histology laboratories for Pap tests and other specimens. Contracts shall only be written with laboratories that report results according to the Bethesda System of reporting, and are certified for Medicaid/Medicare, meeting the Clinical Laboratory Improvement Act (CLIA) regulations, or the Joint Council on the Accreditation of Healthcare Organizations (JCAHO).

(b) Facilities performing mammograms for locals shall be accredited by the American College of Radiology Accreditation Program and certified by the Food and Drug Administration (FDA).

(c) Colposcopists, either local staff or contracted, shall have successfully completed an approved residency that includes colposcopic training, or have successfully completed a formal training program that includes both didactic and clinical experience, followed by supervised colposcopic examinations, as defined by the training program.

(d) Locals who participate in the Centers for Disease Control and Prevention federally funded Breast and Cervical Cancer Program shall follow the reporting requirements of that grant as a condition of participation.

Section 8. Medical Nutrition Therapy. (1) Required services.

(a) Individual counseling shall be available through referral from a physician or health care provider or by request of the individual with prior authorization from their health insurer, when applicable.

(b) Group counseling may be available through referral from a physician or health care provider or by request of individuals or organizations.

(2) Staff requirements. Medical nutrition therapy shall be provided by a registered dietitian (RD) who is licensed by the State Board of Licensure and Certification as a licensed dietitian or a certified nutritionist (CN) who receives certification from the State Board of Licensure and Certification.

Section 9. Community Services. (1) Locals shall conduct a community assessment to determine the public health needs of their community.

(2) Target population.

(a) Community services shall be available to groups or individuals needing nonpersonal health services without regard to income.

(b) Locals may assess a fee for individuals participating in non-personal health services.

(3) Required services.

(a) Locals shall provide services that address the performance measures of the Maternal and Child Health Block Grant.

(b) Locals shall provide services that promote health and prevent injury and disease in children and adults.

JOHN H. MORSE, Secretary

RICE C. LEACH, M.D., Commissioner

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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

VOLUME 25, NUMBER 6 – DECEMBER 1, 1998

Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ann Tarter

(1) Type and number of entities affected: The 120 local health departments and the individuals that receive personal and community services from the health departments are affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue. Changes in the cost of living and employment in Kentucky cannot be anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue. No effect to business is anticipated, administrative regulation only affects local health departments.

(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 does not change the compliance, reporting and paperwork currently required of local health departments. Costs will not be increased or decreased. Competition will not be affected, since this relates only to local health departments.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department for Public Health will not experience any increased direct or indirect costs or savings.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: No effect of increasing or decreasing costs is anticipated.

(b) Reporting and paperwork requirements: The division is required to produce reports to meet federal grant requirements or upon request of authorized agencies and individuals.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: The administration is financed by federal grants and state general fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The regulation provides guidance on personal and community services to be provided by local health departments.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented: The regulation provides guidance to Kentucky's local health departments would not have guidance on services to be provided to individuals or the communities.

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

(c) If detrimental effect would result, explain detrimental effect: The low income citizens of the Commonwealth may not have a source for the personal and community services provided by the local health departments.

(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 the statute applies to all local health departments who provide services to the citizens of the Commonwealth.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Public Health Protection and Safety (New Administrative Regulation)

902 KAR 8:028. Local health department environmental health program standards.

RELATES TO: KRS 194A.050, 211.070, 211.180, 211.345, 211.350 to 211.380, 211.357, 211.972 to 211.982, 211.995, 212.210, 217.005 to 217.285, 217.808 to 217.812, 217.992, 219.011 to 219.081, 219.310 to 219.410, 219.990, 219.991

STATUTORY AUTHORITY: KRS 194A.030, 211.180, 211.345, 211.350 to 211.380, 211.760, 211.920 to 211.945, 211.972 to 211.982, 211.995, 212.210, 217.005 to 217.285, 217.808 to 217.812, 217.992, 219.011 to 219.081, 219.310 to 219.410, 219.990, 219.991, 221.010 to 221.110, 221.990

NECESSITY, FUNCTION, AND CONFORMITY: The above referenced Kentucky Revised Statutes mandate that the Cabinet for Health Services regulate temporary food service establishments, food service establishments, food and beverage vending machines, retail-food establishments (retail and food service combinations), bed and breakfast establishments, retail food stores, warehouses, bakeries, mills, grain storage facilities, bottling plants, food and cosmetic salvage processors and distributors, general food processors, food distributors, food transporting vehicles, frozen food lockers, raw agriculture commodities (for pesticide residues), hotels and motels, mobile home and recreational vehicle parks, youth camps, public rest rooms, schools, confinement facilities, public swimming and bathing facilities, private water supplies, nuisance control, private sewage, septic tank cleaning companies and vehicles and land application sites, on-site sewage disposal systems, construction standards for components of on-site sewage disposal systems, certification of on-site system installers and certification of tattoo artists. This administrative regulation establishes minimum operation standards for local health departments in administering environmental health programs.

Section 1. Retail Food Establishments. (1) Retail food establishments shall include temporary food service establishments, food service establishments, food and beverage vending machines, retail-food establishments (retail and food service combinations), bed and breakfast establishments, and retail food stores.

(2) Personnel qualifications and training.

(a) Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or a registered environmental health specialist (REHS) pursuant to KRS Chapter 223 within one (1) year of employment.

(b) Staff shall attend Food CORE Training from Division of Environmental Health and Community Safety, Food Safety Branch, plus in-service special training and short courses as required to insure program effectiveness.

(c) Each local health department shall have employed on staff a Retail Food Specialist who meets the qualifications of the Department for Public Health.

(3) Policies and procedures. Reports of inspections and investigations shall be reviewed and evaluated by the environmental supervisor or, in the absence of a supervisor, the local health department director prior to the issuance of notices, orders, etc, in accordance with written local policy.

(4) Recordkeeping.

(a) Inspection data shall be entered in the Environmental Health Management Information System (EHMIS) or an alternative system approved by the department.

(b) Records and reports shall be maintained pursuant to the records and retention schedule.

(c) Local health departments shall maintain fee processing records in accordance with Department for Public Health policies and procedures.

(d) All recordkeeping, filing, etc., shall be neat, orderly and current.

(e) Local health departments shall establish a bank account for deposit of all state environmental fee receipts.

(f) The environmental health fee receipts shall be transmitted to the Division of Resource Management, Environmental Support Branch, by the tenth of each month.

1. The Division of Resource Management shall be notified of the bank name and address, the name of the account and the account number, as well as any subsequent changes.

2. Fee processing and permit issuance shall be conducted through the Environmental Health Management Information System (EHMIS) System or an alternative system approved by the department.

(5) Equipment. Required equipment is listed in the EHMIS Coding and Operational Procedures (Rev. 1-98), Section H, Environmental Health Forms, Pamphlets and Equipment.

(6) Program publicity and consumer education.

(a) Local health departments shall be responsible for at least semiannual dissemination of information to the public through local news media, presentations to local civic organizations, or displays at public gatherings, and should be accomplished to keep the consumer informed about program activities.

(b) At least one (1) source of information shall include a news release prepared relative to the etiology of food-borne illnesses, listing some common symptoms, and emphasizing the importance of promptly reporting suspected food-borne illnesses to the local health department.

(c) Training for food industry personnel is recommended (retail food establishment workshops). Training workshops for food industry personnel should be directed toward owners, management and food industry personnel no less than one (1) time each three (3) years.

(7) Reference materials. Local health departments shall maintain at least one applicable trade and professional journal, textbook and reference material.

(8) Compliance.

(a) Permits for all retail food establishments shall be denied or approved and issued in accordance with KRS Chapter 217 and 902 KAR 45:005, 902 KAR 45:006 or 902 KAR 45:100.

(b) Construction plan review shall be conducted in accordance with the respective Kentucky Retail Food Code; the Kentucky bed and breakfast administrative regulation, or the Kentucky Food and Beverage Vending Machine Code.

(c) The average time for review shall be one (1) hour.

(d) Refer to the Guide for Reviewing and Approving Construction Plans (Rev. 10-98).

(e) Inspection observations shall be adequately documented, using photos and field samples for evidence where needed. Results of inspections shall be communicated thoroughly to the permit holder or person responsible.

(f) For temporary operations, refer to DFS-218 (Rev. 5-94), Concessionaires Food Sanitation Guidelines.

(g) Routine and follow-up inspections of retail food establishments including vending machine companies shall be conducted in accordance with the State Retail Food Code and the State Food and Beverage Vending Machine Code.

(h) Following initial inspection of each new vending machine company, each company's vending locations shall be inspected at least one (1) time each three (3) years, plus necessary follow-up inspections.

(i) Following initial inspection, each bed and breakfast establishment shall be inspected at least one (1) time each year, plus necessary follow-up inspections.

(j) The average routine inspection time, including travel, recording and administrative time, for food service establishments, retail food establishments, retail food stores, bed and breakfast establishments, vending machine commissaries and vending machine locations shall be as follows:

1.	Project Reporting Area	Program
	603	Seasonal Restricted Food Concessions - 1.0 hour
	604	Temporary Food Service Establishments - 1.0 hour
	605	Food Service Establishments/vending Commissaries - 2.0 hours
	606	Vending Machine locations - 1.0 hour
	607	Retail-Food Establishments - 3.0 hours
	608	Bed and Breakfast Establishments - 1.0 hour
	610	Retail Food Stores - 2.0 hours

2. Average compliance or follow-up inspection time including travel, recording and administrative time - one (1.0) hour.

3. Other services, field visits, food related complaints, surveys and etc., shall be one (1) to three (3) times annually per establishment. Average time shall be one (1.0) hour, including travel and administrative time.

(k) Collection of food, evidence, field samples may be necessary at the time of an inspection or field service when in the opinion of the health authority, sanitary conditions warrant. Average time for collection and preparation for shipment, including travel time shall be one and one-half (1.5) hours per sample.

(9) Legal actions.

(a) Notices shall be issued in accordance with appropriate sections of the State Retail Food Code; the Food and Beverage Vending Machine Code; or the bed and breakfast administrative regulation.

(b) Orders may be issued if in harmony with the appropriate enforcement sections of the cabinet's laws and administrative regulations.

(c) The appropriate forms are designated in EHMIS Manual, Section H., Environmental Health Forms, Pamphlet and Equipment.

(d) Conferences shall be held in accordance with KRS Chapter 13B and 902 KAR 1:400 and the enforcement provisions of the State Retail Food Code; the State Food and Beverage Vending Machine Code; and the bed and breakfast administrative regulation. The average time for conducting a conference, including preparation, notification, recording, shall be five (5) hours.

(e) When upon examination, a food product is known or suspected to be adulterated, the product shall be quarantined in accordance with Section 42 of the State Retail Food Code and KRS 217.115.

(f) Permit suspension and revocation shall be accomplished in accordance with the provisions of the State Retail Food Code; the Food and Beverage Vending Machine Code; or the bed and breakfast administrative regulation.

(g) Permit reinstatement may be accomplished in accordance with the State Retail Food Code; the Food and Beverage Vending Machine Code; or the bed and breakfast administrative regulation.

(h) When, upon determination by the health authority, the product under quarantine is unfit for sale or use, condemnation proceedings shall be initiated in accordance with the provisions of KRS 217.115(2).

(i) When administrative procedures have been exhausted in accordance with the provisions of the State Retail Food Code; the Food and Beverage Vending Machine Code; or the bed and breakfast administrative regulation, a complaint or warrant prepared by the appropriate prosecuting attorney may be signed to initiate court proceedings.

(j) When other administrative procedures and legal actions have been exhausted and a particular food establishment does not comply, the circuit court may be petitioned to pursue injunctive proceedings to either temporarily or permanently enjoin the facility from operation in accordance with KRS 217.205.

(10) Outcome standards.

(a) Each retail food establishment, bed and breakfast establishment and vending machine company shall possess a valid permit to operate.

(b) Satisfactory sanitation compliance level for regulated establishments.

lishments shall be a level of eighty-five (85) percent compliance or above with no critical (four (4) or five (5) point items) items debited.

(c) Satisfactory administrative compliance level for each local health department shall be an evaluation rating score of eighty-five (85) percent or higher for administrative procedures, compliance procedures, legal actions, recordkeeping, etc., in accordance with 902 KAR 45:140.

Section 2. Food Production, Manufacturing, and Storage Establishments.

(1) Food production, manufacturing, and storage establishments include: warehouses, bakeries, mills, grain storage facilities, bottling plants, food and cosmetic salvage processors and distributors, general food processors, food distributors, food transporting vehicles, frozen food lockers, and raw agriculture commodities (for pesticide residues).

(2) Personnel qualifications and training.

(a) Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or a registered environmental health specialist (REHS), pursuant to KRS Chapter 223 within one (1) year of employment.

(b) Staff shall attend Food CORE Training from Division of Public Health Protection and Safety, Food Safety Branch, plus in-service special training and short courses as required to insure program effectiveness.

(3) Policies and procedures. Reports of inspections and investigations shall be reviewed and evaluated by the environmental supervisor or, in the absence of a supervisor, the local health department director prior to the issuance of notices, orders, etc., in accordance with written local policy.

(4) Recordkeeping.

(a) Inspection data shall be entered in the Environmental Health Management Information System (EHMIS), or an alternative system approved by the department.

(b) Records and reports shall be maintained pursuant to the records and retention schedule or longer at the option of the local health department.

(c) Local health departments shall maintain fee processing records in accordance with Department for Public Health policies and procedures.

(d) Recordkeeping, filing, etc., shall be neat, orderly and current.

(e) An up-to-date file shall be maintained on each commercial producer of raw agricultural commodities and include the product or crops produced, acreage, approximate harvest dates, and market area.

(f) Local health departments shall be authorized to establish a bank account for deposit of all state environmental fee receipts, which shall be transmitted to the Division of Resource Management, Environmental Support Section, by the tenth of each month.

1. The Division of Resource Management shall be notified of the bank name and address, the name of the account and the account number, as well as any subsequent changes.

2. Fee processing and permit issuance shall be conducted through the EHMIS system or an alternative system approved by the department.

(5) Equipment. Required equipment is listed in the Environmental Health Management Information System (EHMIS) Coding and Operational Procedures Manual (Rev. 1-98), Section H, Environmental Health Forms, Pamphlets and Equipment.

(6) Program publicity and education.

(a) Food-related articles and information should be disseminated to the public through local news media.

(b) Presentations should be offered to local civic organizations and by means of display at public gatherings.

(7) Reference materials. Local health departments shall maintain at least one (1) applicable trade and professional journal, as well as textbooks and reference materials.

(8) Compliance.

(a) Permits for all food processing establishments, food storage warehouses, salvage distributors, or salvage processors and frozen food lockers shall be denied, or approved and issued in accordance with applicable public health laws of the Cabinet for Health Services.

(b) Construction plan review shall be in accordance with appli-

cable public health laws of the Cabinet for Health Services. Refer to the Guide for Reviewing and Approving Construction Plans.

(c) Inspection observations shall be adequately documented, using photos and field samples for evidence where needed. Results of inspections shall be communicated thoroughly to the permit holder or person responsible.

(d) Annually, or as otherwise determined by the Food Safety Branch, inspections shall be required for fixed establishments with an estimated ten (10) percent follow-ups.

(e) Food transporting vehicles should be inspected annually with ten (10) percent follow-ups, provided that, if driver can produce a current inspection report conducted by another agent of the Cabinet for Health Services, an inspection would not be necessary.

(f) Appropriate forms shall be used for inspections, as designated in the EHMIS manual, Section H, Environmental Forms, Pamphlets, and Equipment.

(g) Average routine inspection time including travel, recording, report writing and administrative time for food production, manufacturing and storage establishments shall be as follows:

1. Average time for a complete surveillance inspection - six and one-half (6.5) hours.

2. Average follow-up or compliance inspection time - six (6.0) hours.

3. Average time for food transporting vehicles - one-half (0.5) hour. Inspections may be accomplished when a vehicle is sighted while en route to do other field work thus cutting down travel time.

4. In the absence of specific administrative regulations, inspectors should follow techniques and procedures in accordance with 902 KAR 45:130, the Food and Drug Administration's (FDA) Investigations Operations Manual.

5. Other services, field visits, and food related complaints, surveys, etc. shall be one to three (3) times annually per each ten (10) establishments. Average time shall be one and one-half (1.5) hours per establishment, including travel and administrative time.

(h) Collection of food, evidence, and field samples shall be in accordance with 902 KAR 45:130, the Food and Drug Administration's Investigations Operations Manual, unless otherwise specified in this standard.

1. Food evidence and field samples serve as a basis for specific legal action when officially collected. Samples shall be collected when in the opinion of the health authority sanitary conditions in a food manufacturing or processing firm may result in adulteration of food products.

2. Collection of four (4) food samples annually from each of an estimated ten (10) percent of the food processing or manufacturing firms may be necessary.

3. Average time for collection and preparation for shipment, including travel time shall be one and one-half (1.5) hour per sample.

4. Official representative samples shall be collected from approximately fifty (50) percent of commercial producers of raw agricultural products one (1) time per year. Samples shall be collected at random, but not prior to offering for sale to the consumer.

5. Average time for raw agricultural commodity samples shall be three (3.0) hours per producer sampled.

6. The following procedures for collection of raw agricultural commodities (pesticides, etc.) shall be followed:

a. Collect at least a two (2) pound sample.

b. Place in a double brown paper bag, secure with state seal.

c. Ship or deliver promptly to Division of Laboratory Services.

d. Keep the sample cool by refrigeration or use of cold packs, but not frozen after collection and during transportation.

e. List all pesticides used up to forty-five (45) days prior to harvesting. If none were used, so state. The producer shall sign the form and retain a copy.

f. If a food product is found to be adulterated it shall be placed under quarantine. If the product cannot be brought into compliance, voluntary destruction or condemnation shall be accomplished and shall be witnessed by an authorized representative of the cabinet.

(9) Legal action.

(a) Notices may be issued in accordance with Chapters 217.185 and 217.195 of the State Food, Drug and Cosmetic Act; Section 16(3) of the state food and cosmetic salvage administrative regula-

tion; or other applicable rules and administrative regulations of the Cabinet for Health Services.

(b) Notices may be issued in the form of a copy of the inspection report or a regulatory letter given in person to the permit holder or responsible individual or sent to same by certified or registered mail, return receipt requested.

(c) Orders may be issued if in harmony with the appropriate enforcement sections of the cabinet's laws and administrative regulations.

(d) Notice and Order of Quarantine Form - DFS-222, shall be issued in accordance with Chapter 217.115 of the State Food, Drug, and Cosmetic Act.

(e) Conferences shall be held in accordance with KRS Chapter 13B and 902 KAR 1:400. The average time for a conference, including notification, preparation time, and recording of proceedings shall be five (5.0) hours.

(f) When upon examination a food product is known or suspected of being adulterated, the item shall be tagged or marked, giving notice that it has been detained and quarantined in accordance with KRS 217.115 of the State Food, Drug and Cosmetic Act.

(g) Permit suspension and revocation shall be accomplished in accordance with the provisions of applicable laws and administrative regulations of the cabinet.

(h) Permit reinstatement may be accomplished in accordance with the provisions of applicable laws and administrative regulations of the cabinet.

(i) When in the opinion of the health authority, the product under quarantine is unfit for sale or use, condemnation may be pursued for court ordered condemnation in accordance with the provisions of KRS 217.115 of the State Food, Drug, and Cosmetic Act.

(j) When administrative procedures, in accordance with the provisions of the pertinent laws and administrative regulations of the cabinet have been exhausted, a complaint or warrant prepared by the appropriate prosecuting attorney may be signed to initiate court proceedings.

(k) When all other administrative procedures and legal actions have been exhausted and a particular food establishment does not comply, the circuit court may be petitioned to pursue injunctive proceedings to either temporarily or permanently enjoin the establishment from operation as provided in Sections KRS 217.205 of the Kentucky Food, Drug and Cosmetic Act.

(10) Outcome standards.

(a) Each establishment shall possess a valid permit to operate as required.

(b) Satisfactory compliance level for establishments shall be compliance with the minimum requirements of Kentucky's public health laws, and rules and administrative regulations of the Cabinet for Health Services.

(c) Satisfactory compliance for establishments for which no law or administrative regulation sets forth specific compliance guidelines shall mean that the establishment has, at the time of a current or recent inspection, been found to have satisfied the minimum provisions of applicable Kentucky public health laws, administrative regulations, and guidelines.

(d) For those establishments for which no law or regulation sets forth specific compliance guidelines, satisfactory compliance shall mean the following:

1. Compliance with the FDA Current Good Manufacturing Practices (GMP's), 21 CFR Part 110, Title Code of Federal Regulations.

2. That adulterated or misbranded food is not a problem at the time of inspection.

(e) If no other specific guidelines are provided, the following classifications of compliance shall serve as guidelines.

1. NAI - (no action indicated) - means the establishment has no objectionable conditions, or any objectionable conditions are so minor that only routine inspection is indicated.

a. The establishment is in substantial compliance with state food laws and standards and federal GMP's.

b. Any objectionable conditions are not likely to recur or are so minor that only routine reinspection is indicated.

2. VAI - (voluntary action indicated) - means that compliance with state food laws and administrative regulations and federal GMP's is borderline.

a. Objectionable conditions do not justify official action at this time. Conditions are such that if not corrected, could reasonably result in or lead to conditions that could support official action.

b. If a quarantine action has not taken place, it is only an isolated incidence. An informational letter or official notice may be sent to management.

c. An accelerated follow-up inspection (usually within six (6) months) should be indicated.

3. OIA (official action indicated) - means that noncompliance with state food laws and standards is evident to the extent that critical violations are noted, i.e., adulterated food, active pest infestation, misuse of pesticides or other chemicals.

a. An official action, quarantine or court case, has taken place or is anticipated. An official notice to correct shall be issued to management.

b. Accelerated follow-up shall take place, usually in thirty (30) to sixty (60) days.

(f) Administrative compliance level means that level at which administrative procedures, compliance procedures, legal actions, recordkeeping, etc., have been carried out in accordance with the Division of Public Health Protection and Safety guidelines and procedures for evaluating programs.

Section 3. Tattoo Artists and Tattoo Studios. (1) Personnel qualifications and training.

(a) Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or a registered environmental health specialist (REHS) pursuant to KRS Chapter 223 within one (1) year of employment.

(b) Staff shall receive state orientation and CORE training from the Division of Public Health Protection and Safety, plus attend Department for Public Health in-service training workshops.

(2) Policies and procedures. Reports of inspections and investigations shall be reviewed and evaluated by the environmental supervisor or, in the absence of a supervisor, the local health department director prior to the issuance of notices, orders, etc, in accordance with written local policy.

(3) Recordkeeping.

(a) A separate file shall be established on each tattoo artist and tattoo studio containing documentation which includes: inspection reports, notices, correspondence, and all other pertinent information. Records, reports, and correspondence shall be maintained pursuant to the records and retention schedule or longer if so opted by the local health department.

(b) Inspection data shall be entered in the Environmental Health Management Information System (EHMIS), or an alternative system approved by the department.

(c) Local health departments shall establish a bank account for deposit of all state environmental fee receipts.

(d) State environmental fee receipts shall be transmitted to the Division of Resource Management, Environmental Support Section, by the tenth of each month.

(e) The division shall be notified of the bank name, address, the name of the account, and the account number, as well as any subsequent changes.

(f) The tattoo studio certification fee shall be a state fee. The tattoo artist fee shall be a local fee.

(g) Fee processing, registration and certification shall be conducted through the Environmental Health Management Information System (EHMIS) system or an alternative system approved by the Department for Public Health.

(4) Equipment. See Environmental Health Management Information System (EHMIS) manual, Section H, Environmental Health Forms, Pamphlets and Equipment.

(5) Surveillance.

(a) The average time for inspection, including travel, recording, and administrative time, shall be two (2) hours.

(b) The average time for follow-up inspections shall be one and on-half (1.50) hours.

(c) A routine inspection shall be conducted once every six (6) months, in addition to follow-up inspections as necessary to enforce the administrative regulation. Violations are to be recorded on stan-

dard forms.

(d) Complaints, surveys and other surveillance inspections shall be conducted as necessary to assure compliance on specific conditions or to provide other services to the establishment owner or the general public.

(6) Compliance.

(a) Tattoo artist registration or tattoo studio certification of sanitation shall be denied or approved and issued in accordance with 902 KAR 10:045.

(b) An individual denied a tattoo artist registration or tattoo studio certification of sanitation shall be notified in writing as to the reason the application is being denied and the applicant shall be provided an opportunity for a conference.

(c) For serious or repeated violations of a requirement of this administrative regulation or for interference with the local health department in carrying out its duties of inspection and certification, the registration or certificate of sanitation may be permanently revoked after an opportunity for a conference has been provided.

(d) A temporary tattoo studio violation shall be corrected within twenty-four (24) hours of inspection and notification to the owner. If violations are not corrected, the studio certificate of sanitation shall be immediately suspended. In accordance with 902 KAR 10:045, a conference may be requested by the holder of the certificate after suspension.

(7) Legal action.

(a) The artist registration and studio certificate of sanitation shall be suspended immediately upon notice to the holder without a conference when the local health department has reason to believe that an imminent health hazard exists.

(b) In all other instances of violation of the provisions of 902 KAR 10:045, the local health department shall serve the registrant or certificate holder a written notice specifying the violations and afford the registrant or certificate holder a reasonable opportunity to correct the violations.

(c) If a registrant or certificate holder has failed to comply with a written notice issued under the provisions of this administrative regulation, the local health department may suspend the artist's registration or studio certification.

(d) The holder of the artist's registration or studio certificate of sanitation shall be notified in writing that the registration or certification shall be suspended at the end of ten (10) days following service of notice, unless a request for a conference is made to the local health department within the ten (10) day period.

(e) A person whose registration or certification has been suspended may make a written request for reinstatement of the registration or certification.

(8) Outcome standards.

(a) An artist shall possess a valid tattoo artist registration pursuant to 902 KAR 10:045.

(b) A tattoo studio shall possess a valid tattoo studio certificate of sanitation pursuant to 902 KAR 10:045.

(c) Tattoo studios shall operate with an acceptable sanitation compliance level and with no critical violations or imminent health hazards.

(d) Local health departments shall demonstrate an administrative compliance level of eighty-five (85) percent or higher pursuant to Department for Public Health requirements.

Section 4. Permitted Public Facilities. (1) Permitted public facilities include hotels and motels, mobile home and recreational vehicle parks, and youth camps.

(2) Personal qualifications and training.

(a) Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or hold a registered environmental health specialist (REHS) pursuant to KRS Chapter 223 within one (1) year of employment.

(b) Staff shall attend Department for Public Health in-service training workshops.

(3) Policies and procedures. Reports of inspections and investigations shall be reviewed and evaluated by the environmental supervisor or, in the absence of a supervisor, the local health department director.

(4) Recordkeeping.

(a) A separate file shall be established on each facility containing documentation and include inspection sheets, notices, correspondence, and all other pertinent information.

(b) Inspection data shall be entered in the Environmental Management Information System (EHMIS), or an alternative system approved by the department.

(c) Records and reports shall be maintained pursuant to record and retention schedules or longer by the local health department.

(d) Local health departments shall establish a bank account for deposit of state environmental health fee receipts, which shall be transmitted to the Division of Resource Management, Environmental Support Section, by the tenth of each month. The division shall be notified of the bank name and address, the name of the account and the account number, as well as subsequent changes.

(e) Fee processing and permit issuance shall be conducted through the EHMIS system or an alternative system approved by the department.

(5) Equipment. See EHMIS manual, Section H, Environmental Health Forms Pamphlets, and Equipment.

(6) Reference materials. An adequate number of each code in pamphlet form, applications for permit and inspection forms shall be kept available for use in enforcing the administrative regulations and for distribution to interested persons.

(7) Program publicity. At least one (1) time each year, news releases developed by the department or the local health department should be prepared regarding hotels and motels; 902 KAR 15:101, 902 KAR 15:020, and 902 KAR 10:040.

(8) Compliance.

(a) Permits shall be denied or approved and issued in accordance with KRS 219.011 to 219.081, 219.991 and 902 KAR 7:010; KRS 219.310 - 219.410, 219.991, 902 KAR 15:010, and 902 KAR 15:020 or KRS 211.180 and 902 KAR 10:040.

(b) A construction plan review shall be carried out pursuant to 902 KAR 7:010, Section 18; KRS 219.350 and 219.360; or 902 KAR 10:040, Section 16.

(c) Observations during inspections shall be documented on forms provided by the cabinet, using photographs for evidence when needed. Results of inspections shall be communicated thoroughly to the permit holder or person responsible.

(d) Frequency of routine and follow-up inspections of hotel and motels, mobile home and recreational vehicle parks and youth camps shall be conducted in accordance with the Hotel Code; the mobile home park administrative regulation; the recreational vehicle park administrative regulation, or the Kentucky youth camp administrative regulation.

(e) Following the initial inspection of each new hotel, motel, mobile home park, or recreational vehicle park, each shall be inspected once each year, plus necessary follow-up inspections.

(f) Each youth camp shall be inspected prior to the opening of the camp and once during the operating season, plus necessary follow-up inspections.

(g) Routine inspection time, including travel, recording and administrative time for hotels, motels, mobile home parks and recreational vehicle parks shall be as follows:

1. Average routine inspections - two (2.0) hours; five (5.0) hours for youth camps and two (2.0) hours for day camps.

2. Compliance or average time for follow-up inspections - one and one-half (1.5) hours.

3. Average time for complaints, surveys and other inspections shall be two (2) hours, including travel, recording and administrative time for hotels, motels, mobile home parks, and recreational vehicle parks.

(9) Legal action.

(a) Notices shall be issued in accordance with 902 KAR 7:010, Section 20; 902 KAR 15:010, Section 16, 902 KAR 15:020, Section 16; and 902 KAR 10:040, Section 18.

(b) Orders may be issued by the appropriate administrative designee of the local health department when indicated.

(c) Conferences shall be held as provided in, and in accordance with KRS Chapter 13B, 902 KAR 1:400, 902 KAR 7:010, Section 20(3); 902 KAR 15:010, Section 15(3); 902 KAR 15:020, Section 16(3); and 902 KAR 10:040, Section 18. The average time for a

conference shall be five (5.0) hours, including preparation, notification and recording.

(d) Permit suspension shall be accomplished in accordance with 902 KAR 7:010, Section 20; 902 KAR 15:010, Section 16; 902 KAR 15:020, Section 16; or 902 KAR 10:040, Section 18.

(e) Permit reinstatement shall be accomplished in accordance with 902 KAR 7:010, Section 21; 902 KAR 15:010, Section 17; 902 KAR 15:020, Section 17; or 902 KAR 10:040, Section 19.

(f) Revocation of permits shall be accomplished in accordance with 902 KAR 7:010, Section 22; 902 KAR 15:010, Section 18; 902 KAR 15:020, Section 18; or 902 KAR 10:040, Section 20.

(g) If the administrative procedures of 902 KAR 7:010, 902 KAR 15:010, 902 KAR 15:020, or 902 KAR 10:040 have been exhausted, a complaint or warrant may be signed to initiate court proceedings.

(h) If all other administrative procedures and legal actions have been exhausted and a particular hotel, motel, mobile home park, recreational vehicle park, or youth camp does not comply with administrative regulations, the circuit court may be petitioned to pursue injunctive proceedings to either temporarily or permanently enjoin the facility from operation.

(10) Outcome standards.

(a) Each hotel, motel and youth camp shall have a valid permit to operate. Each mobile home park or recreational vehicle park shall have valid permits to construct/alter and operate.

(b) Satisfactory sanitation compliance level for regulated facilities shall be a level of eighty-five (85) percent or higher with no critical point items debited.

(c) Satisfactory administrative compliance level for local health departments shall be a level of eighty-five (85) percent or higher based upon compliance with administrative procedures, compliance procedures, legal actions, recordkeeping, etc.

Section 5. Nonpermitted Public Facilities. (1) Nonpermitted public facilities include public rest rooms, schools, confinement facilities, and public swimming and bathing facilities.

(2) Personnel qualifications and training.

(a) Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or a registered environmental health specialist (REHS) pursuant to KRS Chapter 223 within one (1) year of employment.

(b) Staff shall attend Department for Public Health in-service training workshops and hold certified pool operator certification if required by local health department.

(3) Policies and procedures. Reports of inspection, monitoring and investigations shall be reviewed and evaluated by the environmental supervisor or, in the absence of a supervisor, the local health department director.

(4) Recordkeeping.

(a) A separate file shall be established on each facility containing documentation and include inspection sheets, notices, correspondence, and all other pertinent information.

(b) Inspection data shall be entered in the Environmental Health Management Information System, or an alternative system approved by the department.

(c) Records and reports shall be maintained pursuant to standard record and retention schedules or longer by the local health department.

(d) Local health departments shall establish a bank account for deposit of all state environmental health fee receipts.

(e) The environmental health receipts shall be transmitted to Division of Resource Management, Environmental Support Section, by the tenth of each month.

(f) The Division of Resource Management shall be notified of the bank name and address, the name of the account and the account number, as well as any subsequent changes.

(g) Fee processing for public swimming and bathing facilities shall be conducted through the EHMIS system or an alternative system approved by the department.

(5) Equipment. See EHMIS manual, Section H, Environmental Health Forms, Pamphlets and Equipment.

(6) Reference materials.

(a) An adequate number of each code in pamphlet form, appli-

cations, and inspection forms shall be kept available for use in enforcing the administrative regulations and for distribution to interested persons.

(b) For the Public Swimming and Bathing Facilities Program, a current annual listing of National Sanitation Foundation approved circulation system components and reference materials on the care, operation and maintenance of swimming pools shall be available.

(7) Program publicity. At least one (1) time each year, news releases developed by either the department or the local health department should be prepared regarding the Kentucky public swimming and bathing facilities administrative regulation; and the Kentucky school sanitation administrative regulation.

(8) Compliance.

(a) Construction plans shall be submitted to and reviewed by the local health department on all new or altered facilities in conformance with the requirements of the Department of Housing, Buildings and Construction.

(b) Upon review, the plans shall be submitted to the appropriate state agency.

(c) The average construction review time shall be one-half (0.5) hour for public buildings and rest rooms; one (1.0) hour for confinement facilities; one-half (0.5) hour for cursory review of pool plans; and one (1.0) hour for schools.

(d) Piping and final construction inspections shall be conducted by Department for Public Health personnel, accompanied by local health department inspector when available.

(e) Observations during inspections shall be documented on forms provided by the cabinet, using photographs for evidence if needed. Results of inspections shall be communicated thoroughly to the person responsible.

(f) Frequency of routine and follow-up inspections shall be as follows:

1. An inspection shall be conducted upon complaint, plus follow-ups as necessary for public rest rooms.

2. An inspection shall be conducted once each six (6) months, plus follow-ups as necessary for schools, confinement facilities, and public swimming and bathing facilities.

3. A new or modified public swimming and bathing facility shall receive one (1) piping inspection and one (1) final construction inspection, plus necessary follow-ups as necessary.

4. A swimming pool shall be inspected on a monitoring basis every thirty (30) days when in operation.

(g) Average routine inspection time, including travel, recording and administrative time, shall be as follows:

1. One (1.0) hour for public rest rooms.

2. Two and one-half (2.5) hours for schools.

3. Two (2.0) hours for public swimming and bathing facilities.

4. One (1.0) hour for public swimming and bathing monitoring.

5. Seven and one-half (7.5) hours for confinement facilities.

(h) Average inspection time, including travel, recording and administrative time, for complaints, follow-ups, surveys and other inspections shall be as follows:

1. One (1.0) hour for public rest rooms.

2. Two (2.0) hours for schools, public swimming and bathing facilities and confinement facilities.

(9) Legal action.

(a) Legal action shall proceed in accordance with applicable law, administrative regulation and policy.

(b) Orders may be issued by the appropriate administrative designee of the local health department when indicated.

(c) Conferences shall be held as provided in, and in accordance with, KRS Chapter 13B, 902 KAR 1:400, and in accordance with applicable law, administrative regulation and policy. The average time for a conference shall be five (5.0) hours, including preparation, notification and recording.

(d) If the administrative procedures have been exhausted, a complaint or warrant prepared by the appropriate prosecuting attorney may be signed to initiate court proceedings.

(e) If all other administrative procedures and legal actions have been exhausted and a particular facility does not comply with administrative regulations, the circuit court may be petitioned to pursue injunctive proceedings to either temporarily or permanently enjoin the facility from operation.

(10) Outcome standards.

(a) A local health department shall cooperate upon request with training workshops for custodians in conjunction with the Division of Buildings and Grounds, Department of Education; and with the Department for Public Health for training workshops for pool operators.

(b) At least once per school year and upon completion of inspection of all schools, the local health department should prepare and submit to the superintendent of the school district a summary report listing all violations debited.

(c) Satisfactory sanitation compliance levels shall be as follows:

1. In building and recreational areas where public rest rooms are provided and confinement facilities, such facilities should be maintained in accordance with the appropriate laws and administrative regulations.

2. Schools and public swimming and bathing facilities shall operate at a level of eighty-five (85) percent or higher with no critical point items debited.

(d) Satisfactory administrative compliance level for local health departments shall be a level of eighty-five (85) percent or higher based upon compliance with administrative procedures, compliance procedures, legal actions, recordkeeping, etc.

Section 6. General Sanitation Programs. (1) General sanitation programs shall include private water supplies, nuisance control, and private sewage.

(2) Personnel qualifications and training. Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or a registered environmental health specialist (REHS) pursuant to KRS Chapter 223 within one (1) year of employment; staff shall attend Department for Public Health in-service training workshops. Staff shall be certified as Inspectors pursuant to KRS 211.360 for Private Sewage Program.

(3) Policies and procedures. Reports of inspections and investigations shall be reviewed and evaluated by the environmental supervisor or, in the absence of a supervisor, the local health department director.

(4) Recordkeeping.

(a) A separate file shall be established on each facility containing documentation and include inspection sheets, notices, correspondence, water sample analysis and all other pertinent information.

(b) Inspection data shall be entered in the Environmental Health Management Information System, or an alternative system approved by the department. The records and reports shall be maintained pursuant to record and retention schedules, or longer, by the local health department.

(c) Local health departments shall establish a bank account for deposit of all state environmental health fee receipts.

(d) The environmental health fee receipts shall be transmitted to the Division of Resource Management, Environmental Support Section, by the tenth of each month.

(e) The Division of Resource Management shall be notified of the bank name and address, the name of the account and the account number, as well as any subsequent changes.

(f) Fee processing and/or permit issuance shall be conducted through the EHMS system or an alternative system approved by the department.

(5) Equipment. See EHMS manual, Section H, Environmental Health Forms, Pamphlets and Equipment.

(6) Reference materials. Adequate copies of current program laws, administrative regulations and appropriate forms shall be available.

(7) Program publicity. At least one (1) time each year, news releases developed by the department should be prepared regarding the nuisance control program; private sewage and private water supplies.

(8) Compliance.

(a) Observations during inspection/investigation shall be documented on forms provided by the cabinet, using photographs for evidence when needed. Results of inspections shall be communicated thoroughly to property owner.

(b) Frequency of inspection/investigation should be conducted at

least within five (5) working days after date of receipt on each nuisance and private sewage complaint and as requested/warranted for private water supplies.

(c) Average routine inspection time for complaints, follow-ups, surveys and other inspections, including travel, recording and administrative time, shall be as follows:

1. One (1.0) hour for private water supplies and private sewage.

2. One and one-half (1.5) hours for nuisance control.

(9) Legal action.

(a) A determination should be made upon completion of the nuisance control inspection/investigation as to the existence of a verifiable public health nuisance.

(b) A determination should be made upon completion of the inspection/investigation as to the disposition of the nuisance and the responsible agency under whose authority abatement is to be secured.

(c) Notices and orders may be issued, by the appropriate administrative designee of the local health department, when indicated.

(d) Conferences shall be held as provided in, and in accordance with, KRS Chapter 13B, 902 KAR 1:400, and in accordance with applicable law, administrative regulation and policy. The average time for a conference shall be five (5.0) hours, including preparation, notification, and recording.

(e) If the administrative procedures have been exhausted, a complaint or warrant prepared by the appropriate prosecuting attorney may be signed to initiate court proceedings.

(f) If all other administrative procedures and legal actions have been exhausted and particular property owner does not comply with administrative regulations, the circuit court may be petitioned to pursue injunctive proceedings to either temporarily or permanently enjoin the property owner.

(10) Outcome standards.

(a) Satisfactory sanitation compliance levels shall be as follows:

1. Each private sewage system has been inspected or evaluated on receipt of a complaint, at the owner's request for correction of a malfunctioning system, or mortgage loan agency's request.

2. Each private water supply has been inspected and water sampled at owner's request or a mortgage loan agency's request; or eighty-five (85) percent of public health nuisances are abated, eliminated, or otherwise mitigated in a manner satisfactory for the protection of public health.

(b) Satisfactory administrative compliance level for local health departments is a level of eighty-five (85) percent or higher based upon compliance with administrative procedures, compliance procedures, legal actions, recordkeeping, etc.

Section 7. Septic Tank Cleaners and On-Site Systems. (1) Programs included shall be septic tank cleaning companies, vehicles and land application sites; on-site sewage disposal systems, construction standards for components of on-site sewage disposal systems, construction, and installer certification.

(2) Personnel qualifications and training. Staff shall meet minimum requirements for the environmental services classification plan and shall hold registration as a registered sanitarian (RS) or a registered environmental health specialist (REHS) pursuant to KRS Chapter 223 within one (1) year of employment; staff shall attend Department for Public Health in-service training workshops. Staff shall be certified as inspectors for on-site sewage disposal systems under KRS 211.360.

(3) Policies and procedures. A local health agency shall establish policies for administrative enforcement action, and policy procedure including staff authority or have an approved local health agency policy.

(4) Recordkeeping.

(a) A separate file shall be established on each regulated entity and shall contain all documentation.

(b) Inspection data shall be entered in the Environmental Health Management Information System (EHMS) or an alternative system approved by the department.

(c) Records and reports shall be maintained pursuant to the local health department record and retention schedules or longer by the local health department, except the on-site sewage disposal system records which are to be maintained indefinitely.

(d) Local health departments shall establish a bank account for deposit of all state environmental health fee receipts.

(e) The environmental health fee receipts shall be transmitted to the Division of Resource Management, Environmental Support Section, by the tenth of each month.

(f) The Division of Resource Management shall be notified of the bank name and address, the name of the account and the account number, as well as any subsequent changes.

(g) Fee processing and permit issuance shall be conducted through the EHMS system or an alternative system approved by the department.

(h) Frequency of routine inspections of septic tank cleaning vehicles shall be once every twelve (12) months, plus follow-up inspections as necessary. Application sites shall be inspected once every twelve (12) months, plus follow-up inspections as necessary.

(i) Average routine inspection time, including travel, recording and administrative time, shall be as follows:

1. Septic tank cleaning vehicles and on-site sewage application sites shall be routine inspections - one (1.0) hour.
2. Proposed application site (evaluation) - ten (10.0) hours.
3. Average annual application site inspection time - two (2.0) hours.

(j) Complaints, surveys and other inspections shall be conducted to determine compliance on specific conditions, or to provide other services.

(k) Average routine inspection time, including travel, recording and administrative time, for on-site sewage shall be as follows:

1. Individual on-site sewage disposal systems site evaluations shall be two (2.0) hours.
2. Tentative subdivision evaluations shall be one (1.0) hour per proposed lot.
3. Average follow-up site evaluation time shall be one and one-half (1.5) hours.
4. Initial installation inspection time shall be one and one-half (1.5) hours or two (2.0) hours if initial installation inspection not conducted.
5. Average follow-up inspection time shall be one (1.0) hour.
6. Certified installer certification test, including grading of the test and administrative time, shall be two (2.0) hours.

(5) Legal action.

(a) Legal action shall proceed in accordance with applicable law, administrative regulations and policy.

(b) Conferences shall be held as provided in, and in accordance with, KRS Chapter 13B, 902 KAR 1:400. The average time for a conference shall be five (5.0) hours, including preparation, notification and recording.

(6) Outcome standards. Satisfactory administrative compliance level for local health departments shall be a level of eighty-five (85) percent or higher based upon compliance with administrative procedures, compliance procedures, legal actions, recordkeeping, etc, for septic tank cleaners; and in accordance with KRS Chapter 211 and 902 KAR 10:081, 902 KAR 10:085, 902 KAR 10:110 and 902 KAR 10:140.

Section 8. Incorporation By Reference. (1) The following material is incorporated by reference:

(a) Environmental Health Management Information System (EHMS) Coding and Operational Procedures (January, 1998).

(b) Guide for Reviewing and Approving Construction Plans for Retail Food Establishments (October, 1998).

(c) DFS-218, Concessionaires Food Sanitation Guidelines (May, 1994).

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety and Cosmetics Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN H. MORSE, Secretary

RICE C. LEACH, M.D., Commissioner

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 3, 1998

FILED WITH LRC: November 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held December 21, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by December 14, 1998. If no notice 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 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: Mark Hooks

(1) Type and number of entities affected: 53 local health departments.

(2) Direct and indirect costs or savings to those affected: No change.

(a) 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 change.

(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 change.

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

1. First year following implementation: No change.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: No change.

1. First year: No change.

2. Continuing costs or savings: No change.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change.

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

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: In order to establish uniformity and consistency for program operation on a statewide basis, alternative methods were not utilized. Proposed regulation sets minimum standards for local health departments in administering the environmental health programs administered by local health departments.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Assures citizens of the Commonwealth will receive standardized environmental health program administration.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes, local health departments could experience non-uniformity of program evaluation criteria.

(c) If detrimental effect would result, explain detrimental effect: Would result in a lack of standardized evaluation criteria for environmental health programs.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not utilized because the proposed regulation does not create a disproportional impact on a part, class or division of the regulated entity. Tiering would defeat the intent of establishing uniform administration and evaluation of environmental health programs.

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. Establishes operation standards for the environmental health programs within each local health department.

3. State the aspect or service of local government to which this administrative regulation relates. Surveillance, fee collection, recordkeeping, compliance, construction plan review, enforcement and publicity for the environmental health programs.

4. How does this administrative regulation affect the local government or any service it provides. Establishes minimum operational procedures.

CABINET FOR HEALTH SERVICES Department For Medicaid Services Division of Financial Management and Analysis (New Administrative Regulation)

907 KAR 1:391. Repeal of 907 KAR 1:390.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520(3), 1998 Ky. Acts ch. 615

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 repeals 907 KAR 1:390, which is no longer needed because the information contained in this material is now obsolete. Current information shall be incorporated by reference in 907 KAR 1:038.

Section 1. 907 KAR 1:390, Incorporation by reference of the Hearing Services Manual, is hereby repealed.

DENNIS BOYD, Commissioner
JOHN H. MORSE, Secretary
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 13, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on December 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by December 14, 1998, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: 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).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Providers who are currently enrolled in the Medicaid Program 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: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Repeal of the Hearing Services Manual will allow for obsolete information to be removed and a current version to be incorporated by reference in 907 KAR 1:038. This will allow for binaural hearing aids to be a covered service.

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

(c) If detrimental effect would result, explain detrimental effect: Medicaid coverage could only be extended to a monoaural hearing aid instead of binaural.

(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.

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of November 10, 1998

The November meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, November 10, 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 October 13, 1998 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Joe Pendleton; Nick Kafoglis; Representatives Jimmy Lee, and Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Edna Lowery, Ellen Benzing, Dana Mayton, Biff Baker; DeeAnn Wenk; Jonathan Lowe.

Guests: Linda Renschear, Diana Barber, KHEAA; Randy Overstreet, C. Joseph Beavin, Pam Johnson, William P. Hanes, Kentucky Retirement Systems; Angela Robinson, Jim Abbott, Finance and Administration Cabinet; Brenda Lowe, Roy A. Massey, Jack Wilson, Bruce Williams, Mark Mangeot, Robert Logan, Bob Ware, R. Bruce Scott, Natural Resources and Environmental Protection Cabinet; Leslie Cole, Scott Richards, Environmental Quality Commission; Jack Damron, Keith Hardison, Hazel M. Combs, Department of Corrections; Rita Osborne, Education Professional Standards Board; Dana Parker, Diane Fleming, Betty Timon, Julie Posey, Kentucky Commission on the Deaf and Hard of Hearing; Porter Dailey, Morehead State University; George Parsons, Vocational Rehabilitation; Charles Bell, Don Hogan, Vic Gausepohl, Workforce Development Cabinet; Walter Turner, Donna Elsen Floyd, Carla H. Montgomery, Department of Workers' Claims; D.J. Wasson, Sharron S. Burton, Shaun Orme, Department of Insurance; Ralph Von Derau, Melinda Holbert, Connie Barker, Michael Cheek, Mac Bell, Danna E. Droz, Michael Littlefield, Rashmi Adi, Helen Danser, Cliff Jennings, John H. Walker, Betty Weaver, Trish Howard, Sarah Maynard, Karen Doyle, Anne B. Satterwhite, Linda Dailey, Cheryl Younger, Donna Delahanty, Thelma Cornett, Dee Swain, Sandra Rolland, Deborah Whitehouse, Departments for Health Services and Families and Children; John-Mark Hack, Governor's Office; Ronny Pryor, Sam Crawford, Kentucky Farm Bureau; Liz Natten, Heather Roe, Democracy Resource Center; Malcolm Winsper, Barbara Winsper, KMA; Larry Maggard, AIK; Greg Brotzoe, AHA, KNA; Ted Bradshaw, IIAK; Dennis O. Liptrap, IPKy, Inc.; Robert L. Barnett, Kentucky Pharmacists Association; John Brazel, Kentucky Chamber of Commerce; Jim Carlross, Jr.; Daniel B. Howard, KARP; Mike Ovesen, Kentucky Pork Industry; Lewis H. Melson, CFA; Karen Hinkle, Kentucky Home Health Association; Douglas E. Corbin, Community Farm Alliance; Bart Baldwin, Children's Alliance; Jan L. Gould, Kentucky Retail Federation; Lenny Krages, David Newman, Kentucky M/C Association.

The Subcommittee determined that the following administrative regulation did not conform to statutory authority or legislative intent:

Natural Resources And Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:009 & E. Permits for swine feeding operations. Bob Logan, Commissioner, Bruce Scott, Branch Manager of the permitting branch, and Bob Weir, Assistant Director of the Division of Water, represented the Cabinet.

Liz Natter, Democracy Resource Center, spoke in favor of this administrative regulation.

Mr. Logan stated that the administrative regulations relating to swine feeding operations were a continuation of a set of administrative regulations that: (1) were reviewed at the March 11, 1998 meeting of the Subcommittee; (2) expired at the close of the 1998 Regular Session of the General Assembly on April 15; (3) on April 17, 1998 the Cabinet filed emergency administrative regulations, along with the Notice of Intent to promulgate new administrative regulations for permitting swine feeding operations; (4) after the Notice of Intent process: (a) the proposed administrative regulations were published in the September, 1998 Administrative Register; and

(b) a public hearing was conducted on September 20, 1998 at Lake Barley State Resort Park; (5) There are substantial differences between the previously filed administrative regulations and the new emergency administrative regulations; (6) The applicability section allowed owners and operators of existing permitted operations to expand to 1,250 swine units after April 15, 1999 without having to comply with the provisions of the new administrative regulation; (7) provisions which accommodate operational variation were removed; (8) a provision establishing intergrater liability was incorporated; (9) criteria for determining if facilities were related were limited to sharing of: (a) common waste lagoons; or (b) common land application areas; (10) land application of swine waste could be approved for land with: (a) a slope of up to eighteen percent; and (b) an established hay or pasture vegetative cover; (11) setback distances for several features were increased; (12) lagoon liner requirements and specifications were modified; (13) lagoon liner monitoring frequency was increased to quarterly; (14) land application of swine waste was prohibited on crops grown for direct human consumption; (15) as a result of the public hearing on September 21, 1998, a couple of amendments were made to the administrative regulation originally filed that related to a narrowing of the integrator liability; (16) an owner and operator would be liable for complying with all phases or facets of the permit; (17) the jointly liable party or the contractor would be liable only for the unpermitted release of swine waste or for repairs of lagoons, pursuant to Sections 6 and 8 of the current administrative regulation; (18) the monitoring requirement for nitrogen was changed by limiting monitoring to title nitrogen and deleted total keldall nitrogen requirement; (19) 401 KAR 5:002 was a definitions administrative regulation that applied to all programs associated with 401 KAR Chapter 5; (20) there were no changes after the public hearing in the definitions administrative regulation.

In response to a questions by Chairman Arnold, Mr. Logan stated that: (1) his comments were related to 401 KAR 5:009; (2) the definitions established by 401 KAR 5:002 had not been amended; (3) the comments he had made stated the basic changes to the administrative regulation that was reviewed in March, 1998; (4) the applicability, and the number of swine units that were governed by this administrative regulation were modified; (5) the number of swine units had been raised to 1,250 from 1,000 for operations after April 15, 1999 that had been in compliance with the provisions of the new administrative regulation to that period of time; (6) the term "integrator": (a) did not occur in the administrative regulation; and (b) was a term of art that was used; (7) the Cabinet incorporated a provision that made the owner of the swine or other entities associated with the operation jointly liable for the specified provisions in the administrative regulation that he read relating to unreleased swine waste, unpermitted release of swine waste; if: (a) a contractor owned the swine, feed, or any other portion of the operation; and (b) the owner and operator was basically a grower under contract, (8) the contractor, the seller, the supplier of the swine or feed, will be equally responsible for unpermitted swine waste releases, and closure of a waste lagoon, if the owner and operator walks away; and (9) this responsibility would not be for the entire permit, or all of the administrative areas of the permit.

Senator Pendleton stated that: (1) all parties had been studying these administrative regulations for some time; (2) they presented a challenge; , and (3) further study was needed, because the Environmental Protection Agency's unified strategy for animal feeding operations will evolve some time within the next 12-18, or 24, months; (3) we need to determine the effectiveness of the odor and environmental assessment program that was coming about; (4) we already have the Kentucky Agriculture Water Quality Authority, the agriculture community which was the people that helped put this together, who in his opinion, should prepare the guidelines for this; (4) he believed the Governor was committed to the wellbeing of our swine industry; (5) he did not think that they were going to see any permits coming in with fifteen cent hogs; (6) he thought the permitting process was taken care by existing procedures; (7) time was

required to be able to look in to this, because we have some wording in there when only lagoons are referenced; (8) lagoons were not the only way of handling animal wastes; and (9) if we were going to be environmentally effective, as we propose and try to say that we are, we need to look at all waste handling management, not just lagoons.

In response to a question by Representative Allen, it was stated that (1) there were two numbers of swine units in the administrative regulation; and (2) an operation could go to 1,250 swine units, if it had been: (a) in compliance for a period of time; and (b) limited to 1,000 swine units initially.

In response to questions by Representative Allen, it was stated that a swine unit: (1) was very similar to the federal definition of an animal unit; (2) it paralleled identically with the federal definition; (3) for example, 2,500 feeder pigs was equal to 1,000 swine units; (4) one animal unit was considered one 1,000 pound beef cow; (5) the term swine unit was used, rather than animal unit, the term used in the federal regulation; (6) the term swine unit depended upon the type of operation that someone had in place; (7) if a person had a farrow to finish operation, that would be 282 sows, including all of the piglets that go with it; (8) there was no permit fee for a swine feeding operation; (9) this administrative regulation applied only to confinement operations; (10) under the state program, an entity could have a confined or waste treatment system, and would be obligated to come under permit and administrative regulation requirements; (11) there was not a threshold level at which this came into effect; (12) he did not know of any permit program that was in place, or that was coming into effect, that would require an operation that had a free range setup to have a permit; (13) the only thing that would address a free range pig operation was the Agriculture Water Quality plan, in which each farm was required to have a water quality plan to address these type of operations; and (14) it was not a permitting program, but a plan that each farm must have in place.

Senator Pendleton stated that: (i) he did not think that this administrative regulation complies with the statutory authority or the legislative intent; (i) it is not substantially different from the previous administrative regulation found deficient; (i) it is not clear that it complies with the federal requirements; (i) he wanted to put that in the record.

It was stated that: (1) several permutations had been studied; (2) a lot of the terminology and factors that went into deriving the requirements came from NRCS, which developed a lot of lagoons and nutrient management plans for existing swine operations in the states; (3) a lot of the factors also came directly from the American Standards and Agriculture Engineering handbook, which the University of Kentucky and extension services used; and (4) having recognized that it was confusing, an attempt to put it in more understandable terminology would be made.

Ms. Natter stated that: (1) the Democracy Resource Center was one of several groups in the State that had been monitoring these administrative regulations through the long development and review process; (2) the organizations that were involved included the: (a) Community Farm Alliance, who wished to submit written material; (b) Kentucky Resources Council; (c) Sierra Club; (d) Coalition for Family Farms; (e) Hickman County Local Governance project; (f) a number of smaller groups in Western Kentucky; (g) Hopkins County Chapter of Kentuckians for the Commonwealth; and (h) others; (3) several folks called her from Western Kentucky yesterday and said that: (a) they could not attend the meeting; (b) apologized for that; and (c) hoped that their opinions would also be considered by the Subcommittee; (4) governments across the United States, in particular in our region, the South and Midwest, had been scrambling to put in place protections against the large scale swine feeding operations, in order to protect: (a) their rural communities; (b) the quality of life; and (c) the groundwater from those facilities; (5) North Carolina had to enact tough regulations after the fact; (6) in Illinois, several communities have enacted local moratoriums; (7) Colorado voters recently decisively voted to support regulation of these facilities; (8) in Wichita, local officials responsible for protecting groundwater said that they: (a) could not afford to repeat the mistakes of the past and give these facilities the benefit of the doubt; and (b) had to be careful and regulate from the start; (9) with regard to the regulatory package before the Subcommittee, the administrative regula-

tions had been eased in several ways; (10) some specific provisions had been changed that addressed concerns raised by the House Agriculture and Small Business Committee during the 1998 Regular Session; (11) she urged the Subcommittee not to hamstring the Cabinet's ability to address what could become a significant problem for Kentucky; (12) she respected what Senator Pendleton said about the need to study this issue further to understand it better; (13) the General Assembly was free to take up this issue during its next Regular Session, regardless of whether the Subcommittee found these administrative regulations deficient, today; and (14) she urged them not to find them deficient, in order to ensure that there would be some level of protection that continued for the State.

Chairman Arnold stated that he: (1) requested that on the make up of swine units, more elementary, easier understood terms be used; (2) had constituents who did not understand the terms; and (3) because of the complexity of the language, could not easily explain the terms to constituents.

Senator Pendleton moved that the Subcommittee find this administrative regulation deficient. Senator Pendleton stated that: (1) a finding of deficiency would give the legislature and all parties eighteen months to work on the issues; (2) after this time period, the National Pork Producers Association and other groups will have had time to consider the requirements and compare them with EPA requirements; (3) in eighteen months, the Subcommittee will have reviewed the issues and all parties could attempt to write some administrative regulations that would: (a) take care of the environmental issues that we faced; and (b) be friendly to the pork producing people; and (5) hopefully, by that time, hogs would be up, and we may have people wanting to expand and start new hog operations.

Representative Jimmie Lee seconded the motion to find this administrative regulation deficient.

Without objection, the Subcommittee approved the motion to find 401 KAR 5:009 deficient.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Finance And Administration Cabinet: Kentucky Retirement Systems: General Rules

105 KAR 1:230 & E. Reemployment after retirement. Pam Johnson, General Manager, Bill Haynes, Staff Attorney, Joe Bevins, Attorney represented the Cabinet.

Mr. Haynes stated that: (1) Kentucky Retirement System personnel had appeared before the Subcommittee to address a similar issue relating to tax qualifications last month; (2) House Bill 234, enacted during the 1998 Regular Session of the General Assembly, authorized members of the retirement system to retire and return to work in the same system within thirty days; (3) subsequent to the ending of the Session, the Kentucky Retirement System had: (a) had an opportunity to review this legislation; and (b) discovered that this created a potential problem for disqualification under our plan that would have some very significant tax consequences; and (4) the amendments promulgated by the Cabinet extended the time that must elapse between retirement and return to work to a six month period, without suffering a suspension of the retirement allowance.

Justice Cabinet: Department of Corrections: Kentucky Parole Board

501 KAR 1:030 & E. Determining parole eligibility. Determining parole eligibility. Jack Damron, Staff Attorney, Keith Hardison, Staff Attorney, and Hazel Combs, represented the Department.

Subcommittee staff stated that this was an existing administrative regulation amended pursuant to House Bill 455, enacted during the 1998 Regular Session of the General Assembly, to limit parole eligibility for: (1) sexual offenders; and (2) violent offenders.

Mr. Hardison stated that this administrative regulation: (1) was promulgated to comply with House Bill 455, enacted during the 1998 Regular Session of the General Assembly; (2) eliminated parole eligibility for a sex offender who did not complete the sex offender treatment program; and (3) increased the length of a sentence that must be served by a violent offender from 50% to 85%.

In response to a question by Chairman Arnold, Mr. Hardison stated that: (1) by statute, the Department could not parole a sex offender unless the treatment program had been completed; and (2) a violent offender could not be paroled until he had served 85% of his sentence.

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 3 was amended to comply with formatting requirements of KRS 13A.220(4); and (3) Sections 1, 2, 3, and 6 were amended to comply with drafting requirements of KRS 13A.222(4).

Class D Felons

501 KAR 2:070 & E. Work release. Subcommittee staff stated that this was a new administrative regulation that related to work release for inmates of county jails.

Mr. Hardison stated that: (1) House Bill 455, enacted during the 1998 Regular Session of the General Assembly, required the Department to promulgate administrative regulations for an alternative sentence; (2) in an alternative sentence, a person could: (a) receive probation by the Court; and (b) be required to serve a sentence of up to one year in jail with work release privileges; (3) the statute required the Department to establish minimum criteria for work release privileges, including a requirement that the person have: (a) a job; (b) transportation to and from the job; and (c) an employer who was willing to provide employment information; (4) if a person violated the requirements, the jailer could deny work release privileges until the Court had been notified; and (5) some of the types of conduct that would result in revocation of work release included: (a) returning to the jail under the influence of drugs or alcohol; (b) bringing contraband into the jail; (c) losing a job; or (d) failure to notify the jailer that there had been a change in job status.

In response to a question by Chairman Arnold, Mr. Hardison stated that this administrative regulation: (1) did not apply to week-end service of a jail sentence; and (2) was applicable to a prisoner who worked five days per week.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended, pursuant to KRS 13A.222(4), to provide the criteria for work release; (3) Section 2 was amended to provide that a jailer may deny work release for violation of a jail rule; (4) Section 3 was amended to provide that a written report be sent to the Court if work release was denied; and (5) Section 4 was deleted, in accordance with KRS 13A.120(2)(e), due to repetition of KRS 533.010(13).

Office of the Secretary

501 KAR 6:020 & E. Corrections policies and procedures. Mr. Damron stated that: (1) the Department wished to propose an additional amendment to this administrative regulation; and (2) the proposed amendment included: (a) in CPP 28-01-03, additional information would be required in a probation and parole officer's report; (b) in CPP 27-11-02, if a sentencing court requested a recommendation the Department would: 1. obtain all information needed by the court; and 2. exclude certain inmates from the pre-release program; (c) designation of policy number 13.11 as CPP 27-03-01; and (d) notification of the sentencing court and Kentucky State Police regarding a sex offender.

Agency personnel were informed that: (1) in the future, the Department would have to file the amendment in the format required by KRS Chapter 13A, rather than submitting a copy of the material as it would appear after the amendment; and (2) unless the amendment was in the format, it would be difficult to determine what the actual amendment was.

In response to a question, by Chairman Arnold, Subcommittee staff stated that all of the issues raised by Norman Lawson in his initial staff review had been addressed.

This administrative regulation was amended as follows: (1) CPP 13.2 was amended to delete a provision that emergency care would be delivered within four (4) minutes; (2) CPP 13.9 was amended to provide that a dentist visit would cost \$2.00; (3) CPP 13.11 was amended to incorporate by reference necessary forms; (4) the REFERENCES section of CPP 27-15-11 was amended to correct citations; (5) CPP 27-15-11 was amended to provide that agency staff make an occasional unannounced personal visit to an offender; and

(6) CPP 13.8, CPP 13.11, and CPP 27-15-11 were amended to comply with the drafting requirements of KRS 13A.222(4).

Education Professional Standards Board: Board

704 KAR 20:700. Standards for admission to teacher education. Rita Osborne represented the Board.

In response to a question by Representative Allen, Ms. Osborne stated that this administrative regulation: (1) expanded the options available for colleges to use in determining whether a student had the minimum academic proficiency necessary to enter into a teacher education program; and (2) did not raise the scores for the existing options.

This administrative regulation was amended as follows: Section 2(3)(e) was amended to increase the minimum composite score from 910 to 990.

Commission on the Deaf and Hard of Hearing: Interpreter Referral Services

735 KAR 2:010 & E. Definitions. Dana Parker, Interpreter Administrator, represented the Commission.

In response to questions by Chairman Arnold, Ms. Parker stated that: (1) under the Interpreter Referral Services Program: (a) the Commission would: 1. be contacted by a state agency with a request for interpreter services for a specific date and time; and 2. locate and send an available interpreter for the agency; and (b) the interpreter would bill the contracting agency directly; and (2) the interpretation services could also be used by a state agency that employed a deaf or hard of hearing individual to request interpreter services for use during: (a) an employee evaluation; or (b) training or certification programs for the employee.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) the TITLE, NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4).

735 KAR 2:020 & E. KCDHH Interpreter Referral Services Program parameters. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 1(1) were amended to correct statutory citations; (2) Section 1(11) was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

735 KAR 2:030 & E. Interpreter qualifications. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Material in Section 1(2) that was unnecessarily incorporated by reference was deleted; and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

735 KAR 2:040 & E. Interpreter protocols. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) a new Section 2 was created to incorporate by reference necessary forms; (3) Section 1(1)(c) was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

735 KAR 2:050 & E. Processing of requests for services. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Section 1 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration

781 KAR 1:070. Fees for service. George Parsons represented the Department.

Subcommittee staff stated that the existing administrative regulation had been amended by the Cabinet to establish a fee for the wellness maintenance program at the Carl D. Perkins Comprehensive Rehabilitation Center.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); and (2) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department for Employment Services: Division of Unemployment Insurance: Unemployment Insurance

787 KAR 1:200 & E. Maximum weekly benefit rate. (Compiler's Note: The amendments made to this administrative regulation at the November 10, 1998, ARRS meeting, only needed to be made to the original administrative regulation as filed with LRC. The administrative regulation as published in the October 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".)

Vic Gospohl, Assistant Director, and Don Hope, Department for Employment Services, represented the Department.

Subcommittee staff stated that: (1) the agency had amended the existing administrative regulation to determine the maximum weekly benefit rate for insured employment by completing the formula established in KRS 341.380(3); and (2) the amendment raised the weekly benefit for workers whose benefit year commenced on or after July 1, 1998, from \$256.00 to \$268.00.

In response to a question by Chairman Arnold, Mr. Gospohl stated that KRS 341.380(3) required the Department to recalculate the maximum weekly benefit rate each year, based on the most recent year's established average weekly wage for all people covered by Kentucky's unemployment insurance laws.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct a statutory citation; and (2) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

Labor Cabinet: Department of Workers' Claims: Workers' Claims

803 KAR 25:089. Workers' Compensation medical fee schedule for physicians. Walter W. Turner, Commissioner, and Donna Floyd, Staff Attorney, represented the Department.

Subcommittee staff stated that this administrative regulation had been amended by the agency to incorporate by reference the updated Medical Fee Schedule for Physicians, September 11, 1998 edition, as required by KRS 341.035.

Mr. Turner stated that: (1) KRS 324.235 required the Department to amend the fee schedule for physicians every two years to comport with the amount general health care carriers paid for the same services; (2) the Department hired a consultant, Price Waterhouse, to: (a) analyze the fees paid in Kentucky and nationally; and (b) determine what reimbursements were paid for services used in workers' compensation; (3) the fee schedule included an overall increase of 8.9 percent over the 1996 fee schedule, which was based on inflation of 4.5 percent per year over the last two years; (4) the effects of the increase had been ameliorated, since the inflation rates that had been recognized in the increased fee schedule had already taken place; (5) the Department suspected that inflation and the cost of medical services would continue to increase as these fees went into effect; and (6) this administrative regulation was intended to be effective by January 1, 1999.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); (2) Sections 1 and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 2(2)(b) was amended to cross-reference the applicable administrative regulation.

Health Insurance Contracts

806 KAR 17:160 & E. Creditable coverage for health insurance. Sharron Burton, Counsel; DJ Wasson, Principal Assistant, and Shaune Orme, Counsel, represented the Department.

Subcommittee staff stated that this was a new administrative regulation that: (1) had been filed in response to House Bill 315, enacted during the 1998 Regular Session of the General Assembly; and (2) defined: (a) "public health plan"; and (b) categories of benefits as creditable coverage.

In response to questions by Chairman Arnold, Ms. Burton stated that this administrative regulation: (1) established a credit for the amount of time an individual had prior health insurance coverage towards the pre-existing clause of new insurance coverage, if the individual: (a) had a lapse in his individual health insurance coverage less than 63 days; and (b) obtained additional or other health insurance coverage; (2) defined the categories of benefits for which an individual was authorized to use this credit; (3) reduced the pre-existing waiting period for individuals who qualified for the credit; and (4) did not involve the health insurance rates.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

806 KAR 17:220 & E. Approval criteria and requirements for reentry into the Kentucky health insurance market. Subcommittee staff stated that this was a new administrative regulation that: (1) was filed in response to House Bill 315, enacted during the 1998 Regular Session of the General Assembly; and (2) established the: (a) approval criteria; and (b) requirements for reentry into the Kentucky health insurance market.

In response to questions by Chairman Arnold, Ms. Burton stated that: (1) this administrative regulation did not involve the health insurance rates; (2) the federal government believed that House Bill 315, enacted during the 1998 Regular Session, conflicted with the federal law provisions that related to reentry; and (3) to address the conflicts, this administrative regulation: (a) was promulgated; and (b) required the Commissioner to take into account the federal standards for reentry prior to approving the reentry of a company into Kentucky.

In response to a question by Chairman Arnold, Ms. Wasson stated that: (1) while none of the companies who had left Kentucky had come back yet, the Department had talked with four companies who were interested in returning to Kentucky; and (2) nothing had been finalized in writing.

In response to questions by Senator Kafoglis, Ms. Wasson stated that: (1) the federal health insurance affordability and accountability laws required that a company that left the market was subject to a five-year ban before it could re-enter the market; (2) while Kentucky also had a five-year ban, House Bill 315, enacted during the 1998 Regular Session, established an amnesty provision that allowed carriers who left the market to come back if they came back before January 1, 1999; (3) the Health Care Financing Administration: (a) reviewed Kentucky's law; (b) determined that Kentucky's law was inconsistent with federal law; and (c) informed the Department that the federal government would run the individual health insurance market in Kentucky unless Kentucky denied amnesty for carriers who left after the federal law went into effect on July 1, 1997; and (4) while it would be a violation of federal law to grant amnesty to six companies, most insurance companies had left Kentucky before July 1, 1997.

In response to questions by Chairman Arnold, Ms. Wasson stated that federal law required each state to enact a program that contained certain requirements.

Mr. Orme stated that an amendment to the federal law was necessary to change the federal requirements.

In response to questions by Senator Kafoglis, Ms. Wasson stated that the six companies affected by this federal ban: (1) included: (a) Cigna, not HealthSource which Cigna owned; (b) United Wisconsin, which wrote the American Security Plan; (c) Connecticut National Life; (d) Pioneer Life; (e) Heritage National Life; and (f) PFL Life; and (2) represented less than ten percent of the market.

In response to a question by Chairman Arnold, Ms. Burton stated that: (1) the Department tried to address the inconsistencies by requiring the Commissioner to take the federal criteria into consideration when approving the reentry of a company; and (2) the

individual market had been affected as well as small group policies.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 were amended to correct statutory citations; and (2) Section 2(3) was amended to comply with the drafting requirements of KRS 13A.222(4).

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. Ralph von Derau, health planner, represented the Division. This administrative regulation was amended to correct statutory citations.

Department for Public Health: Health Services and Facilities

902 KAR 20:081. Operations and services; home health agencies. This administrative regulation was amended to correct statutory citations.

Division of Adult and Child Health: Controlled Substances

902 KAR 55:105. Requirements for controlled substance prescription blanks. Dana Droz, Drug Control Program, represented the Division.

This administrative regulation was amended as follows: (1) statutory citations were corrected; (2) pursuant to KRS 13A.222(4), the language establishing requirements was amended to clearly state requirements; and (3) amendments were made to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

902 KAR 55:110. Monitoring system for prescription controlled substances. This administrative regulation was amended as follows: (1) statutory citations were corrected; (2) pursuant to KRS 13A.222(4), the language establishing requirements was amended to clearly state requirements; and (3) amendments were made to comply with the: (a) formatting requirements.

902 KAR 55:115. Drug possession by hospice or home health agency. This administrative regulation was amended as follows: (1) statutory citations were corrected; (2) pursuant to KRS 13A.222(4), the language establishing requirements was amended to clearly state requirements; and (3) amendments were made to comply with the: (a) formatting requirements.

Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Technical Requirements

904 KAR 3:025. Technical requirements. Cliff Jennings represented the Cabinet.

Subcommittee staff stated that the existing administrative regulation had been amended by the agency: (1) to comply with: (a) changes in federal law; and (b) House Bill 864, enacted during the 1998 Regular Session of the General Assembly; and (2) establish the qualifications of legal aliens and drug felons for child care assistance.

This administrative regulation was amended to correct statutory citations.

904 KAR 3:042. Food Stamp Employment and Training Program. This administrative regulation was amended to correct statutory citations.

Department for Community-based Services: Day Care

905 KAR 2:141. Repeal of 905 KAR 2:140. Michael Cheek, Staff Assistant, represented the Department. This administrative regulation was amended to correct statutory citations.

905 KAR 2:160 & E. Child day care assistance program. This administrative regulation was amended to correct statutory citations.

Cabinet For Health Services: Department for Medicaid Services: Division of Financial Management and Analysis: Medicaid Services

907 KAR 1:026 & E. Dental services. Karen Doyle, Commissioner's Office; Trish Howard, Betty Weaver, and Sarah Maynard represented the Department.

In response to a question by Chairman Arnold, Ms. Maynard stated that this administrative regulation: (1) clarified: (a) language in the manual that was incorporated by reference; and (b) policies that

related to dental services; (2) increased dental fees; and (3) was promulgated to settle a potential lawsuit by the Kentucky Dental Association.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; and (2) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:034. Early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 6 was amended to clarify requirements for coverage of diagnosis and medical treatment services; (3) Section 9(2)(g) was amended to clarify the requirements for approval of a request for diagnosis or treatment service in a community-based setting; and (4) Sections 1, 2, 3, and 7 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:035. Payments for early and periodic screening, diagnosis, and treatment services and early and periodic screening, diagnosis, and treatment special services. Subcommittee staff stated that this was an amendment to an existing administrative regulation to establish the payment rates for the special services that were added to 907 KAR 1:034 for Early and Periodic Screening, Diagnosis, and Treatment Special Services.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; and (2) Sections 2 through 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:626 & E. Reimbursement of dental services. Subcommittee staff stated that this administrative regulation: (1) was a companion to 907 KAR 1:026; (2) increased the Medicaid reimbursement for numerous dental services; (3) required prior authorization for all orthodontic procedures; and (4) added dental sealants to the scope of coverage.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; and (2) Sections 1 through 4 and 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department for Mental Health and Mental Retardation Services: Substance Abuse

908 KAR 1:340. Narcotic Treatment Programs. Mike Littlefield, Regulations Coordinator; Helen Danser, Division of Mental Health; and Mike Well, Division of Substance Abuse Services, represented the Department. This administrative regulation was amended to correct statutory citations.

Division of Mental Retardation: Mental Health

908 KAR 2:210 & E. Domestic violence offender treatment certification standards. Mike Littlefield, Regulations Coordinator; Carol Jordan, Executive Director of the Governor's Office of Child Abuse and Domestic Violence Services; and Rosh Miati, Program Administrator, represented the Division.

Mr. Littlefield stated that this administrative regulation established: (1) standards for mental health professionals that would offer treatment services to court-referred perpetrators of domestic violence; (2) standards and procedures for applying for certification; and (3) program content requirements for programs.

This administrative regulation was amended to correct statutory citations.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Kentucky Higher Education Assistance Authority: Division of Student Services: KHEAA Grant Programs

11 KAR 5:130. Student application. Diana Barber and Linda Renschler represented the Authority.

Subcommittee staff stated that the existing administrative regulation was amended to incorporate by reference the new federal

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financial aid form required for student applicants for financial aid.

In response to a question by Chairman Arnold, Ms. Barber stated that: (1) to be eligible for a KHEAA-administered grant program, a student was required to complete a Federal Application for Federal Student Aid (FAFSA) form each year; and (2) this administrative regulation required the completion of the 1999-2000 FAFSA form.

Finance And Administration Cabinet: Office of the Secretary: Property

200 KAR 6:060 & E. Lease of new construction. Jim Abbott, Director of the Division of Rental Property, represented the Cabinet.

Mr. Abbott stated that: (1) the information that was submitted related to the amendment to KRS 56.803; (2) the purpose of this administrative regulation was to create a level playing field; (3) applicable statute had been amended to allow people to offer existing buildings and new construction for lease space; (4) in offering new construction, this administrative regulation required the same information to be submitted by an interested lessor as was required currently of people who had existing buildings to offer.

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. Bob Logan, Commissioner, Bruce Scott, Branch Manager of the permitting branch, and Bob Weir, Assistant Director of the Division of Water, represented the Cabinet.

Liz Natter, Democracy Resource Center, spoke in favor of the administrative regulation.

Morehead State University: Board of Regents

755 KAR 1:070. Affiliated corporations. Porter Daly represented the Board.

In response to a question by Chairman Arnold, Mr. Daly stated that: (1) KRS Chapter 164A allowed the Board of Regents of a state university to elect certain financial management functions; and (2) in June, the Morehead State University Board of Regents decided to promulgate an administrative regulation relating to the organization and operation of affiliated corporations pursuant to KRS 164A.610.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the November, 1998 meeting of the Subcommittee:

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.

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.

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: Office of the Secretary: Purchasing

200 KAR 5:021 & E. Manual of policies and procedures. Angela Robinson, Staff Attorney, Don Speer, Commissioner, represented the Cabinet.

Subcommittee staff stated that (1) questions had been raised concerning the restriction of and conditions placed on contracts for upkeep and radio service work relating to the statewide vehicle enforcement radio system; (2) the following conditions attached to a contract: (a) the vendor response time during off-peak hours was limited to maximum of two hours; (b) repair had to be completed in two days; and (c) a vendor had to be located within a sixty mile radius of Frankfort; (3) the following questions had been raised: (a) the basis for the sixty mile radius; (b) what percent of mobile units were located in Central Kentucky; and (c) if a vendor had to be within a sixty mile radius of Frankfort, what effect did this have on service in other areas of the State?

Mr. Speer stated that: (1) a number of the issues raised were procurement issues; (2) a number of the issues were issues that could be addressed by the Transportation Cabinet, which was the agency requesting the service; (3) Finance had forwarded the questions to the Transportation Cabinet, and was trying to obtain answers; (4) having just learned of the questions a few days ago, he did not have a specific answer to the questions; and (5) he would get a written answer within the next few days.

In response to a question by Chairman Arnold, Mr. Speer stated that the Cabinet would be willing to defer this administrative regulation until a response had been received from the Transportation Cabinet.

Board of Licensure for Nursing Home Administrators

- 201 KAR 6:020. Other requirements for licensure.
- 201 KAR 6:030. Temporary permits.
- 201 KAR 6:040. Renewal of license.
- 201 KAR 6:050. Licensure by endorsement.
- 201 KAR 6:060. Fees.
- 201 KAR 6:070. Continuing education requirements.
- 201 KAR 6:080. Code of ethics.
- 201 KAR 6:090. Complaint management process.

Board of Medical Licensure

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

Board of 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

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

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Water Patrol

301 KAR 6:005E. Boat registration fees.

Justice Cabinet: 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

702 KAR 7:125E. Pupil attendance.

Education Professional Standards Board: Board

704 KAR 20:720E. Professional certificate for exceptional work experience, limited to secondary education.

Board of Education: Department of Education: Office of Special Instructional Services: Instructional Programs

705 KAR 4:240E. School to careers.

Commission on the Deaf and Hard of Hearing: Interpreter Referral Services

735 KAR 2:060 & E. Grievance procedures.

School Facilities Construction Commission: Education Technology Funding Program

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

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.

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 17:170E. Genetic testing.

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.

Cabinet for Families and Children: 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.

Division of Adult and Child Health: 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.

Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Public Assistance

904 KAR 2:001. Definitions.

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.

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.

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.

Department for Community-based Services: Child Welfare

905 KAR 1:320. Fair 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.

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

907 KAR 1:755E. Preadmission Screening and Resident Review Program.

Payment and Services

907 KAR 3:065E. Nonemergency medical transportation waiver services and payments.

Department for Mental Health and Mental Retardation Services: Substance Abuse

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

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs.

OTHER BUSINESS:

Chairman Arnold stated that Representative Bruce was not at the meeting because he was attending a legislative conference.

House Bill 564, Exemption from Continuing Education Requirements Promulgated by the Real Estate Commission.

Subcommittee staff stated that: (1) at Representative Lee's request, a memorandum had been prepared relating to issues raised by the: (a) statutes governing the Real Estate Commission; and (b) administrative regulations governing: 1. continuing education; and 2. appeals; (2) the Commission was required to promulgate adminis-

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trative regulations establishing: (a) standards for exemption from continuing education requirements; and (b) procedures for administrative hearings on appeals by a licensee, for a commission action relating to a license; (3) Real Estate Commission staff agreed to meet with Subcommittee staff to prepare necessary amendments to applicable administrative regulations; and (4) Subcommittee staff would report to the Subcommittee at its December, 1998 meeting.

The Subcommittee adjourned at 12:15 p.m. until December 8, 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 October 21, 1998

Of the ten administrative regulations, 201 KAR 8:140, 201 KAR 20:070, 201 KAR 20:091, 201 KAR 20:110, 201 KAR 20:240, 201 KAR 20:260, 201 KAR 20:370, 907 KAR 1:022 & E, 907 KAR 1:560 & E, and 907 KAR 1:563 & E, referred to the Interim Joint Committee on Health and Welfare on October 21, 1998, pursuant to KRS 13A.290(6), only 907 KAR 1:022 & E, 907 KAR 1:560 & E, and 907 KAR 1:563 & E were placed on the agenda and approved by the Interim Joint Committee on Health and Welfare during its meeting of October 21, 1998.

The remainder of the administrative regulations referred to the Interim Joint Committee on Health and Welfare on October 21, 1998, will be placed on the agenda and considered during the November 18, 1998 meeting.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 21, 1998 meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of November 5, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of November 5, 1998, having been referred to the Committee on October 21, 1998, pursuant to KRS 13A.290(6):

725 KAR 1:070
704 KAR 20:710
702 KAR 3:060
702 KAR 3:110
702 KAR 7:065

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 November 5, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND
REVENUE**
Meeting of October 22, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of October 22, 1998, having been re-

ferred to the Committee on October 21, 1998, pursuant to KRS 13A.290(6):
103 KAR 7:011
200 KAR 15:010 & E

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 22, 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 F2

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 F11

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 F19

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.

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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
Expired		10-18-98
31 KAR 4:120E	2575	4-22-98
200 KAR 15:010E	2327	4-7-98
Expired		10-18-98
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
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806 KAR 17:141E	2601	4-15-98
Expired		11-18-98
806 KAR 17:150E	2602	4-15-98
Expired		11-18-98
905 KAR 2:160E	2605	4-20-98
907 KAR 1:006E	2337	4-6-98
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907 KAR 1:011E	2339	4-6-98
Replaced		9-16-98
907 KAR 1:022E	2080	2-18-98
Expired		10-18-98
907 KAR 1:026E	2612	4-24-98
907 KAR 1:560E	2093	2-18-98
Expired		10-18-98
907 KAR 1:563E	2097	2-18-98
Expired		10-18-98
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
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907 KAR 1:755E	2100	2-18-98
907 KAR 3:030E	1639	12-19-97
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908 KAR 2:210E	2352	4-6-98

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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		
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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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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
Replaced	589	11-20-98
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
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201 KAR 9:330E	1338	11-12-98
201 KAR 9:335E	1339	11-12-98
201 KAR 9:340E	1340	11-12-98
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301 KAR 2:226E	1019	9-23-98	9 KAR 1:015		
301 KAR 6:005E	554	7-16-98	Amended	883	
501 KAR 1:030E	226	7-14-98	9 KAR 1:030		
501 KAR 1:050E	229	7-14-98	Amended	884	
Replaced	1037	11-20-98	9 KAR 1:036	1259	
501 KAR 2:070E	230	7-14-98	9 KAR 1:040		
501 KAR 6:020E	231	7-14-98	Amended	1086	
501 KAR 14:010E	233	7-14-98	9 KAR 1:050		
Replaced	1038	11-20-98	Amended	887	
502 KAR 31:020E	234	7-14-98	11 KAR 3:100		
603 KAR 7:080E	37	5-15-98	Amended	375	
702 KAR 7:125E	555	8-6-98	As Amended	798	10-1-98
704 KAR 3:480E	1021	10-14-98	11 KAR 4:050		
704 KAR 20:720E	558	7-15-98	Amended	385	
705 KAR 4:240E	559	8-6-98	As Amended	806	10-1-98
735 KAR 2:010E	236	6-30-98	11 KAR 4:070	450	
735 KAR 2:020E	238	6-30-98	As Amended	808	10-1-98
735 KAR 2:030E	239	6-30-98	11 KAR 5:001		
735 KAR 2:040E	240	6-30-98	Amended	390	
735 KAR 2:050E	241	6-30-98	As Amended	809	10-1-98
735 KAR 2:060E	243	6-30-98	11 KAR 5:130		
750 KAR 1:010E	1022	9-23-98	Amended	888	
750 KAR 2:010E	244	7-1-98	11 KAR 8:030		
787 KAR 1:200E	245	6-30-98	Amended	890	
803 KAR 2:306E	246	7-2-98	Amended	1398	
803 KAR 2:307E	249	7-2-98	11 KAR 12:010		
803 KAR 2:308E	251	7-2-98	Amended	392	
803 KAR 2:311E	253	7-2-98	As Amended	810	10-1-98
803 KAR 2:316E	255	7-2-98	11 KAR 12:040		
803 KAR 2:317E	256	7-2-98	Amended	393	
803 KAR 2:320E	258	7-13-98	As Amended	811	10-1-98
803 KAR 2:403E	264	7-2-98	11 KAR 12:060		
803 KAR 2:404E	265	7-2-98	Amended	395	
803 KAR 2:418E	269	7-2-98	As Amended	812	
803 KAR 2:425E	271	7-2-98	Reprint	991	10-1-98
803 KAR 25:715E	1349	10-28-98	11 KAR 12:070		
806 KAR 15:040E	560	7-21-98	Amended	397	
806 KAR 17:160E	272	6-19-98	As Amended	812	10-1-98
806 KAR 17:170E	564	8-6-98	11 KAR 14:010	451	
806 KAR 17:180E	275	6-19-98	As Amended	813	10-1-98
806 KAR 17:190E	277	7-2-98	11 KAR 14:020	453	
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904 KAR 2:006E	775	9-14-98	11 KAR 14:040	456	
904 KAR 2:018E	42	5-15-98	As Amended	814	10-1-98
904 KAR 2:116E	782	9-15-98	11 KAR 14:050	457	
904 KAR 2:370E	786	9-14-98	As Amended	815	10-1-98
904 KAR 2:380E	44	6-15-98	11 KAR 14:060	459	
904 KAR 2:490E	283	6-22-98	As Amended	815	10-1-98
907 KAR 1:013E	1025	9-29-98	11 KAR 14:070	460	
907 KAR 1:025E	285	6-30-98	As Amended	815	10-1-98
907 KAR 1:635E	790	9-1-98	11 KAR 14:080	462	
907 KAR 1:755E	793	9-1-98	As Amended	815	10-1-98
907 KAR 3:065E	48	5-15-98	11 KAR 15:010	464	
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			11 KAR 15:020	465	
			As Amended	817	10-1-98
			11 KAR 15:030	467	
			As Amended	817	10-1-98
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As Amended	819	10-1-98	Amended	907	
12 KAR 2:031			201 KAR 2:050		
Amended	892		Amended	908	
12 KAR 2:041			201 KAR 6:011	1268	
Amended	1087		201 KAR 6:020	678	
12 KAR 2:046			201 KAR 6:030	679	
Amended	893		201 KAR 6:040	680	
12 KAR 2:051			201 KAR 6:050	681	
Amended	894		201 KAR 6:060	681	
12 KAR 2:056			201 KAR 6:070	682	
Amended	894		201 KAR 6:080	685	
12 KAR 2:061			201 KAR 6:090	686	
Amended	895		201 KAR 8:140		
12 KAR 2:066			Amended	590	
Amended	897		As Amended	1029	
12 KAR 3:012			201 KAR 8:440	475	
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12 KAR 3:017			201 KAR 9:320	687	
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12 KAR 3:022			Amended	1432	
Amended	898		201 KAR 10:080		
12 KAR 3:027			Amended	1433	
Amended	899		201 KAR 14:180	1482	
12 KAR 3:037			201 KAR 15:030		
Amended	900		Amended	592	
12 KAR 3:042			As Amended	1030	11-13-98
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13 KAR 2:020			Amended	592	
Amended	1428		As Amended	1030	
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30 KAR 4:010	1259		As Amended	1031	
31 KAR 4:120	1260		201 KAR 20:110		
31 KAR 4:130	1261		Amended	594	
32 KAR 2:050			As Amended	1031	
Amended	1092		201 KAR 20:240		
40 KAR 2:070			Amended	596	
Amended	1093		As Amended	1032	
40 KAR 2:075	1263		201 KAR 20:260		
40 KAR 2:076	1265		Amended	597	
40 KAR 6:010	1265		As Amended	1033	
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Amended	398	10-12-98	Amended	598	
103 KAR 7:010			As Amended	1034	
Repealed	677	10-22-98	201 KAR 26:121		
103 KAR 7:011	677	10-22-98	Amended	403	
103 KAR 7:020			As Amended	820	9-16-98
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105 KAR 1:170			Amended	406	
Amended	589	11-20-98	As Amended	823	9-16-98
105 KAR 1:230			201 KAR 26:180		
Amended	901		Amended	407	
As Amended	1351		As Amended	823	9-16-98
200 KAR 5:021			201 KAR 26:215		
Amended	903		Amended	408	9-16-98
200 KAR 6:060	946		201 KAR 34:030	476	
200 KAR 7:010			As Amended	824	10-12-98
Repealed	139	9-8-98	201 KAR 34:040	476	
200 KAR 7:011	139	9-8-98	As Amended	826	10-12-98
200 KAR 15:010			201 KAR 35:030	947	
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Amended	904		As Amended	828	9-16-98

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As Amended	831	9-16-98	Amended	1110	
201 KAR 36:050	485		415 KAR 1:100		
As Amended	832	9-16-98	Amended	1112	
202 KAR 3:010			415 KAR 1:110		
As Amended	299		Amended	1114	
202 KAR 3:030			415 KAR 1:114		
Amended	584		Amended	1119	
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301 KAR 1:090			Amended	1122	
Amended	409		415 KAR 1:130		
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301 KAR 1:201			As Amended	1352	
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301 KAR 2:020			Amended	610	
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301 KAR 2:179	486		501 KAR 2:070	713	
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301 KAR 2:225			Amended	611	
Amended	1095		As Amended	1355	
301 KAR 2:251			Amended	1461	
Amended	1435		501 KAR 6:040		
301 KAR 5:020			Amended	125	10-12-98
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As Amended	1035		Amended	126	10-12-98
301 KAR 5:030			501 KAR 6:999		
Amended	602		Amended	1463	
As Amended	1036		501 KAR 8:010		
301 KAR 6:005	1272		Repealed	490	10-12-98
302 KAR 20:040			501 KAR 8:011	490	10-12-98
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Amended	1061		503 KAR 1:080		
401 KAR 50:010			Amended	614	
Amended	1437		503 KAR 3:005	1278	
401 KAR 51:001			503 KAR 3:010		
Amended	1442		Amended	1130	
401 KAR 59:001			505 KAR 1:010	1485	
Amended	1446		505 KAR 1:040		
401 KAR 61:001			Amended	909	
Amended	1450		505 KAR 1:050	1486	
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401 KAR 65:001			As Amended	836	10-6-98
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415 KAR 1:050			As Amended	837	10-6-98
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415 KAR 1:060			Amended	350	
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			Amended	871	

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Amended	422		772 KAR 1:020	141	9-3-98
Amended	873		772 KAR 1:030	142	9-3-98
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601 KAR 2:020			772 KAR 1:050	144	9-3-98
Amended	352		772 KAR 1:060	145	9-3-98
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Amended	425		Amended	131	
Amended	875		As Amended	844	10-1-98
As Amended	1042	11-20-98	781 KAR 1:050		
603 KAR 7:080	1492		Amended	431	
701 KAR 5:021	1279		As Amended	845	10-1-98
701 KAR 5:120	1279		781 KAR 1:060		
702 KAR 3:060			Repealed	566	9-3-98
Amended	617		781 KAR 1:061		
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702 KAR 3:110			781 KAR 1:070		
Amended	618	11-5-98	Amended	913	
702 KAR 4:151	1281		As Amended	1362	
702 KAR 7:065			782 KAR 1:030		
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As Amended	1046	11-5-98	As Amended	847	10-1-98
702 KAR 7:125			782 KAR 1:040		
Amended	1137		Amended	136	
703 KAR 5:010	1281		Withdrawn		8-31-98
704 KAR 3:035			787 KAR 1:200		
Amended	1141		Amended	914	
704 KAR 7:070			789 KAR 1:010	147	
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704 KAR 10:051	1282		802 KAR 1:010		
704 KAR 20:305			Amended	434	
Amended	429		Amended	880	
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704 KAR 20:460			Amended	1151	
Amended	1144		803 KAR 2:307		
704 KAR 20:690			Amended	1153	
Amended	129	9-3-98	803 KAR 2:308		
704 KAR 20:700			Amended	1155	
Amended	910		803 KAR 2:311		
As Amended	1357		Amended	1158	
704 KAR 20:710			803 KAR 2:316		
Amended	619		Amended	1159	
As Amended	1046	11-5-98	803 KAR 2:317		
704 KAR 20:720	1283		Amended	1161	
705 KAR 7:240	1284		803 KAR 2:320		
725 KAR 1:070	714	11-5-98	Amended	1162	
735 KAR 1:010			803 KAR 2:403		
Amended	1146		Amended	1168	
735 KAR 1:020			803 KAR 2:404		
Amended	1149		Amended	1170	
735 KAR 2:010	951		803 KAR 2:418		
As Amended	1357		Amended	1173	
735 KAR 2:020	953		803 KAR 2:425		
As Amended	1358		Amended	1175	
735 KAR 2:030	954		803 KAR 25:021		
As Amended	1359		Amended	1464	
735 KAR 2:040	955		803 KAR 25:026		
As Amended	1360		Amended	1176	
735 KAR 2:050	956		803 KAR 25:089		
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803 KAR 25:240	1285		815 KAR 45:080		
803 KAR 50:010			Amended	1205	
Amended	1467		815 KAR 45:090		
804 KAR 4:190			Amended	1209	
Repealed	716	11-13-98	815 KAR 45:100		
804 KAR 4:195	716	11-13-98	Amended	1213	
804 KAR 4:350	717		900 KAR 1:030		
As Amended	1048	11-13-98	Recodified as 920-1:030		10-30-98
806 KAR 3:130			900 KAR 1:070		
Repealed	852	10-12-98	Recodified as 920-1:070		10-30-98
806 KAR 3:131	491		900 KAR 2:020		
As Amended	852	10-12-98	Amended	1216	
806 KAR 9:240			900 KAR 2:031	965	
Repealed	1048	11-20-98	As Amended	1364	
806 KAR 9:241	492		900 KAR 6:030		
As Amended	1048	11-20-98	Amended	1217	
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VICTIM NOTIFICATION

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