

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 25, NUMBER 7
FRIDAY, JANUARY 1, 1999

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MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on January 12, 1999, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 1535-1538 of this Administrative Register.

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

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 25, Kentucky Register, page 318 (short form: 25 Ky.R. 318).

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

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

ADMINISTRATIVE REGISTER OF KENTUCKY

(ISSN 0096-1493)

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The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA – January 12, 1999 at 10:00 a.m. in Room 149, Capitol Annex**

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

LEGISLATIVE ETHICS COMMISSION

Commission

- 2 KAR 2:010. Required forms.
- 2 KAR 2:020. Statement of financial disclosure.
- 2 KAR 2:040. Updated registration short forms for employers and legislative agents.

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

Commercial Feeds

- 12 KAR 2:031. Directions and precautionary statements for feed with additives. (Deferred from November)
- 12 KAR 2:041. Additives. (Deferred from December)
- 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

- 12 KAR 3:012. Uniform labeling format. (Deferred from December)
- 12 KAR 3:017. Brand and product names. (Deferred from December)
- 12 KAR 3:022. Guarantees. (Deferred from November)
- 12 KAR 3:027. Ingredients. (Deferred from November)
- 12 KAR 3:037. Additives. (Deferred from November)
- 12 KAR 3:042. Statement of caloric content. (Deferred from December)

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

- 13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky.
- 13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.

KENTUCKY STATE TREASURER

State Treasury (Deferred from December)

- 20 KAR 1:040E. Unclaimed properties; claims.
- 20 KAR 1:070E. Unclaimed property; administrative hearing, appeals process.
- 20 KAR 1:080E. Reports to be filed by holders of unclaimed property.

SECRETARY OF STATE

Kentucky Lien Information System

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

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

Selective Excise Tax; Motor Vehicle Usage

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

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

Purchasing

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

GENERAL GOVERNMENT CABINET

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)
- 201 KAR 9:330E. Determination of death by a paramedic.
- 201 KAR 9:335E. Discontinuance of resuscitation by a paramedic.
- 201 KAR 9:340E. Training of paramedics in determination of death and discontinuance of resuscitation.

Board of Examiners and Registration of Landscape Architects

- 201 KAR 10:050. Fees.
- 201 KAR 10:080. Continuing education.

Board of Barbering

- 201 KAR 14:180. License fees, examination fees, renewal fees and expiration fees.

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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KENTUCKY COMMISSION ON MILITARY AFFAIRS

Commission

202 KAR 5:010. Criteria for allocation of grant money. (Deferred from December)

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

Game

301 KAR 2:221E. Waterfowl seasons and limits.
301 KAR 2:222E. Waterfowl hunting requirements.
301 KAR 2:223E. Waterfowl reporting requirements.
301 KAR 2:226E. Youth waterfowl hunting season. (Deferred from December)
301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

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

General Administrative Procedures

401 KAR 50:010. Definitions and abbreviations of terms used in 401 KAR Chapter 50.

New Source Requirements; Nonattainment Areas

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

New Source Standards

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

Existing Source Standards

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

General Standards of Performance

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

401 KAR 63:105. Requirements for control technology determinations for major sources in accordance with Clean Air Act sections 112 (g) and 112 (j).

Mobile Source-related Emissions

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

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

Petroleum Storage Tank Environmental Assurance Fund (Public Hearing in November)

415 KAR 1:050. Definitions.
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.

**JUSTICE CABINET
Department of Corrections**

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:999. Corrections secured policies and procedures.

Department of Criminal Justice Training

Kentucky Law Enforcement Council (Deferred from October)

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

Department of Juvenile Justice

Child Welfare

505 KAR 1:010. Definitions.
505 KAR 1:040. Policies and procedures manual. (Not Amended After Hearing) (Deferred from December)
505 KAR 1:050. Local juvenile delinquency prevention councils: formation procedure.
505 KAR 1:060. Local juvenile delinquency prevention councils: operation and duties.
505 KAR 1:070. Local juvenile delinquency prevention councils: Community Juvenile Justice Partnership Grant Program.

**TRANSPORTATION CABINET
Department of Vehicle Regulation**

Division of Motor Carriers

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

Department of Highways

Mass Transportation

603 KAR 7:080 & E. Human service transportation delivery.

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

Office of Instruction

704 KAR 3:480E. Early reading incentive grants. (Deferred from December)

SCHOOL FACILITIES CONSTRUCTION COMMISSION

Procedures

750 KAR 1:010E. Commission procedures. (Deferred from December)

Education Technology Funding Program

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

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Board of Tax Appeals

Tax Appeals

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

LABOR CABINET

Department of Workers Claims

803 KAR 25:021. Individual self-insurers.

803 KAR 25:026. Group self-insurers. (Public Hearing in November)

803 KAR 25:170. Filing of claims information with the Department of Workers' Claims. (Public Hearing in November)

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

803 KAR 25:240. Workers' compensation unfair claims settlement practices. (Public Hearing in November)

Occupational Safety and Health Review Commission

803 KAR 50:010. Hearings; procedure, disposition.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance

Insurance Contract

806 KAR 14:130. Electronic applications, forms, and signatures.

Life Insurance and Annuity Contracts

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

Health Insurance Contracts

806 KAR 17:170E. Genetic testing. (Deferred from October)

806 KAR 17:190 & E. Guaranteed Acceptance Program requirements. (Public Hearing in November)

806 KAR 17:200E. Severity codes for high-cost conditions. (Deferred from October)

806 KAR 17:210 & E. Reporting requirements for the Kentucky Guaranteed Acceptance Program. (Public Hearing in November)

Department of Housing, Buildings and Construction
Division of Building Codes Enforcement

Kentucky Building Code

815 KAR 7:105. Kentucky Building Code/1997.

Plumbing

815 KAR 20:120. Water supply and distribution.

Electrical Inspectors

815 KAR 35:015. Certification of electrical inspectors.

CABINET FOR HEALTH SERVICES
Office of Inspector General

Division of Licensing and Regulation

Certificate of Need

900 KAR 6:030. Certificate of need expenditure minimums. (Deferred at December)

900 KAR 6:050. Certificate of need administrative regulations. (Public Hearing in November)

Department for Public Health

Maternal and Child Health

902 KAR 4:110. Abortion information. (Public Hearing in November)

Health Services and Facilities

902 KAR 20:134. Repeal of 902 KAR 20:135. (Deferred from December)

902 KAR 20:360. Abortion facilities. (Public Hearing in November)

Milk and Milk Products (Deferred from February)

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

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

Public Assistance

- 904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from November)
- 904 KAR 2:116E. Home Energy Assistance Program. (Deferred from November)
- 904 KAR 2:370E. Technical requirements for Kentucky Works. (Deferred from November)

Child Welfare

- 905 KAR 1:050. Approval of adoption assistance.

**CABINET FOR HEALTH SERVICES
Division of Licensing and Regulation**

Office of Inspector General

- 906 KAR 1:110. Critical access hospital services. (Public Hearing in November)

**Department for Medicaid Services
Division of Financial Management and Analysis**

Medicaid Services

- 907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from December)
- 907 KAR 1:019. Pharmacy services. (Public Hearing in November)
- 907 KAR 1:021. Amounts payable for drugs. (Public Hearing in November)
- 907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from September)
- 907 KAR 1:391. Repeal of 907 KAR 1:390.
- 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)

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)

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, DECEMBER 15, 1998

GENERAL GOVERNMENT CABINET
Office of the Kentucky State Treasurer

December 15, 1998

- (1) **20 KAR 1:090.** Accounts for unclaimed property that was held in an interest-bearing demand, savings or time deposit.
- (2) The Kentucky State Treasurer intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendments to the administrative regulation has been scheduled for Wednesday, January 27, 1999 at 10 a.m., EST, at the offices of the Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 27, 1999 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should file their written request with the State Treasurer at the following address: Stanley Salchli, Kentucky State Treasurer, Capitol Annex, Room 183, Frankfort, Kentucky 40601, Phone: (502) 564-4722, Fax: (502) 564-6545.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the State Treasurer at the Kentucky State Treasurer at the address above.
- (7) Information relating to the proposed amendments to the administrative regulation.
 - (a) The statutory authority for the amendment of an administrative regulation relating to the hearing procedures and appeal for unclaimed property is KRS 393.130, 393.110, and 393.280.
 - (b) The administrative regulation the Kentucky State Treasurer proposes to promulgate will set out the requirements for the by holders of unclaimed property that was held in an interest-bearing demand, savings or time deposit and the accounts they are to place the unclaimed property in.
 - (c) The necessity and function of the proposed amendment to the administrative regulation is as follows: This amended administrative regulation will fulfill a statutory mandate governing accounts to be maintained by holders for unclaimed property that was held in an interest-bearing demand, savings or time deposit.
 - (d) The benefit expected from this administrative regulation is a more efficient and fair procedure for holder the unclaimed property of the rightful owner.
 - (e) The regulation will be implemented by the Kentucky State Treasurer. The Kentucky State Treasurer will implement this regulation by merely adhering to the procedures contained within the regulation and notifying affected holders.

KENTUCKY RETIREMENT SYSTEMS

December 1, 1998

- (1) Regulation number and title: **105 KAR 1:205.** Eligibility for disability retirement.
- (2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.
- (3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for January 21, 1999 at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the 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 January 21, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Pamela S. Johnson, General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124.
- (b) On request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems 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 disability applications is 29 USC 623(l)(1)(a), 29 CFR 1625.10(f)(ii) and KRS 61.645(9)(f).
 - (b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will establish that eligibility for disability retirement for members of the Kentucky Employees Retirement System, County Employees Retirement System and the State Police Retirement System shall be based on the employee's retirement eligibility status and not age and will establish a procedure for allowing individuals who were denied the right to apply for disability based on age to apply retroactive to the effective retirement date.
 - (c) The necessity and function of the proposed administrative regulation is as follows: 29 USC 623, the Age Discrimination in Employment Act, prohibits limitation of long-term disability benefits from a pension plan solely on age. This administrative regulation is intended to bring disability eligibility provisions in compliance with the federal law.
 - (d) The benefits expected from the administrative regulation are: The Commonwealth of Kentucky intends that disability benefits provided to members of the Kentucky Retirement Systems will be in compliance with the federal Age Discrimination in Employment Act.

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(e) The administrative regulation will be implemented as follows: Members will be eligible to apply for disability if they are not eligible for a benefit with no reductions. Members will be informed through a newsletter. Notification in the statewide newspapers will be used to inform individuals who may have been denied disability application based on age of their rights to apply.

BOARD OF PHARMACY

December 15, 1998

- (1) **201 KAR 2:015.** Continuing education.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:015 relating to continuing education.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 27, 1999 at 11 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 27, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).
- (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which a pharmacist receives continuing education from a provider.
- (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.065 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which program approval shall be granted and to set forth the minimum requirements of courses to be completed to maintain a license to practice the profession of pharmacy.
- (d) The benefit expected from the amendment to the administrative regulation is a greater certainty that the provider will meet minimum standards.
- (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the method of approval of providers of continuing education.
- (8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than January 18, 1999.

December 15, 1998

- (1) **201 KAR 2:030.** Reciprocity; temporary license.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:030 relating to the method by which a pharmacist may obtain a license in the Commonwealth through license transfer.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 27, 1999 at 11:20 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 27, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to methods by which a pharmacist may obtain license by license transfer is found at KRS 315.210 and 315.191(1)(a).
- (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will conform its language to the current technology for the use of the Multistate Pharmacy Jurisprudence Examination.
- (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.210 authorizes the Board of Pharmacy to promulgate administrative regulations to establish the method by which a pharmacist may obtain a license to practice the profession of pharmacy in the Commonwealth through an exchange of a license from another jurisdiction.
- (d) The benefit expected from the amendment to the administrative regulation is a greater clarity with current technology with the adoption of the use of the Multistate Pharmacy Jurisprudence Examination.
- (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to require the successful passage of the Multistate Pharmacy Jurisprudence Examination instead of the current board member interview and examination.
- (8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in

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the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than January 18, 1999.

December 15, 1998

- (1) **201 KAR 2:040.** Registration of interns.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:040 relating to the registration of interns.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 27, 1999 at 11:15 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 27, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).
- (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which an intern becomes eligible for registration and the criteria by which preceptors will be accepted to educate interns.
- (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.050 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which interns receive practical pharmacy experiences and the criteria for the preceptors who educate the interns.
- (d) The benefit expected from the amendment to the administrative regulation is a greater certainty that an intern will receive appropriate practical education and that the preceptor will have the facility within which to provide the intern with a valuable educational experience.
- (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to change the initial criteria for the issuance of the intern certificate and to establish the minimum criteria for the awarding of hours of internship.
- (8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than January 18, 1999.

December 15, 1998

- (1) **201 KAR 2:050.** Licenses and permits; fees.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:050 relating to licensees and permit fees.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 27, 1999 at 11:10 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 27, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601, (502) 573-1580, FAX (502) 573-1582.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).
- (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the matter of the fees associated with the operation of the Board of Pharmacy.
- (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: 315.191(1)(a) and the various individual sections of KRS Chapter 315 authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the fees associated with the operation of the Board of Pharmacy for issuance and renewal of permits and licenses.
- (d) The benefit expected from the amendment to the administrative regulation is a greater clarity to conform to changes made by the board office and to provide for fees that were inadvertently omitted.
- (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to change the fees associated with the application for license transfer; to conform the intern license to 6 years to be equal with the educational sequence of a student at a college or school of pharmacy; to include a delinquent renewal penalty for a permit to operate as a drug wholesaler or manufacturer.
- (8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than January 18, 1999.

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TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

December 4, 1998

- (1) Regulation number and title: **301 KAR 2:042**, Deer and elk ranching.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to January 21, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, FAX (502) 564-6508.
- (b) On the request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation an administrative regulation governing deer and elk ranching is KRS 150.180(1) and 150.280.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish requirements for confining, disease testing and identifying deer, elk or other ungulates held in captivity; procedures for dealing with escaped animals; and reporting requirements for operators.
 - (c) The necessity and function of the proposed administrative regulation is to assure that deer and elk ranching operations have adequate fencing to confine their animals, provide a place where animals can be confined for disease testing, and adequately mark their animals so they can be distinguished from free ranging wildlife.
 - (d) The benefits expected from the administrative regulation are protection of native wildlife and livestock from diseases spread from ungulate ranching operations.
 - (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.

December 4, 1998

- (1) Regulation number and title: **301 KAR 2:132**, Elk depredation permits.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
 2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to January 21, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601. Phone (502) 564-3400, FAX (502) 564-6508.
- (b) On the request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing"; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the department at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation an administrative regulation governing deer and elk ranching is KRS 150.390.
 - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish procedures to be followed when elk are causing property damage.
 - (c) The necessity and function of the proposed administrative regulation: KRS 150.390, as amended by the 1998 General Assembly, protects wild elk and authorizes the department to promulgate administrative regulations establishing the conditions under which elk causing damage may be taken. Different requirements inside and outside the 14-county elk restoration zone in Southeastern Kentucky will be established.
 - (d) The benefits expected from the administrative regulation are protection of reintroduced elk and their offspring, while at the same time providing relief from damages these elk may cause.
 - (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.

December 4, 1998

- (1) Regulation number and title: **301 KAR 6:051**, Repeal of 301 KAR 6:050.
- (2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed

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above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1999, at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

(b) If a request for a public hearing is not received from the required number of people at least ten days prior to January 21, 1999, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing personal watercraft is KRS 235.280.

(b) The administrative regulation that the department intends to promulgate will repeal 301 KAR 6:050, Requirements for personal watercraft.

(c) The necessity and function of the proposed administrative regulation: 1998 Ky. Acts ch. 22, sec. 2 created requirements for personal watercraft equipment and safety that were substantially the same as those contained in 301 KAR 6:050, making this administrative regulation unnecessary.

(d) The benefits expected from the administrative regulation are regulatory reduction and complying with KRS Chapter 13A.

(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.

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

December 14, 1998

(1) **401 KAR 51:001**, Definitions and abbreviations of terms used in 401 KAR Chapter 51, is being amended. The subject matter of this administrative regulation is the establishment of definitions for terms used in 401 KAR Chapter 51. The proposed amendments include the addition of new terms that will be used in the regulations implementing the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) which was published as a final rule in the Federal Register at 63 Fed. Reg. 57355 (October 27, 1998).

(2) The Division for Air Quality intends to promulgate an amendment to the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed amended administrative regulation has been scheduled for January 28, 1999, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

1. It is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members; and
2. A minimum of five (5) persons, or one (1) person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to January 28, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their request to the following: Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The phone number is (502) 573-3382 ext. 338. The FAX number is (502) 573-3787.

(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 may file a request to be informed by the administrative body.

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

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

(a) The statutory authority for the promulgation of the amendments to this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410, and 63 Fed. Reg. 57355 (October 27, 1998).

(b) The amendments to the administrative regulation that the Division for Air Quality intends to promulgate will include the addition of new terms used in the administrative regulations promulgated to implement the requirements of the NOx SIP Call. Since these new requirements are being promulgated in 401 KAR Chapter 51, the chapter title is being changed from "New Source Requirements; Nonattainment Areas" to "Attainment and Maintenance of the National Ambient Air Quality Standards."

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides for the defining of terms to be used in 401 KAR Chapter 51, and is being amended to include new terms used in implementing the NOx SIP Call.

(d) The expected benefit from this administrative regulation is that Kentucky's State Implementation Plan (SIP) will meet the requirements of the federal NOx SIP Call.

(e) The new administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the administrative regulations in 401 KAR Chapter 51 will use these definitions when establishing requirements needed to attain and maintain the

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National Ambient Air Quality Standards, including the regional NOx requirements pursuant to the NOx SIP Call.

December 14, 1998

(1) **401 KAR 51:100**, General provisions for regional NOx requirements. The subject matter of this administrative regulation is the establishment of general provisions that will apply to sources subject to the requirements of the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) which was published as a final rule in the Federal Register at 63 Fed. Reg. 57355 (October 27, 1998).

(2) The Division for Air Quality intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for January 28, 1999, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

1. It is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members; and

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to January 28, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their request to the following: Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The phone number is (502) 573-3382 ext. 338. The FAX number is (502) 573-3787.

(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 may file a request to be informed by the administrative body.

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the new administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410, and 63 Fed. Reg. 57355 (October 27, 1998).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. 401 KAR 51:100 is a new administrative regulation that establishes the general provisions for sources subject to the requirements of the NOx SIP Call. Since these new requirements are being promulgated in 401 KAR Chapter 51, the chapter title is being changed from "New Source Requirements; Nonattainment Areas" to "Attainment and Maintenance of the National Ambient Air Quality Standards."

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes the general provisions for sources subject to the requirements of the NOx SIP Call.

(d) The expected benefit from this administrative regulation is that Kentucky's State Implementation Plan (SIP) will meet the requirements of the federal NOx SIP Call.

(e) The new administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of sources subject to the requirements of the NOx SIP Call shall comply with the provisions of 401 KAR 51:100 as part of the existing regulatory program.

December 14, 1998

(1) **401 KAR 51:110**, Regional NOx emission limits. The subject matter of this administrative regulation is the establishment of emission limits for large utility and industrial boilers to meet the requirements of the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) which was published as a final rule in the Federal Register at 63 Fed. Reg. 57355 (October 27, 1998).

(2) The Division for Air Quality intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the new administrative regulation amendment has been scheduled for January 28, 1999, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

1. It is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members; and

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to January 28, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their request to the following: Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The phone number is (502) 573-3382 ext. 338. The FAX number is (502) 573-3787.

(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 may file a request to be informed by the administrative body.

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the new administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410, and 63 Fed. Reg. 57355 (October 27, 1998).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. 401 KAR 51:110 is a new administrative regulation that establishes new requirements necessary to meet the NOx SIP Call. Since these new requirements are being promulgated in 401 KAR Chapter 51, the chapter title is being changed from "New Source Requirements; Nonattainment Areas" to "Attainment and Maintenance of the National Ambient Air Quality Standards."

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. Addition-

ally, the NOx SIP Call requires Kentucky and 21 other states in the Eastern U.S. plus the District of Columbia to reduce their NOx emissions in order to achieve the National Ambient Air Quality Standard for Ozone. The NOx SIP Call requires Kentucky to reduce NOx emissions during the ozone season (May 1 through September 30) from 230,997 tons to 155,698 tons, a reduction of 75,299 tons or 32.6% beginning in the year 2003. To accomplish this, the United States Environmental Protection Agency (U.S. EPA) has recommended that Kentucky reduce emissions from large utility boilers from 107,800 tons per ozone season to 37,753 tons, a reduction of 71,047 tons. Additionally, the U.S. EPA has recommended that Kentucky achieve NOx reductions during the ozone season of 4251 tons (from 18,956 to 14,705 tons) from large industrial (other than utility) boilers, cement manufacturing plants, and stationary internal combustion engines. Pursuant to recommendations by the U.S. EPA, this administrative regulation proposes to establish (a) NOx emission limits for large utility and industrial boilers, (b) procedures for demonstrating compliance with the limits, (c) a method for distribution of emission allowances, and (d) penalties for exceeding the allowances. The limits would be imposed by creating caps on the total NOx emissions allowed from these sources statewide, and distributing portions of that allowance to each affected source. Despite EPA's recommendation, the federal rule provides Kentucky with considerable latitude in how the reductions are actually achieved. Therefore, the division invites comment on the following alternatives, as well as any new ideas or proposals for achieving the required emission reduction.

1. Should Kentucky seek the prescribed reductions from large utility and industrial boilers, or should it seek a portion of those emissions from other sources? If emission reductions from other sources are to be substituted for those from large utility and industrial boilers, who should the others be, and how much of the reduction should come from them? If other sources are to be used, how does the cost and technical feasibility of their reductions compare to those for large utility and industrial boilers?

2. If limits or caps are imposed for large utility and industrial boilers, should the allocations to each source be based solely on size (this was the only criterion used by the U.S. EPA to establish the overall allocation) or should the division consider local environmental impacts, costs, and technical feasibility when determining the allocation for individual sources? Should the division consider exempting units that limit NOx emissions to less than 25 tons per ozone season?

3. If the division considers factors other than size alone in making allocations, should it create separate caps for utility versus industrial boilers, or combine both under a single cap?

4. Should Kentucky set aside part of the total allocation to use for future growth? If so, how long should those allocations be kept, and how should they be distributed if the growth does not occur? In providing the credits for growth, what should the division presume regarding NOx emission rates?

5. For how many years should allocations be made, and how far in advance should they be determined? How should the division permit allowances to be affected by changes in the distribution of electric power generation during an allocation period?

6. The U.S. EPA has proposed that sources who exceed their emission allowances be required to purchase 3 times the number of allowances needed to cover their shortfall. Should Kentucky include the penalty in this administrative regulation? Should the division also levy additional fines as may be prescribed in state statutes to sources that exceed their allocated limits?

(d) The expected benefit from this administrative regulation is a substantial improvement in air quality that should help Kentucky to achieve and maintain the National Ambient Air Quality Standards. In addition, Kentucky's electric utilities and other sources having large industrial boilers will be able to work with the state rather than the U.S. EPA to meet the requirements of the NOx SIP Call.

(e) The new administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of sources having large utility and industrial boilers shall comply with the provisions of 401 KAR 51:110 as part of the existing regulatory program.

December 14, 1998

(1) **401 KAR 51:120**, Regional NOx controls. The subject matter of this administrative regulation is the establishment of emission control requirements for cement manufacturing plants and stationary internal combustion engines to meet the requirements of the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call) which was published as a final rule in the Federal Register at 63 Fed. Reg. 57355 (October 27, 1998).

(2) The Division for Air Quality intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for January 28, 1999, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

1. It is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members; and

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to January 28, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their request to the following: Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The phone number is (502) 573-3382 ext. 338. The FAX number is (502) 573-3787.

(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 may file a request to be informed by the administrative body.

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the new administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410, and 63 Fed. Reg. 57355 (October 27, 1998).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. 401 KAR 51:120 is a new administrative regulation that establishes new requirements necessary to meet the NOx SIP Call. Since these new requirements are being promulgated in 401 KAR Chapter 51, the chapter title is being changed from "New Source Requirements; Nonattainment Areas" to "Attainment and Maintenance of the National Ambient Air Quality Standards."

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. Additionally, the NOx SIP Call requires Kentucky and 21 other states in the Eastern U.S. plus the District of Columbia to reduce their NOx emissions in order to achieve the National Ambient Air Quality Standard for Ozone. The NOx SIP Call requires Kentucky to reduce NOx emissions during

the ozone season (May 1 through September 30) from 230,997 tons to 155,698 tons, a reduction of 75,299 tons or 32.6% beginning in the year 2003. To accomplish this, the United States Environmental Protection Agency (U.S. EPA) has recommended that Kentucky reduce emissions from large utility boilers from 107,800 tons per ozone season to 37,753 tons, a reduction of 71,047 tons. Additionally, the U.S. EPA has recommended that Kentucky achieve NOx reductions during the ozone season of 4251 tons (from 18,956 to 14,705 tons) from large industrial (other than utility) boilers, cement manufacturing plants, and stationary internal combustion engines. Pursuant to recommendations by the U.S. EPA, this administrative regulation proposes to establish NOx emission control requirements for cement manufacturing plants and stationary internal combustion engines, and procedures for demonstrating compliance with those requirements. The limits would be imposed by requiring each cement manufacturing plant to reduce NOx emissions by 30%, and each stationary internal combustion engine to reduce NOx emissions by 90%. Only units emitting 1 ton of NOx or more per day during the ozone season would be affected. Despite EPA's recommendation, the federal rule provides Kentucky with considerable latitude in how the reductions are actually achieved. Therefore, the division invites comment on the following alternatives, as well as any new ideas or proposals for achieving the required emission reduction.

1. Should Kentucky seek the prescribed reductions from cement manufacturing plants and stationary internal combustion engines, or should it seek a portion of the emissions from other sources? If emission reductions from other sources are to be substituted for those from cement plants and engines, who should the others be, and how much of the reduction should come from them? If other sources are to be used, how does the cost and technical feasibility of their reductions compare to those for cement manufacturing plants and stationary internal combustion engines?

2. If emission reduction requirements are imposed for cement manufacturing plants and stationary internal combustion engines, should the required percent reduction be 30% for cement plants and 90% for engines, or should the division consider local environmental impacts, costs, and technical feasibility when determining the percent reduction required for each individual source? Should the division consider exempting units that limit NOx emissions to less than 25 tons per ozone season?

(d) The expected benefit from this administrative regulation is a substantial improvement in air quality that should help Kentucky to achieve and maintain the National Ambient Air Quality Standards. In addition, owners and operators of cement manufacturing plants and stationary internal combustion engines in Kentucky will be able to work with the state rather than the U.S. EPA to meet the requirements of the NOx SIP Call.

(e) The new administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of cement manufacturing plants and stationary internal combustion engines shall comply with the provisions of 401 KAR 51:120 as part of the existing regulatory program.

December 14, 1998

(1) **401 KAR 51:130**, Banking and trading NOx allowances. The subject matter of this administrative regulation is the establishment of a program for the banking and trading of emission allowances as recommended in the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call), published as a final rule in the Federal Register at 63 Fed. Reg. 57355 (October 27, 1998).

(2) The Division for Air Quality intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for January 28, 1999, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

1. It is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members; and
2. A minimum of five (5) persons, or one (1) person representing an administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to January 28, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their request to the following: Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The phone number is (502) 573-3382 ext. 338. The FAX number is (502) 573-3787.

(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 may file a request to be informed by the administrative body.

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the new administrative regulation is KRS 224.10-100, KRS 224.20-100, KRS 224.20-110, 42 USC 7410, and 63 Fed. Reg. 57355 (October 27, 1998).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. 401 KAR 51:130 is a new administrative regulation that establishes new requirements necessary to comply with the NOx SIP Call. Since these new requirements are being promulgated in 401 KAR Chapter 51, the chapter title is being changed from "New Source Requirements; Nonattainment Areas" to "Attainment and Maintenance of the Ambient Air Quality Standards."

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. Additionally, the NOx SIP Call requires Kentucky and twenty-one (21) other states in the Eastern U.S. plus the District of Columbia to reduce their NOx emissions in order to achieve the National Ambient Air Quality Standard for Ozone. The NOx SIP Call requires Kentucky to reduce NOx emissions during the ozone season (May 1 through September 30) from 230,997 tons to 155,698 tons, a reduction of 75,299 tons or 32.6% beginning in the year 2003. To accomplish this, the United States Environmental Protection Agency (U.S. EPA) has recommended that Kentucky reduce emissions from large utility boilers from 107,800 tons per ozone season to 37,753 tons, a reduction of 71,047 tons. Additionally, the U.S. EPA has recommended that Kentucky achieve NOx reductions during the ozone season of 4251 tons (from 18,956 to 14,705 tons) from large industrial (other than utility) boilers, cement manufacturing plants, and stationary internal combustion engines. The U.S. EPA has also proposed that sources be allowed to buy, sell, bank, and trade NOx emission allowances so that the reductions can be made as economically and effectively as possible. Pursuant to recommendations by the U.S. EPA, this administrative regulation proposes to establish a NOx banking and trading program. States are given authority under the NOx SIP Call to adopt, not adopt, or modify the NOx banking and trading program proposed by the U.S. EPA. Therefore, the division invites comment on the following alternatives, as well as any new ideas or proposals for achieving the same desired effect.

1. The U.S. EPA proposes to allow states to trade across state lines within the entire jurisdictional area (22 states plus the District of Co-

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lumbia). Should the division allow interstate trading and, if so, should it limit the states with which Kentucky sources may trade? If not, should trading be restricted within the Commonwealth, or disallowed entirely?

2. If a banking and trading program is implemented, should individual sources be restricted in, or barred from, participating based on local environmental impacts? If so, what evidence of local environmental impacts should be used?

(d) The expected benefit from this administrative regulation is that Kentucky's electric utilities and other sources with large industrial boilers will be able to meet the requirements of the NOx SIP Call more efficiently and effectively.

(e) The new administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of sources having large utility and industrial boilers shall comply with the provisions of 401 KAR 51:130 as part of the existing regulatory program.

December 14, 1998

(1) **401 KAR 51:140**, NOx credits for early reduction and emergency. The subject matter of this administrative regulation is the establishment of a program for distributing 13,018 emission credits granted to Kentucky as part of the federal mandate to reduce nitrogen oxides emissions (NOx SIP Call), published as a final rule in the Federal Register at 63 Fed. Reg. 57355 (October 27, 1998).

(2) The Division for Air Quality intends to promulgate a new administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for January 28, 1999, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

1. It is requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by five (5) persons, or by an administrative body, or by an association having at least five (5) members; and

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to January 28, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing or make written comments should mail their request to the following: Millie Ellis, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601. The phone number is (502) 573-3382 ext. 338. The FAX number is (502) 573-3787.

(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 may file a request to be informed by the administrative body.

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

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of the new administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410, and 63 Fed. Reg. 57355 (October 27, 1998).

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend an existing regulation. 401 KAR 51:140 is a new administrative regulation that establishes new requirements necessary to comply with the NOx SIP Call. Since these new requirements are being promulgated in 401 KAR Chapter 51, the chapter title is being changed from "New Source Requirements; Nonattainment Areas" to "Attainment and Maintenance of the National Ambient Air Quality Standards."

(c) The necessity and function of the new administrative regulation is as follows: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. Additionally, the NOx SIP Call requires Kentucky and 21 other states in the Eastern U.S. plus the District of Columbia to reduce their NOx emissions in order to achieve the National Ambient Air Quality Standard for Ozone. The NOx SIP Call requires Kentucky to reduce NOx emissions during the ozone season (May 1 through September 30) from 230,997 tons to 155,698 tons, a reduction of 75,299 tons or 32.6% beginning in the year 2003. To accomplish this, the United States Environmental Protection Agency (U.S. EPA) has recommended that Kentucky reduce emissions from large utility boilers from 107,800 tons per ozone season to 37,753 tons, a reduction of 71,047 tons. Additionally, the U.S. EPA has recommended that Kentucky achieve NOx reductions during the ozone season of 4251 tons (from 18,956 to 14,705 tons) from large industrial (other than utility) boilers, cement manufacturing plants, and stationary internal combustion engines. The U.S. EPA has also proposed that each state and jurisdiction affected by the NOx SIP Call will receive a proportional share of 200,000 emission credits which may be used as an incentive for early reduction, or as an emergency fund for sources that are unable to meet the required reduction by the deadline. Kentucky's share is estimated to be 13,018 credits. Pursuant to recommendations by the U.S. EPA, this administrative regulation proposes to establish a program for distributing the NOx emission credits granted to Kentucky. States are given authority under the NOx SIP Call as to how these credits will be used and distributed. Therefore, the division invites comment on the following alternatives, as well as any new ideas or proposals for the distribution and use of credits:

1. Should the division use all of the credits as incentives for early reduction, or should it reserve all the credits to handle emergency situations? If all of the credits are used for only one purpose, how should the division handle the other?

2. Should the division use the credits for both early reduction and emergency as the U.S. EPA proposes? If so, what proportion of the credits should be used for each?

(d) The expected benefit from this administrative regulation is that Kentucky's electric utilities and other sources with large industrial boilers will be able to meet the requirements of the NOx SIP Call more efficiently and effectively.

(e) The new administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, owners and operators of sources having large utility and industrial boilers shall comply with the provisions of 401 KAR 51:140 as part of the existing regulatory program.

Department for Surface Mining Reclamation and Enforcement

November 24, 1998

(1) Regulation number and title: **405 KAR 10:010**, General requirements for performance bond and liability insurance. The subject matter of this administrative regulation is incorporation by reference of a standard form for performance bond for surface coal mining and reclamation operations on federal lands.

(2) The Natural Resources and Environmental Protection Cabinet intends to promulgate an amended administrative regulation governing the subject matter listed in item (1) above.

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, January 28, 1999 at 10 a.m. eastern time, in Room D-16 (Training Room) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, 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 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 ten (10) calendar days prior to January 28, 1999 the public hearing will be canceled.

(c) Written comments may be submitted to the address listed in item (5)(a) below, until 4:30 p.m. eastern time on January 28, 1999 regardless of whether a public hearing is requested or held.

(5)(a) Persons wishing to request a public hearing, or to submit written comments, should mail their written request or written comments to the following address: Jim Villines, Program Development and Coordination Branch, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Telephone (502) 564-6940 ext. 436, FAX (502) 564-5698.

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

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

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

(b) Persons who wish to file this request for notices pertaining to administrative regulations of the Department for Surface Mining Reclamation and Enforcement may obtain a request form by contacting the Department at the following address: Teri Welch, Program Development and Coordination Branch, Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321. Telephone (502) 564-6940, ext. 417

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the proposed administrative regulation is KRS 350.020, 350.028, 350.060, 350.064, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.11, 800.60, 917, 30 USC 1253, 1255.

(b) The proposed administrative regulation will amend an existing regulation. It will incorporate by reference a new form for performance bonds for surface coal mining and reclamation operations on federal lands.

(c) The necessity and function of the proposed administrative regulation are as follows. This administrative regulation is necessary to fulfill the terms of the State-Federal Cooperative Agreement between the Commonwealth of Kentucky and the United States Department of the Interior for regulation of surface coal mining and reclamation operations on federal lands. The Cooperative Agreement requires that performance bonds be made payable to the Commonwealth of Kentucky, but shall state on their face that the portion of the bonds covering federal lands shall be assigned to the United States in the event that the Cooperative Agreement is terminated, and also shall state that if the Cooperative Agreement is terminated after the bond has been forfeited, any unspent or uncommitted proceeds of the bond covering federal lands shall be assigned to, and forwarded to, the United States. A new bond form is necessary to include the provisions concerning assignment to the United States. KRS Chapter 13A requires that forms required of regulated entities be adopted by administrative regulation.

(d) The expected benefit from this administrative regulation is compliance with the terms of the State-Federal Cooperative Agreement. The Cooperative Agreement makes Kentucky, rather than the U.S. Department of the Interior, the primary regulatory authority over coal mining operations on federal lands. This simplifies the regulatory environment for coal mining operations in Kentucky, particularly for operations located partly on federal lands and partly on nonfederal lands.

(e) This administrative regulation will be implemented through the cabinet's existing organizational structures for regulation of surface coal mining and reclamation operations and for reclamation of abandoned mine lands.

JUSTICE CABINET Department of Corrections

December 11, 1998

(1) Regulation number and title: **501 KAR 6:140**, Bell County Forestry Camp.

(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 January 22, 1999, 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 January 22, 1999, 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, Tamela Biggs, Staff Attorney, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:140, as follows:

1. Monthly reports (BCFC 01-04-01) shall be amended to comply with ACA Standards requiring that quarterly and annual medical statistical summaries shall be provided to the warden.

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2. Inmate canteen (BCFC 02-01-01) shall be amended to reflect current operating procedures and increased spending limits for inmates.
 3. Prisoner's Fund (BCFC 02-08-01) shall be amended to reflect current operating procedures for inmates wishing to withdraw monies from their accounts.
 4. Employee training and development (BCFC 04-01-01) shall be amended to reflect changes in the BCFC Training Coordinator.
 5. Offender records (BCFC 06-01-01) shall be amended to reflect changes in reports available due to the implementation of the KIMS system at BCFC.
 6. Smoking control (BCFC 07-04-01) shall be amended to designate nonsmoking areas of the institution.
- (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 Bell County Forestry Camp 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.

December 11, 1998

- (1) Regulation number and title: **501 KAR 6:170**, Green River Correctional Complex.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1999, 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 January 22, 1999, 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, Tamela Biggs, Staff Attorney, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:170, as follows: Arts and crafts projects (GRCC 22-04-01) shall be established to provide a written plan for use by inmates and staff regarding inmate participation in an art or craft project, while incarcerated at Green River Correctional Complex.
 - (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 Green River Correctional Complex to comply with KRS Chapter 13A and to reflect current operating procedures.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
 - (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

Sex Offender Risk Assessment Advisory Board

December 3, 1998

- (1) Regulation number and title: **501 KAR 6:190**, Certification procedures for mental health professionals performing sex offender risk assessment.
- (2) The Justice Cabinet, Sex Offender Risk Assessment Advisory Board, intends to promulgate an administrative regulation to establish provider certification requirements.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1999, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing shall 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 January 22, 1999, the public hearing shall 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, Amy Barker, Staff Attorney, 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:

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1. "I agree to attend the public hearing."; or
2. "I shall 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 17.554 and 17.564.

(b) The administrative regulation that the Sex Offender Risk Assessment Advisory Board intends to promulgate shall establish 501 KAR 6:190, as follows: The establishment of the requisite qualifications of and a certification procedure for, sex offender risk assessment providers.

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

1. KRS 17.554 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish certification standards for mental health professionals providing court-ordered risk assessments for sex offenders.

2. This administrative regulation establishes provider certification requirements and updates operating procedures to assure the quality of court-ordered sex offender risk assessments.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to establish procedures to implement new statutory requirements.

(e) This administrative regulation will be implemented as follows: The Sex Offender Risk Assessment Advisory Board shall establish the qualifications, duties and certification procedures for Providers who shall be performing the court-ordered risk assessments.

December 3, 1998

(1) Regulation number and title: **501 KAR 6:200**, Sex offender risk assessment procedure.

(2) The Justice Cabinet, Sex Offender Risk Assessment Board, intends to promulgate an administrative regulation to establish a risk assessment procedure for court-ordered risk assessments of sex offenders.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1999, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing shall 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 January 22, 1999, the public hearing shall 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, Amy Barker, Staff Attorney, 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 shall 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 17.554 and 17.564.

(b) The administrative regulation that the Sex Offender Risk Assessment Advisory Board intends to promulgate shall establish 501 KAR 6:200, as follows: Sex offender risk assessment procedure shall be established to assure the quality of court-ordered sex offender risk assessments.

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

1. KRS 17.554 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish a risk assessment procedure for court-ordered risk assessments of sex offenders.

2. This administrative regulation shall assure the quality of court-ordered sex offender risk assessments.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to establish procedures to implement new statutory requirements.

(e) This administrative regulation shall be implemented as follows: Providers shall be instructed in the proper standards and procedures in order to perform a risk assessment.

December 3, 1998

(1) Regulation number and title: **501 KAR 6:210**, Sex offender community notification.

(2) The Justice Cabinet, Sex Offender Risk Assessment Advisory Board, intends to promulgate an administrative regulation to establish guidelines and procedures for consistent community notification concerning sex offenders.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1999, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing shall 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 January 22, 1999, the public hearing shall 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, Amy Barker, Staff Attorney, 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 shall not attend the public hearing."

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

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

(b) Persons who wish to file this request may obtain a request form from the 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 17.564.

(b) The administrative regulation that the Sex Offender Risk Assessment Advisory Board intends to promulgate shall establish 501 KAR 6:210, as follows: Sex offender community notification shall be established to set up guidelines and procedures for consistent community notification concerning sex offenders.

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

1. KRS 17.564 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations necessary to establish a procedure for community notification regarding sex offenders.

2. This administrative regulation shall establish guidelines and procedures for consistent community notification concerning sex offenders.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to establish procedures to implement new statutory requirements.

(e) This administrative regulation shall be implemented as follows: Sheriffs shall make the appropriate arrangements to permit a victim or other eligible entity to request a notification and acquire any information necessary for a notification from law enforcement agencies.

Kentucky Law Enforcement Council

November 30, 1998

(1) Regulation number and title: **503 KAR 1:140**, Kentucky Law Enforcement Council - peace officer professional standards.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1999, at 9 a.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 21, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Stephanie C. Bingham, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160, and 1998 Ky. Acts ch. 606, sec. 98-110.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will create 503 KAR 1:140, as follows:

1. Certification of exempt officers: Establish procedures for exempt officers and agencies requesting certification by the council;

2. Suitability: Establish minimum standards and procedures to determine an applicant's suitability for the position of peace officer. Areas to be included are background investigation, medical screening, drug screening, psychological screening, fingerprinting, physical agility, and polygraph examination;

3. Testing costs: establish costs of and procedure for agency's repayment of testing services provided by the council;

4. Agency testing: Establish procedure to be used to approve and accept testing done by agencies without a job task analysis;

5. Job task analysis: establish procedures for approval of job task analyses;

6. Financial hardship: establish standards and procedures necessary to determine if a waiver of costs due to undue financial hardship has been demonstrated;

7. Employment changes: establish procedures for reporting a peace officer's change of employment status due to retirement, resignation, termination, revocation, or transfer to another law enforcement agency;

8. Records: establish guidelines and procedures regarding records retention and security;

9. Agency reporting: establish minimum standards and procedures for information reported by the agency;

10. Compliance: establish standards and procedures to audit the compliance of an applicant, trainee and agency, and actions following the discovery of noncompliance;

11. Test results: establish standards and procedures regarding the length of test result validity, updating test results, and agency access to prior test results;

12. Add language as necessary to conform to the requirements of 1998 Ky. Acts ch. 606, sec. 98-110.

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

1. KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992;

2. This administrative regulation codifies procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and 1998 Ky. Acts ch. 606, sec. 98-110 as they relate to peace officer professional standards.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify statutes as enacted by the 1998 Legislative session in 1998 Ky. Acts ch. 606, sec. 98-110 to improve the quality of law enforcement services provided to the citizens of the Commonwealth.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, law enforcement agencies, applicants and officers will comply with operational procedures and standards as established in policy.

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TRANSPORTATION CABINET

December 10, 1998

- (1) **601 KAR 1:040**, Application for operating authority of motor carriers.
- (2) The Kentucky Transportation Cabinet intends to promulgate an amendment to administrative regulation 601 KAR 1:040. The amendment being considered is required by the Transportation Equity Act of 2000 (TEA 21) and relates to charter bus operators.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 26, 1999 at 8:30 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 26, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should contact Charles Harman at: phone (502) 564-7650, fax (502) 564-5238, and e-mail charman@mail.kytc.state.ky.us. A written request may be mailed to 501 High Street, 10th Floor, State Office Bldg., Frankfort, Kentucky 40622.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the operation of charter buses in Kentucky is KRS 281.600, 281.620, 281.752, 49 CFR 1023 and 49 USC 11501.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 601 KAR 1:040.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of intrastate motor carriers operating in Kentucky pursuant to authority granted by the United States Department of Transportation.
- (d) The benefits expected from the administrative regulation are more efficient and effective procedures relating to motor carrier operating authority.
- (e) The administrative regulation will be implemented in accordance with KRS Chapter 13A.
- (8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Charles Harman at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

December 14, 1998

- (1) **601 KAR 14:010**, Headgear and eye-protective devices.
- (2) The Kentucky Transportation Cabinet intends to promulgate an administrative regulation regarding headgear and eye-protective requirements.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 22, 1999 at 9:30 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to January 22, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should contact Charles Harman at: phone (502) 564-7650, fax (502) 564-5238, and e-mail charman@mail.kytc.state.ky.us. A written request may be mailed to 501 High Street, 10th Floor, State Office Bldg., Frankfort, Kentucky 40622.
- (b) On a request for public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to headgear and eye-protective requirements is KRS 189.285(5).
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 601 KAR 14:010. It will amend an existing regulation. It will establish procedures to be followed when requesting an helmet decal.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 189.285(5) requires the Transportation Cabinet to establish standards for the use of headgear and eye-protective devices while operating a motorcycle.
- (d) The benefits expected from the administrative regulation are to provide standards and procedures regulating motorcycle safety.
- (e) The administrative regulation will be implemented as follows: By the Transportation Cabinet in accordance with KRS Chapter 13A.
- (8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Charles Harman at the above-mentioned address no later than 10 days prior to the scheduled hearing date.

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KENTUCKY BOARD OF EDUCATION

December 9, 1998

(1) **703 KAR 4:021**, Repeal of: 703 KAR 4:020, Annual performance reports and standards of student, program, service, and operational performance; and, 703 KAR 4:050, Operational standards defining ratios for the major classifications of classified employees.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1999, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 29, 1999, the public hearing will be canceled.

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

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

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

2. I will not attend the public hearing.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of a regulation to repeal 703 KAR 4:020 and 703 KAR 4:050 is KRS 156.160 and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 4:021.

(c) The necessity, function, and conformity of the proposed administrative regulation is that 703 KAR 4:020 and 703 KAR 4:050 are no longer required because the 1998 Ky. Acts ch. 598, sec. 11, deleted the requirement for districts to publish an annual performance report. In addition, as of June 30, 1996, KRS 158.710(6) provides that KRS 158.650 to 158.710, relating to educationally deficient districts is null and void. 703 KAR 4:050 is no longer required since the 1992 General Assembly Budget Memorandum, directing the adoption of operational standards defining ratios for classified employees, expired June 30, 1994.

(d) The benefit expected from the administrative regulation is to comply with current statutes and to reduce the number of administrative regulations.

(e) The administrative regulation will be implemented as follows: 703 KAR 4:020 and 703 KAR 4:050 will be repealed.

December 11, 1998

(1) **703 KAR 5:020**, The formula for determining school performance classifications and school rewards.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1999 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to January 29, 1999 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of a new administrative regulation relating to the formula for determining school performance classifications and school rewards is KRS 156.070, 158.6543, and 158.6455.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:020.

(c) The necessity and function of the proposed administrative regulation is KRS 158.6455 (1998 Ky. Acts ch. 598) requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet their threshold. This administrative regulation will replace 703 KAR 4:010 and 703 KAR 3:060, which are being repealed by 703 KAR 5:111.

(d) The benefits expected from this administrative regulation are that local district and school personnel will be informed of the procedures used to calculate school accountability indices and of the use of these indices in the school accountability process.

(e) The administrative regulation will be implemented as follows. Copies of the regulation will be posted on the Department of Education's web sight, distributed to those without access to this web site, and reviewed in state and regional meetings with local district assessment coordinators.

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December 11, 1998

- (1) **703 KAR 5:040**, Statewide Assessment and Accountability Program; relating accountability index to school classification (A1-A6).
- (2) The Kentucky Board of Education intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1999, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to January 29, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of a new administrative regulation relating to Statewide Assessment and Accountability Program; Relating Accountability Index to School Classification (A1-A6), is KRS 158.6455 and 156.070.
- (b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:040.
- (c) The necessity and function of the proposed administrative regulation is KRS 158.6455 (1988 Ky. Acts ch. 598) requires the Kentucky Board of Education to create and implement a statewide assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451. This administrative regulation will replace 703 KAR 4:080, which is being repealed by 703 KAR 5:111.
- (d) The benefits expected from this administrative regulation are that local district and school personnel will be informed of the procedures used to include staff in special schools (alternative schools) in the school accountability program.
- (e) The administrative regulation will be implemented as follows: Copies of the regulation will be posted on the Department of Education's web sight, distributed to those without access to this web site, and reviewed in state and regional meetings with local school district assessment coordinators.

December 11, 1998

- (1) **703 KAR 5:050**, Appeal procedures for a school performance judgment.
- (2) The Kentucky Board of Education intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1999, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to January 29, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
 1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of a new administrative regulation relating to appeal procedures for a school performance judgment is KRS 158.6455 and 156.070.
- (b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:050.
- (c) The necessity and function of the proposed administrative regulation is KRS 156.6455 (1988 Ky. Acts ch. 598) requires the Kentucky Board of Education to promulgate an administrative regulation to establish a process whereby a school shall be allowed to appeal a performance judgment considered to be grossly unfair. This administrative regulation establishes the procedures for an appeal of a performance judgment. This administrative regulation will replace 703 KAR 4:090, which is being repealed by 703 KAR 5:111.
- (d) The benefits expected from this administrative regulation are that local district and school personnel will be informed of the appeal procedures they may use to appeal a school performance judgment issued through the school accountability process.
- (e) The administrative regulation will be implemented as follows: Copies of the regulation will be posted on the Department of Education's web sight, distributed to those without access to this web site, and reviewed in state and regional meetings with local school district assessment coordinators.

December 11, 1998

- (1) **703 KAR 5:060**, Interim accountability model.
- (2) The Kentucky Board of Education 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 January 29, 1999 at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 29, 1999 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of a new administrative regulation to an interim accountability model is KRS 156.070 and 158.6455.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:060.

(c) The necessity and function of the proposed administrative regulation is KRS 158.6455 (1998 Ky. Acts ch. 598) requires the Kentucky Board of Education to promulgate administrative regulations to establish a system for identifying and rewarding successful schools and to establish appropriate consequences for schools failing to meet their threshold.

(d) The benefits expected from this administrative regulation are that local district and school personnel will be informed of the procedures used to calculate year 2000 interim school accountability indices and of the use of these indices in the school accountability procedures.

(e) The administrative regulation will be implemented as follows: Copies of the regulation will be posted on the Department of Education's web sight, distributed to those without access to this web site, and reviewed in state and regional meetings with district assessment coordinators.

December 11, 1998

(1) **703 KAR 5:111**, Repeal of: 703 KAR 4:010, Formula for determining successful schools; 703 KAR 3:060, Procedures for determining rewards and sanctions; 703 KAR 4:080, Relating accountability index to school classification (A1-A6); 703 KAR 4:090, School building and local district appeal of performance judgments; 703 KAR 4:100, Grade placement of assessment program components.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 29, 1999, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to January 29, 1999 the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of a new administrative regulation relating to the repeal of 703 KAR 4:010, Formula for determining successful schools; 703 KAR 3:060, Procedures for determining rewards and sanctions; 703 KAR 4:090, School building and local district appeal of performance judgments; 703 KAR 4:100, Grade placement of assessment program components is KRS 156.6455, 1998 Ky. Acts ch. 598, and KRS 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 703 KAR 5:111.

(c) The necessity, function, and conformity of the proposed administrative regulation is 1998 Ky. Acts ch. 598 necessitates significant new provisions of several assessment and accountability administrative regulations, and thus these existing administrative regulations are being repealed.

(d) The benefits expected from this administrative regulation are repeal and replacement of regulations with ones which conform to 1998 Ky. Acts ch. 598.

(e) The administrative regulation will be implemented as follows: The regulation will repeal five existing regulations.

EDUCATION PROFESSIONAL STANDARDS BOARD

November 1998

(1) **704 KAR 20:082**, Probationary certificate for teachers of children, birth to primary.

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

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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1999, at 10 a.m. in the Local District Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 21, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation: The prerequisite requirements for obtaining a probationary certificate for teachers of children, birth to primary, are being expanded to include other certificate areas which include a preschool education component.

(a) The statutory authority for the promulgation of an administrative regulation relating to the probationary certificate for birth to primary teachers is KRS 157.3175 and 161.020.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:082.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualification for their respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board; furthermore, a teacher education institution is required to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of children ages birth to primary age.

(d) The benefits expected from administrative regulation are: Local school districts will be able to fill the preschool teaching positions and teachers with a related certificate or degree will be given an opportunity to be offered a preschool teaching position if a fully certified interdisciplinary early childhood education teacher is not available.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all teachers, school district personnel, and teacher preparation programs as soon as the amendment is effective. The Division of Certification will begin accepting applications from teachers who wish to apply for the probationary certificate, provided the prerequisite requirements have been met.

November 1998

(1) **704 KAR 20:470**, Principal Intern Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for January 21, 1999, at 10 a.m. in the Local District Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to January 21, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation: Section 4 will be changed to delete the current administrator standards and add the new interstate school leaders consortium standards. Also, other clarifying language will be added.

(a) The statutory authority for the promulgation of an administrative regulation relating to the advancement in rank classification is KRS 161.020 and 161.027.

(b) The administrative regulation that the Education Professional Standards Board intends to promulgate will amend is 704 KAR 20:470.

(c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires that all applicants for certification as school principal with less than 2 years of appropriate service complete a one-year intern program. This administrative regulation establishes the procedures to implement the principal intern program required under KRS 161.027.

(d) The benefits expected from administrative regulation are: The applicants will be held accountable for meeting national standards for school leaders which will ensure quality in the principal certification program.

(e) The administrative regulation will be implemented as follows: The amendment to the regulation will be communicated to all school district personnel, and principal preparation programs as soon as the amendment is effective. The training for the principal intern committee members will be revised to reflect the new standards and the principal intern handbook will be modified to reflect this change.

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

KENTUCKY PUBLIC SERVICE COMMISSION

December 9, 1998

(1) Regulation Number and Title: **807 KAR 5:070**. Filing requirements and standards for commission approval of water district commissioner training programs.

(2) The Kentucky Public Service Commission intends to promulgate a new 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 January 27, 1999, at 9 a.m., eastern standard time, in Hearing Room 1 of the Public Service Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

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

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

2. A minimum of 5 persons, or 1 person representing an 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 January 27, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to Deborah T. Eversole, Attorney, Kentucky Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky, 40602, telephone number (502) 564-3940, facsimile number (502) 564-7279.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to this subject is as follows: KRS 74.020(6) provides that a water district commissioner may receive an annual salary of not more than \$6,000 to be paid out of the water district management fund if he completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the commission. KRS 74.020(7)(b) provides that the commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions. KRS 74.020(7)(c) requires the commission to establish standards and procedures to evaluate, accredit, and approve water district management training programs. KRS 74.020(7)(d) provides that the commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement KRS 74.020.

(b) The administrative regulation that the Kentucky Public Service Commission intends to promulgate will specify filing requirements for persons wishing to apply for commission approval of water commissioner training programs, specify subject areas of training, and provide for expiration and renewal of certification. The commission will propose that an application for approval of a particular program be filed at least 30 days prior to the first date upon which the program will first be presented. The commission also will propose to require an application to contain the applicant's name and address; the name of, and the subject matter to be covered by, the program for which approval is sought; the name of the sponsor of the program; a summary of the content of the program in detail sufficient to describe how the program will enhance the management, operation, and maintenance of water treatment and distribution systems; the number of credit hours requested for the program; the name and qualifications of each instructor presenting the program; a copy of written materials to be given to water commissioners attending the program; and, if the program has been certified by an organization that provides training to water industry personnel, the name of the certifying organization and a statement that the certification remains valid. The commission will also propose to specify certain subject areas to be covered in water commissioner training programs. Among these are federal and state laws concerning safety standards for drinking water; management techniques; accounting standards and treatment of costs; financial principles; rate design; water technology and system facilities; ethics; and any other area of instruction related to the management, operation, and maintenance of a water system. The commission plans to propose that approvals for particular programs expire after 12 months, except that an applicant may request renewal of the approval by filing a copy of the initial application with a copy of the commission order approving, together with a list of relevant updates to the application.

(c) The necessity for promulgating the administrative regulation and a summary of the functions intended to be implemented by the administrative regulation are as follows: The recently enacted amendments to KRS 74.020 require the commission to regulate water commissioner training programs and to set standards and procedures pursuant to which those programs will be evaluated and accredited. The proposed administrative regulation will accomplish those goals.

(d) The benefits expected from the proposed administrative regulation are: Applicants wishing to receive commission approval of proposed water commissioner training programs will be informed as to specific information required to apply for approval and will be given standards upon which those programs will be evaluated. Water district commissioners wishing to attend training will be assured before they attend that the program has been accredited by the commission.

(e) The administrative regulation will be implemented as follows: The requirements of the regulation will be implemented and enforced as soon as they are effective.

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

December 9, 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 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, January 26, 1999, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort,

Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to January 26, 1999, 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 318.130.

(b) The department intends to amend the administrative regulation to better specify the method by which the examinations are given.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the department's conduct of examinations for master and journeyman plumber applicants, and this amendment will better specify the method by which the examinations are given.

(d) The benefits expected from administrative regulation are: To provide revision of testing methods.

(e) This administrative regulation will be implemented by the Division of Plumbing.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services

December 15, 1998

(1) **907 KAR 1:023**, Review and approval of oxygen and selected therapies in nursing facilities.

(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 January 29, 1999 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 January, 29, 1999 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.

(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 review and approval of oxygen and selected therapies for Medicaid recipients in nursing facilities are 42 USC 1396a, b, d, KRS 194A.030, 194A.050, 205.520, 44 CFR 431, 432, 433, 435, 440, 442, 447, 455, 456.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:023, Review and approval of oxygen and selected therapies in nursing facilities to provide reimbursement to facilities as an ancillary for therapy services provided to address the special needs of children, delineate the modalities performed by a physical therapist and an occupational therapist as established in KRS 319A.010 and 327.010, incorporate KRS 194A.030 which reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services in the Cabinet for Health Services, revise the language to comply with the requirements of KRS Chapter 13A, and make minor policy clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth provisions relating to review and approval of oxygen and selected therapies for Medicaid recipients in nursing facilities.

(d) The benefits expected from administrative regulation are:

1. Reimburse facilities as an ancillary for therapy services provided to children to address their special healthcare needs;
2. Delineate the modalities performed by a physical therapist and an occupational therapist;
3. Incorporate KRS 194A.030 which reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services in the Cabinet for Health Services;
4. Revise the language to comply with the requirements of KRS Chapter 13A; and
5. To clarify current policy.

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

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

**CABINET FOR FAMILIES AND CHILDREN
Office of Program Support**

December 15, 1998

- (1) **920 KAR 1:060**, Institutional review board for the protection of human subjects (IRB).
- (2) Cabinet for Families and Children, Office of Program Support 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 January 29, 1999 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 January 29, 1999, 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, Administrative 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 Cabinet Regulation Coordinator, Cookie Whitehouse, Cabinet Families and Children, Office of Program support, CHR Building, 4th Floor Center, 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 920 KAR 1:060, are KRS 194B.050, 45 CFR 46.101 to 46.409.
 - (b) The administrative regulation that the Cabinet for Families and Children, Office of Program Support intends to promulgate will reflect administrative changes necessitated by the reorganization of the former Cabinet for Human Resources into two (2) cabinets.
 - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: The Cabinet for Families and Children is required by 45 CFR 46.101 to 46.409 to have an Institutional Review Board for the Protection of Human subjects (IRB), as a prerequisite for the Cabinet for Families and Children receiving any federal funds for activities that fall under the federal definition of "research," which may include components of federal demonstration or service programs. This administrative regulation incorporates by reference, applicable federal regulations and publications which set forth the type of projects, definitions, assurances, membership, functions and operations, review procedures, criteria for approval of research, record requirements, informed consent requirements, consent documentation, ethical principles and guidelines, a listing of research activities which may be reviewed through expedited review procedures, and other matters relevant to the IRB. It covers the specific requirements for protecting human subjects in studies involving clients, staff, sponsorship, or funding by the Cabinet for Families and Children.
 - (d) The benefits expected from administrative regulation are: The Cabinet for Families and Children will be eligible to receive federal funds under demonstration, service, or research programs which include "research" activities.
 - (e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, Office of Program Support 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
105 KAR 1:205E

This administrative regulation limits eligibility for disability benefits from the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System to members who are not eligible for a retirement benefit without reduction regardless of the age of the member and establishes a procedure for individuals previously denied disability benefits on the basis of age to apply for disability benefits retroactive to their effective retirement date. 29 USC 623(i)(1)(a), the Age Discrimination in Employment Act, makes it unlawful to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of age. It does permit an employer to observe the terms of a bona fide employee benefit plan provided the plan is not inconsistent with the purposes of the age discrimination law. The current provisions contained in KRS 16.582 and 61.600 are not completely consistent with the age discrimination law. Since the Commonwealth of Kentucky intends no discrimination on the basis of age, it is necessary to remove any conflict between the disability retirement provisions of KERS, CERS and SPRS and the federal age discrimination law. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for 105 KAR 1:205 was filed with Regulations Compiler on December 1, 1998.

PAUL E. PATTON, Governor
RANDY OVERSTREET, Chair, Board of Trustees

KENTUCKY RETIREMENT SYSTEMS

105 KAR 1:205E. Eligibility for disability retirement.

RELATES TO: KRS 16.582, 61.600, 29 CFR 1625.10(f)(ii), 29 USC 623(i)(1)(A)

STATUTORY AUTHORITY: KRS 61.645(9)(f), 29 CFR 1625.10(f)(ii), 29 USC 623(i)(1)(A)

EFFECTIVE: December 1, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.582 and 61.600 provide for long-term disability benefits for members of the Kentucky Employees Retirement System, County Employees Retirement System and the State Police Retirement System. 29 USC 623(i)(1)(A) and 29 CFR 1625.10(f)(ii) prohibit a pension system from limiting long-term disability benefits solely on the basis of age. KRS 61.645(9)(f) provides that the provisions governing the Kentucky Employees Retirement System, County Employees Retirement System and the State Police Retirement System shall conform to federal law. Because the enhanced benefits provided under disability retirement are intended to bridge the gap between the date the member becomes disabled and the date the member would have been eligible for a benefit without reduction, this administrative regulation establishes that members who are eligible for retirement without a reduction, regardless of age, shall not be entitled to disability retirement. This administrative regulation also establishes a procedure for individuals previously denied the right to apply for disability retirement because of age to submit an application for disability retirement.

Section 1. (1) Members of Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System whose effective retirement dates were between October 16, 1992 and the effective date of this emergency administrative regulation, who were not allowed to apply for disability retirement under KRS 16.582 or 61.600 because they were normal retirement age or older shall be allowed to apply for disability benefits retroactive to their effective retirement dates subject to the require-

ments of KRS 16.582 or 61.600.

(2) The Kentucky Retirement Systems shall publish notice of this provision in the two (2) Kentucky newspapers with the largest statewide circulation.

(3) Members shall have sixty (60) days to file the disability retirement application at the Kentucky Retirement Office from the date the notice is first published. No applications shall be accepted after the sixty (60) day period.

(4) Members determined to be disabled under KRS 16.582 or 61.600 shall be entitled to added service credit under KRS 16.582(5)(a) or 61.605 without limitation for age and shall be subject to the annual financial and medical review pursuant to KRS 16.596 or 61.610 for a period equal to the number of years of added service.

Section 2. A member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System, who is eligible for a retirement allowance not subject to the reductions specified in KRS 16.577 or 61.595(2)(a), as of the last day of paid employment, shall not be eligible to apply for disability retirement under KRS 16.582 or 61.600.

RANDY OVERSTREET, Chair
WILLIAM P. HANES, ESQ., Deputy Commissioner
APPROVED BY AGENCY: November 23, 1998
FILED WITH LRC: December 1, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Approximately 2,600 members retired between October 16, 1992 and November 30, 1998 and the current 129,000 active employees of KERS, CERS and SPRS.

(2) Direct and indirect costs or savings to those affected: Any cost or savings from this administrative regulation cannot be immediately known. There will be some increased actuarial cost resulting from past retirees who will be eligible to apply for disability retirement under the regulation. There may be some future savings resulting from employees eligible for a benefit without reduction being ineligible for disability. These costs or savings will appear in future actuarial valuations.

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There are no additional paperwork requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: The impact on the retirement system will depend on the number of retirees who apply for disability retirement under the regulation and the number of employees who will be ineligible to apply due to their status of being eligible for a benefit without reduction. There may be no net increase or decrease in administrative expense.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no change in paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: Federal law, 29 USC 623(a)(1), prohibits discrimination on the basis of age.

(8) Assessment of expected benefits: Failure to remove conflicts with the federal age discrimination law could result in a federal declaration of unconstitutionality of any limitation on disability, thus, creating the risk of increased actuarial cost to the participating employers.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 16.582(2)(b) and 61.600(1)(b) base eligibility for disability retirement solely on the age of the member.

(a) Necessity of proposed regulation if in conflict: This regulation establishes that eligibility for disability benefits shall be based on whether the member is eligible for a retirement benefit not subject to reduction.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 61.645(9)(f) states that provisions of the retirement statutes that conflict with federal law or regulation shall not be available to the member.

(10) Any additional information or comments:

TIERING: Was tiering applied? Tiering was applied. Since the purpose of a disability retirement is to bridge the gap between the member's date of disability and the date when he would have been eligible for a benefit without reduction, this regulation establishes that only those individuals who are not eligible for a retirement benefit without reduction shall be eligible to apply for disability retirement.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government this administrative regulation will affect.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. 29 USC 623(a)(1) and 29 CFR 1625.10(f)(ii).

2. This administrative regulation requires that members who are eligible for a retirement benefit without reduction shall not be eligible

to apply for disability retirement. This regulation provides a procedure for members retired between October 16, 1992 and November 30, 1998 who were denied disability retirement on the basis of age to apply for disability retirement with the Kentucky Retirement Systems.

3. The federal statute requires that a pension plan may not discriminate on the basis of age.

4. This administrative regulation bases eligibility for disability retirement December 1, 1998 and later on the employee's ability to retire with no reduction in benefits. An employee, regardless of age, may not apply for disability if he is otherwise eligible for a benefit without reduction. This is intended to remove any conflict between KRS 16.582 and 61.600 and the federal age discrimination law.

STATEMENT OF EMERGENCY 405 KAR 10:010E

This emergency administrative regulation incorporates by reference a new form for performance bonds for surface coal mining and reclamation operations on federal lands. The new form is made necessary by the State-Federal Cooperative Agreement (63 FR 53252, published October 2, 1998, effective November 2, 1998, 30 CFR 917.30) between the Commonwealth of Kentucky and the United States Department of the Interior for regulation of surface coal mining and reclamation operations on federal lands. The Cooperative Agreement requires that the performance bonds be made payable to the Commonwealth of Kentucky, but be assigned to the United States in the event the Cooperative Agreement is terminated. The new form is necessary to include the requirements regarding assignment to the United States. An ordinary administrative regulation is not sufficient because the Cooperative Agreement took effect November 2, 1998, and permittees must begin to use the new form immediately. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 405 KAR 10:010 will be filed with the Regulations Compiler on November 24, 1998.

PAUL E. PATTON, Governor

JAMES E. BICKFORD, Secretary

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Surface Mining Reclamation and Enforcement

405 KAR 10:010E. General requirements for performance bond and liability insurance.

RELATES TO: KRS 350.020, 350.060, 350.062, 350.064, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.11, 800.60, 917, 30 USC 1253, 1255

STATUTORY AUTHORITY: KRS [Chapter 13A,] 350.020, 350.028, 350.060, 350.064, 350.151, 350.465, 30 CFR Parts 730-733, 735, 800.11, 800.60, 917, 30 USC 1253, 1255

EFFECTIVE: November 24, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028(1), (5), 350.151(1), and 350.465(2) authorize the cabinet to promulgate administrative regulations relating to surface and underground coal mining operations. This administrative regulation establishes the requirements for filing and maintaining performance bonds and liability insurance, and bonding methods. [Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations, including requiring bond sufficient to insure satisfactory reclamation. This administrative regulation sets forth the general requirements for performance bonds and liability insurance. This administrative regulation further sets out general minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations, and general requirements for various bonding methods.]

Section 1. Applicability. This chapter sets forth the minimum requirements for filing and maintaining performance bonds and insurance for surface coal mining and reclamation operations under KRS

Chapter 350.

Section 2. Requirement to File a Bond. (1) An applicant shall not disturb surface acreage or extend any underground shafts, tunnels, or operations prior to receipt of approval from the cabinet of a performance bond covering areas to be affected by surface operations and facilities.

(2) After an application for a new, amended, revised or renewed permit to conduct surface coal mining and reclamation operations has been approved under 405 KAR Chapter 8, but before the permit is issued, the applicant shall file with the cabinet, on a form prescribed and furnished by the cabinet, a performance bond payable to the cabinet. The performance bond shall be conditioned upon the faithful performance of all the requirements of KRS Chapter 350, 405 KAR Chapters 7 through 24, and the provisions of the reclamation plan and permit, and shall cover all surface coal mining and reclamation operations to be conducted within the permit area or increment thereof until all reclamation requirements of 405 KAR Chapters 7 through 24 have been met. The amount, duration, type, conditions and terms of the performance bond shall conform to 405 KAR 10:020 and 405 KAR 10:030.

(3) No permit shall be revised or amended to include additional area unless the liability of the current bond(s) is extended to cover the entire permit area or increment as revised or amended, and the liability of the supplemental bond(s) covers the entire permit area as revised or amended. Unless these conditions are met with respect to the bond(s), the additional area shall be permitted as a separate increment of the current permit area or under a new permit.

(4) A rider to the applicable performance bond, confirming coverage of the revision, shall be submitted by the applicant if a revision to a permit does not change the acreage of the permit area or increment but:

- (a) Adds a coal washer, a crush and load facility, a refuse pile, or a coal mine waste impoundment to the existing permit; or
- (b) Alters the boundary of a permit area or increment.

Section 3. Bonding Methods. The method of performance bonding for a permit area shall be selected by the applicant and approved by the cabinet prior to the issuance of a permit, and shall consist of one (1) of the following methods:

(1) Method "S" - single area bonding. A single area bond is a bond which covers the entire permit area as a single undivided area, for which the applicant shall file the entire bond amount required by the cabinet prior to issuance of the permit. Liability under the bond shall extend to every part of the permit area at all times. Except as provided in 405 KAR 10:020, Section 3(2) regarding extended bond liability, there shall be no release of all or part of the bond amount for completion of a particular phase of reclamation on any part of the permit area under 405 KAR 10:040 until that phase of reclamation has been successfully completed on the entire permit area.

(2) Method "I" - incremental bonding. Incremental bonding is a method of bonding in which the permit area is divided into individual increments, each of which is bonded separately and independently, and for which bond is filed as operations proceed through the permit area.

(a) The permit area shall be divided into distinct increments which shall be subject to approval by the cabinet. Each increment shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation operations by the cabinet become necessary. If the approved postmining land use is of such nature that successful implementation of the postmining land use capability depends upon an area being integrally reclaimed, then that area shall be contained within a single increment. These increments shall be clearly identified on maps submitted in the permit application under 405 KAR Chapter 8, and the applicant shall describe the approximate time schedule for beginning operations in each increment.

(b) Prior to issuance of a permit, the applicant shall file with the cabinet the full bond amount required by the cabinet for the first increment or increments of the permit area to be disturbed, which shall be not less than the minimum bond required for the permit area required under 405 KAR 10:020, Section 2.

(c) The permittee shall not engage in any surface coal mining and reclamation operations on any increment of the permit area unless

[and until] the full bond amount required by the cabinet has been filed with the appropriate regional office of the department for that increment, the cabinet has verified the validity of the bond, and written authorization to conduct surface coal mining and reclamation operations on that increment is issued by the administrator of the regional office. No credit shall be given for reclamation on other increments.

(d) The boundaries of each increment shall be physically marked at the site in a manner approved by the cabinet.

(e) The bond amount for an increment shall be released or forfeited independently of any other increment of the permit area, and liability under the performance bond shall extend only to the increment expressly covered by the bond. A single bond amount may be filed to cover more than one (1) increment, in which case the increments so covered shall be treated as a single increment.

(f) Except as provided in 405 KAR 10:020, Section 3(2) regarding extended bond liability, there shall be no release of bond for completion of a phase of reclamation on any part of an increment until that phase of reclamation has been successfully completed on the entire increment.

(g) When the bond for an increment is completely released under 405 KAR 10:040, the increment shall be deleted from the permit area.

Section 4. Requirement to File a Certificate of Liability Insurance. An [Each] applicant for a permit shall submit to the cabinet, as part of the permit application, a certificate issued by an insurance company authorized to do business in Kentucky. The amount, duration, form, conditions and terms of this insurance shall conform to 405 KAR 10:030.

Section 5. Incorporation [~~Documents Incorporated~~] by Reference. (1) The following material is [~~forms are hereby~~] incorporated by reference:

(a) [(1)] "Performance Bond, Form SME-42, (February, 1991)", Department for Surface Mining Reclamation and Enforcement.

(b) [(2)] "Irrevocable Standby Letter of Credit, Form SME-72, (July, 1994)", Department for Surface Mining Reclamation and Enforcement.

(c) [(3)] "Confirmation of Irrevocable Standby Letter of Credit, Form SME-72-A, (July, 1994)", Department for Surface Mining Reclamation and Enforcement. [~~April, 1991~~]

(d) [(4)] "Certificate of Liability Insurance, Form SME-29", Department for Surface Mining Reclamation and Enforcement.

(e) [(5)] "Notice of Cancellation, Nonrenewal or Change of Liability Insurance, Form SME-30", Department for Surface Mining Reclamation and Enforcement.

(f) [(6)] "Escrow Agreement, Form SME-64, (May, 1991)", Department for Surface Mining Reclamation and Enforcement.

(g) "Performance Bond for Surface Coal Mining and Reclamation on Federal Lands, Form SME-42-F, (November, 1998)", Department for Surface Mining Reclamation and Enforcement.

(2) This material [(7) These forms] may be inspected, copied, [reviewed] or obtained at the Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 24, 1998 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

(1) Type and number of entities affected: Existing and future coal mining operations located on federal lands. At present, there are 49 permitted operations on federal lands in Kentucky.

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

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. No effect anticipated.

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

received. No effect anticipated.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: No comments received. Permittees must replace existing bonds with bonds that use the new bond form. Future permittees must use the new bond form.

2. Second and subsequent years: No comments received. Future permittees must use the new bond form.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Insignificant cost of developing and printing new bond forms.

2. Continuing costs or savings: No continuing costs or savings.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue needed. See additional explanation in item no. 11.

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

(a) Geographical area in which administrative regulation will be implemented: No comments received. Administrative regulation will be implemented on coal mining operations on federal lands in western and eastern Kentucky coal fields. No impacts anticipated.

(b) Kentucky: No impacts anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. KRS Chapter 13A requires that forms required of regulated entities be adopted by administrative regulation.

(8) Assessment of expected benefits of the administrative regulation: The expected benefit of this administrative regulation is compliance with the terms of the recent State-Federal Cooperative Agreement between the Commonwealth of Kentucky and the United States Department of the Interior for regulation of coal mining operations on federal lands. If this administrative regulation is not adopted it will be necessary to amend or terminate the Cooperative Agreement. If the Cooperative Agreement is terminated, Kentucky will lose the authority to regulate coal mining operations on federal lands.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: No effects anticipated.

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No conflict, overlap, or duplication.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(11) Any additional information or comments: This administrative regulation, which merely incorporates by reference a new bond form for operations on federal lands, will not itself require additional revenues for its implementation or enforcement. However, assumption of authority to regulate operations on federal lands will necessarily involve additional program costs for permitting, enforcement, and related activities. Under the terms of the Cooperative Agreement, the federal government will pay these costs.

(12) TIERING: Is tiering applied? No. Tiering is not used in this amendment because, under the federal and Kentucky surface mining laws and regulations, these requirements must apply equally to all permittees under 405 KAR Chapters 7-24.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 63 FR 53252, published October 2, 1998, effective November 2, 1998, 30 CFR 917.30. Kentucky had no obligation to regulate coal mining operations on federal lands under the permanent regulatory program until it voluntarily entered into a State-Federal Cooperative Agreement to do so. The Cooperative Agreement was entered into by the Governor of the Commonwealth of Kentucky and the Secretary of the United States Department of the Interior, under 30 USC 1273(c) and 30 CFR Part 745.

2. State compliance standards. This emergency administrative regulation incorporates by reference a new form for performance bonds for operations on federal lands. The form is generally the same as the existing bond form for nonfederal lands, except that it includes new provisions that take into account the possibility that the Cooperative Agreement may be terminated and authority to regulate the federal lands would then revert to the Department of the Interior. The new form expressly states that if the Cooperative Agreement is terminated, the portion of the performance bond covering the federal lands shall be assigned to the United States; and if the Cooperative Agreement is terminated after the bond is forfeited, any unspent or uncommitted proceeds of the bond covering the federal lands shall be assigned to and forwarded to the United States.

3. Minimum or uniform standards contained in the federal mandate. The Cooperative Agreement requires as follows: Article IX: Bonds

NREPC and the secretary will require each permittee who conducts operations on federal lands to submit a performance bond payable to the state of Kentucky for an amount adequate to cover the operator's responsibilities under the Act and program. Such performance bond will be conditioned upon compliance with all requirements of the Act, the program, state rules and regulations, and any other requirements imposed by the Department of the Interior. Such bond will state on its face that in the event the Federal Lands Cooperative Agreement between Kentucky and the U.S. Department of the Interior is terminated, the portion of the bond covering the federal lands increment(s) shall be assigned to the United States. The bond shall also state that if subsequent to the forfeiture of the bond, the Cooperative Agreement is terminated, any unspent or uncommitted proceeds of the portion of the bond covering the federal lands increment(s) shall be assigned to and forwarded to the United States.

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

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

STATEMENT OF EMERGENCY 501 KAR 6:190E

In order to implement the new statutory requirements pertaining to sex offenders, the Sex Offender Risk Assessment Advisory Board needs to implement this emergency administrative regulation. An ordinary administrative regulation shall not suffice as this emergency administrative regulation shall be effective immediately. The Sex Offender Risk Assessment Advisory Board has established this administrative regulation to comply with the recently enacted KRS 17.510 - 17.991. This administrative regulation establishes procedures for certifying providers to perform sex offender risk assessments required by KRS 17.554. I am requesting that this administrative regulation be declared an emergency so the Sex Offender Risk Assessment Advisory Board may immediately begin using the criteria for certifying providers to perform risk assessments. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency

administrative regulation is being filed.

PAUL E. PATTON, Governor
GARY L. DENNIS, Ph.D., Chairman

JUSTICE CABINET

501 KAR 6:190E. Certification procedures for mental health professionals performing sex offender risk assessments.

RELATES TO: KRS 17.510 to 17.991

STATUTORY AUTHORITY: KRS 17.554, 17.564

EFFECTIVE: December 4, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish certification standards for mental health professionals providing court-ordered risk assessments for sex offenders.

Section 1. Purpose. The purpose of this administrative regulation is to establish provider certification requirements. This administrative regulation is necessary to assure the quality of court-ordered sex offender risk assessments.

Section 2. Definitions. (1) "Board" means the Sex Offender Risk Assessment Advisory Board.

(2) "Corrective action plan" means an individualized plan submitted by a provider or supervised provider and approved by the board or a plan imposed by the board which requires a provider or supervised provider to take specific steps to be in compliance with the provisions of this administrative regulation.

(3) "Court-ordered" means by order of any circuit court judge for an offender to be assessed by a provider or supervised provider to determine the offender's risk of recommitting a sex crime and the threat posed to public safety.

(4) "High risk sex offender" is defined in KRS 17.550.

(5) "Low risk sex offender" is defined in KRS 17.550.

(6) "Mental or behavioral abnormality" is defined in KRS 17.550.

(7) "Moderate risk sex offender" is defined in KRS 17.550.

(8) "Personality disorder" is defined in KRS 17.550.

(9) "Presentence evaluation" means the evaluation as defined in KRS 532.050(4) prepared in the board's standard approved format.

(10) "Provider" means a qualified mental health professional as defined in KRS 202A.011(12) who is certified by the board to perform risk assessments.

(11) "Risk assessment" means the evaluation of the sex offender's characteristics, including the factors listed in KRS 17.554, and any other factors the board may require, to reach a recommendation for a level of risk of the offender's recommitting a sex crime and the threat posed to public safety. Risk assessments include the evaluations identified in KRS 17.554.

(12) "Sex crime" is defined in KRS 17.500.

(13) "Sex offender" is defined in KRS 17.550.

(14) "Supervised provider" means an individual who has been certified under Section 3(2) of this administrative regulation to provide risk assessments under the direct supervision of a provider.

(15) "Supervisor" means a provider as defined in subsection (10) of this section who examines and approves the work of a supervised provider.

(16) "Victim" is defined in KRS 421.500.

Section 3. Qualifications of Providers and Supervised Providers.

(1) An applicant may qualify as a provider if he:

(a) Completes thirty-two (32) hours of specialty training approved or provided by the board including:

1. Characteristics and offense patterns of sex offenders;
2. Treatment modalities used with sex offenders;
3. Legal and ethical issues in the risk assessment of sex offenders;

4. Use of the presentence evaluation;

5. Victim's issues, not to exceed two (2) hours of credit against the total requirement;

6. Issues related to the assessment of juvenile and female sex

offenders, not less than two (2) hours; and

7. Use of board approved actuarial instruments and risk assessment guides;

(b) Complies with the ethical standards of professional practice as promulgated by the licensing or certifying body under which he has qualified mental health professional status; and

(c) Has one (1) year documented experience conducting sex offender evaluations or assessments; however, in lieu of the one (1) year experience, he shall complete a thirty (30) hour practicum administered by the board within the first six (6) months of practice after certification.

(2) An applicant may qualify as a supervised provider if he:

(a) Meets the requirements of subsection (1)(a) of this section;

(b) Complies with the ethical standards promulgated by the employing agency listed in paragraph (c) of this subsection;

(c) Is an employee of the Department of Corrections, Division of Mental Health; Department of Juvenile Justice; or Department of Mental Health and Mental Retardation Services, including an employee of a community mental health center;

(d) Files a completed application for certification with the board by March 31, 1999;

(e) Maintains full-time employment with one (1) of the departments listed in paragraph (c) of this subsection as of March 31, 1999; and

(f) Meets one (1) of the following requirements:

1. Has a master's degree in psychology, social work, counseling or other human service related discipline and one (1) year of counseling experience; or

2. Has a bachelor's degree in a human service related discipline and two (2) years counseling experience.

Section 4. Duties. (1) If a provider performs a risk assessment for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.

(2) A provider shall:

(a) Submit the first four (4) risk assessments prepared after certification for review by the board;

(b) Comply with the ethical standards of professional practice as promulgated by the licensing or certifying body under which he has qualified mental health professional status; and

(c) Complete eight (8) hours of continuing education approved or provided by the board on an annual basis.

(3) If a supervised provider performs a risk assessment for a sex offender, he shall not provide treatment for personal financial gain for the sex offender for six (6) months following that assessment.

(4) A supervised provider shall:

(a) Comply with the requirements of subsection (1)(a) and (c) of this section; and

(b) Comply with the ethical standards promulgated by the employing agency listed in Section 3(2)(c) of this administrative regulation.

Section 5. Certification Procedures. (1) The board may certify a provider or supervised provider if he meets the applicable qualifications specified in Section 3 of this administrative regulation and is not otherwise disqualified by the provisions of Section 6 of this administrative regulation.

(2) An individual may apply to the board for certification as a provider or supervised provider by submitting:

(a) A completed application for certification on the board's approved form;

(b) Documentary evidence of his qualifications; and

(c) Evidence that he has remedied the cause for the denial or revocation, if certification is denied or revoked under Section 6 of this administrative regulation.

(3) The board shall determine that an application is incomplete if:

(a) The documentation of qualifications is insufficient to meet the applicable qualifications;

(b) The board is unable to verify the authenticity of the documentation of qualifications; or

(c) Any of the information required in subsection (2) of this sec-

tion is not submitted.

(4) If the board determines that an application is incomplete, the application shall be returned to the applicant, specifying additional documentation that is required or identifying the information that cannot be verified.

(5) The board shall approve or deny the application for certification in writing no later than sixty (60) days after receiving a complete application for certification.

(6) Certification shall be effective for two (2) years.

(7) The board may renew the certification of a provider or supervised provider upon request if the provider or supervised provider submits documentation of completion of at least eight (8) hours per year of continuing education approved or provided by the board, unless the certification has been revoked in accordance with Section 6 of this administrative regulation.

(8) The board shall maintain a list of providers and supervised providers to be submitted to the Administrative Office of the Courts annually.

Section 6. Denial or Revocation of Certification. (1) The board shall deny a request for certification or revoke the certification of a provider or supervised provider if the board determines that he:

(a) Has been convicted of or pled guilty to a felony criminal offense; or

(b) Has had a domestic violence protective order issued against him within the previous two (2) years.

(2) The board may deny a request for certification or revoke the certification of a provider or supervised provider if the board determines that he:

(a) Has been convicted of or pled guilty to any misdemeanor criminal offense against a person;

(b) Has an alcohol or other drug abuse problem as defined in KRS 222.005;

(c) Has had a sanction applied against any qualified mental health professional licensure or certification held by him at any time in the past two (2) years;

(d) Has performed risk assessments without supervision, if supervision is required by this administrative regulation;

(e) Has falsified any information or documentation, or has concealed a material fact, in his request for certification;

(f) Has failed to meet the qualifications for certification set forth in Section 3 of this administrative regulation;

(g) Has failed to comply with the duties set forth in Section 4 of this administrative regulation;

(h) Has failed to implement a corrective action plan approved or imposed by the board in accordance with Section 8 of this administrative regulation;

(i) Has two (2) or more risk assessments which the board finds are below standard upon review;

(j) Has failed to comply with the risk assessment procedure set forth in 501 KAR 6:200;

(k) Has failed to comply with the requirements set forth by the board for the practicum or to successfully complete the practicum, if so required by Section 3(1)(c) of this administrative regulation;

(l) No longer maintains full-time employment with one (1) of the departments listed in Section 3(2)(c) of this administrative regulation, and is a supervised provider;

(m) Has shown an inability to adequately conduct risk assessments with reasonable skill;

(n) Has accepted gifts or favors from the sex offender being assessed, from the family of the sex offender being assessed, or from their agent;

(o) Has provided gifts or favors to the sex offender being assessed, to the family of the sex offender being assessed, or to their agent; or

(p) Has developed a relationship with the sex offender being assessed other than that necessary to adequately perform a risk assessment.

(3) If the board intends to deny or revoke certification, it shall serve a notice of intent to deny or revoke certification, to the individual requesting certification or renewal of certification, which shall include the date of the hearing for the denial or revocation.

(4) A provider or supervised provider who has had his certifica-

tion revoked shall be ineligible for certification or renewal of certification until the second anniversary of the date his certification was revoked.

Section 7. Scope of Supervision Requirements. A supervisor shall:

(1) Not supervise more than six (6) supervised providers concurrently;

(2) Directly observe the supervised provider's clinical practice in person or through video or audio tape;

(3) Conduct 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 tape of actual clinical practice with the supervised provider;

(4) Assure that a supervised provider conducts risk assessments in accordance with the provisions of this administrative regulation;

(5) Examine and approve all risk assessments performed by the supervised provider; and

(6) Give written notice to the board if he determines that the supervised provider's performance does not comply with the provisions of this administrative regulation.

Section 8. Monitoring. (1) The board shall:

(a) Investigate any formal complaint, verified by affidavit, concerning any provider or supervised provider, if the complaint alleges a failure to comply with the provisions of this administrative regulation; and

(b) Refer any complaint against a provider, which relates to an unethical practice or practice which may be outside the provider's practice, to the appropriate licensure or certification board.

(2) The board may investigate and evaluate a provider's or supervised provider's adherence to the provisions of this administrative regulation on its own initiative.

(3) Board staff may monitor by the following activities:

(a) Interviewing a sex offender or victim, if consent is given for the interview;

(b) Reviewing assessment records maintained by a provider or supervised provider on a sex offender;

(c) Direct observation of the risk assessment of a sex offender; or

(d) Interviewing judicial, correctional, law enforcement officials or other agency personnel that interact with a provider or supervised provider in relation to sex offender risk assessments.

(4) If the board determines that a provider or supervised provider fails to comply with provisions of this administrative regulation, the board shall notify the provider or supervised provider in writing of its determination and may:

(a) Require the provider or supervised provider to submit a corrective action plan for approval by the board;

(b) Impose a corrective action plan; or

(c) Revoke certification in accordance with Section 6 of this administrative regulation.

(5) If the board requires a provider or supervised provider to comply with a corrective action plan, it shall review compliance by the provider or supervised provider with the plan within sixty (60) days.

(6) If the board determines that a supervisor fails to conduct the required supervision of a supervised provider, the board shall notify the supervisor, the supervised provider, and the supervised provider's employer in writing of its determination and may:

(a) Require the supervisor to submit a corrective action plan;

(b) Impose a corrective action plan upon the supervisor;

(c) Prevent the supervisor from continuing to supervise; or

(d) Suspend the certification of the supervised provider.

(7) If the corrective action plan does not correct the supervision problem within sixty (60) days, or if the supervisor notifies the board that he shall no longer be supervising the supervised provider, then the board shall suspend the certification of the supervised provider until a provider is available and willing to provide the supervision required in Section 7 of this administrative regulation.

GARY L. DENNIS, Ph.D., Chairman
STEPHEN P. DURHAM, General Counsel
AMY V. BARKER, Staff Attorney
APPROVED BY AGENCY: December 3, 1998
FILED WITH LRC: December 4, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Amy Barker, Staff Attorney

(1) Type and number of entities affected: Approximately 2,000 sex offenders currently incarcerated in Kentucky's prisons; approximately 250 felony sex offenders convicted each year who are eligible for probation; approximately 50 employees of the Department of Corrections, Department of Juvenile Justice, and Community Mental Health Centers; and an undetermined number of qualified mental health providers in private practice who are eligible to be certified by the Sex Offender Risk Assessment Advisory Board to do presentence evaluations and risk assessments.

(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: Approximately \$700,000

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

1. First year following implementation: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

2. Second and subsequent years: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$700,000 combination of federal and state funds.

2. Continuing costs or savings: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

3. Additional factors increasing or decreasing costs: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

(b) Reporting and paperwork requirements: Review of evaluation and assessment reports by staff.

(4) Assessment of anticipated effect on state and local revenues: State revenues may increase if a significant number of sex offenders are able to pay for all or a part of the assessments; funds collected shall return to the general fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \$675,000 federal grant and state match; portion of salaries of current staff of the Division of Mental Health; additional state general fund dollars were not budgeted in the 1998-2000 biennium to fund this project.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Sex offenders released from custody shall be evaluated and assessed to determine their level of risk to the community and a process of community notification and registration implemented; should result in increased public safety.

(b) State whether a detrimental effect on environment and public

health would result if not implemented: no detrimental effects.

(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.

STATEMENT OF EMERGENCY
501 KAR 6:200E

In order to establish procedures for sex offender risk assessments required by KRS 17.554, the Sex Offender Risk Assessment Advisory Board needs to implement this emergency administrative regulation. An ordinary administrative regulation shall not suffice as this emergency administrative regulation shall be effective immediately. The Sex Offender Risk Assessment Advisory Board has established this administrative regulation to comply with the recently enacted KRS 17.510 - 17.991. This administrative regulation establishes procedures for performing sex offender risk assessments. I am requesting that this administrative regulation be declared an emergency so the Sex Offender Risk Assessment Advisory Board may begin instructing providers in the proper standards and procedures for performing a risk assessment. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor
GARY L. DENNIS, Ph.D., Chairman

JUSTICE CABINET

501 KAR 6:200E. Sex offender risk assessment procedure.

RELATES TO: KRS 17.510 to 17.991

STATUTORY AUTHORITY: KRS 17.554, 17.564

EFFECTIVE: December 4, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations to establish a risk assessment procedure for court-ordered risk assessments of sex offenders.

Section 1. Purpose. The purpose of this administrative regulation is to establish the risk assessment procedure. This administrative regulation is necessary to assure the quality of court-ordered sex offender risk assessments.

Section 2. Definitions. (1) "Board" means the Sex Offender Risk Assessment Advisory Board.

(2) "High risk sex offender" is defined in KRS 17.550.

(3) "Low risk sex offender" is defined in KRS 17.550.

(4) "Moderate risk sex offender" is defined in KRS 17.550.

(5) "Presentence evaluation" means the evaluation as defined in KRS 532.050(4) prepared in the board's standard approved format.

(6) "Provider" means a qualified mental health professional as defined in KRS 202A.011(12) who is certified by the board to perform risk assessments.

(7) "Risk assessment" means the evaluation of the sex of-

fender's characteristics, including the factors listed in KRS 17.554, and any other factors the board may require, to reach a recommendation for a level of risk of the offender's committing a sex crime and the threat posed to public safety. Risk assessments include the evaluations identified in KRS 17.554.

(8) "Sex offender" is defined in KRS 17.550.

(9) "Supervised provider" means an individual who has been certified under Section 3(2) of this administrative regulation to provide risk assessments under the direct supervision of a provider.

Section 3. Risk Assessment Procedures. (1) In performing a risk assessment, a provider or supervised provider shall conduct a presentence evaluation and use a board approved protocol to determine if a recommendation of low risk may be made.

(2) If a recommendation of low risk sex offender cannot be made under the above, then the provider or supervised provider shall use an additional board approved protocol to determine the appropriate risk level for the sex offender to be recommended to the court.

(3) The recommendation to the court shall be made in a standard board approved format.

(4) A provider or supervised provider may not perform a risk assessment if the provider or supervised provider has previously provided treatment to the sex offender.

Section 4. Recordkeeping. (1) A provider or supervised provider shall preserve and maintain all information or documentation used or gathered in an assessment for fifteen (15) years concerning sex offenders determined to be low or moderate risk.

(2) A provider or supervised provider shall preserve and maintain all information or documentation used or gathered in an assessment for the life of the sex offender for sex offenders determined to be high risk.

(3) The provider or supervised provider may elect to surrender all information or documentation concerning an assessment to the board in lieu of maintaining the information for the required number of years.

(4) The original or a copy of all information or documentation concerning a risk assessment shall be surrendered to the board upon request at any time or at the death of the provider.

GARY L. DENNIS, Ph.D., Chairman

STEPHEN P. DURHAM, General Counsel

AMY V. BARKER, Staff Attorney

APPROVED BY AGENCY: December 3, 1998

FILED WITH LRC: December 4, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Amy Barker, Staff Attorney

(1) Type and number of entities affected: Approximately 2,000 sex offenders currently incarcerated in Kentucky's prisons; approximately 250 felony sex offenders convicted each year who are eligible for probation; approximately 50 employees of the Department of Corrections, Department of Juvenile Justice, and Community Mental Health Centers; and an undetermined number of qualified mental health providers in private practice who are eligible to be certified by the sex offender risk assessment advisory board to do presentence evaluations and risk assessments.

(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: Approximately \$700,000

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

1. First year following implementation: Applications for certification by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

2. Second and subsequent years: Applications for certification

by the board shall be completed and reviewed; evaluation and assessment reports prepared for the court; records and report review conducted on an on-going basis by staff of the board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$700,000 combination of federal and state funds.

2. Continuing costs or savings: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

3. Additional factors increasing or decreasing costs: Costs shall continue to increase due to inflation and an increase in the number of sex offenders needing evaluation.

(b) Reporting and paperwork requirements: Review of evaluation and assessment reports by staff.

(4) Assessment of anticipated effect on state and local revenues: State revenues may increase if a significant number of sex offenders are able to pay for all or a part of the assessments; funds collected shall return to the general fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \$675,000 federal grant and state match; portion of salaries of current staff of the Division of Mental Health; additional state general fund dollars were not budgeted in the 1998-2000 biennium to fund this project.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Sex offenders released from custody shall be evaluated and assessed to determine their level of risk to the community and a process of community notification and registration implemented; should result in increased public safety.

(b) State whether a detrimental effect on environment and public health would result if not implemented: no detrimental effects.

(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.

STATEMENT OF EMERGENCY 501 KAR 6:210E

In order to establish procedures for consistent community notification regarding sex offenders, the Sex Offender Risk Assessment Advisory Board needs to implement this emergency administrative regulation. An ordinary administrative regulation shall not suffice as this emergency administrative regulation shall be effective immediately. The Sex Offender Risk Assessment Advisory Board has established this administrative regulation to comply with the recently enacted KRS 17.572. This administrative regulation is established so the sheriffs may begin taking requests for notification, prior to January 15, 1999, when the statutory notification requirements be-

come effective. I am requesting that this administrative regulation be declared an emergency so the sheriffs shall make the appropriate arrangements to permit a victim or other eligible entity to request a notification and acquire any information necessary for a notification from law enforcement agencies. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor
GARY L. DENNIS, Ph.D., Chairman

JUSTICE CABINET

501 KAR 6:210E. Sex offender community notification.

RELATES TO: KRS 17.564

STATUTORY AUTHORITY: KRS 17.564

EFFECTIVE: December 4, 1998

NECESSARY, FUNCTION AND CONFORMITY: KRS 17.564 authorizes the Sex Offender Risk Assessment Advisory Board to promulgate administrative regulations necessary to establish a procedure for community notification regarding sex offenders.

Section 1. Purpose. The purpose of this administrative regulation is to establish guidelines and procedures for consistent community notification concerning sex offenders.

Section 2. Definitions. (1) "Sex offender" is defined in KRS 17.550.

(2) "Statewide media outlets" as used in KRS 17.572 means the Associated Press and the Kentucky News Network.

(3) "Victim" is defined in KRS 421.500.

Section 3. Sheriff's Duty to Notify. (1) The sheriff having the duty to notify under KRS 17.572 may contract with a paid or unpaid organization or individual to carry out the notification function.

(2) In any county with a population over 70,000, the sheriff shall designate an individual within the sheriff's office who shall be responsible for receiving and processing risk determination information and carrying out the notification.

(3) Only a victim or a designated person, from an agency, organization, or group eligible for notice under KRS 17.572, who completes and delivers a written request for notification form to the sheriff's office, shall receive notice from the sheriff or his agent.

(4) Upon receiving the order of sex offender risk determination from the sentencing court, the sheriff or his agent shall acquire sex offender information from the Law Information Network Kentucky (LINK), the Kentucky State Police, or other available source as soon as it becomes available. The sheriff or his agent shall complete notification within twenty (20) days of obtaining the sex offender information.

(5) Upon receiving a request for notification of updated offender information from any victim or organization entitled to notification pursuant to KRS 17.572, the sheriff or his agent shall determine current offender information within ten (10) days of the request and shall complete notification within twenty (20) days of the determination.

(6) This administrative regulation shall not prohibit the sheriff or his agent from notifying local and regional newspapers, radio stations, and television stations or notifying by the Internet.

(7) The sheriff or his agent may provide a photo or fingerprints, if available, of the offender in notification under KRS 17.572.

GARY L. DENNIS, Ph.D., Chairman
STEPHEN P. DURHAM, General Counsel
AMY V. BARKER, Staff Attorney
APPROVED BY AGENCY: December 3, 1998
FILED WITH LRC: December 4, 1998 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Amy Barker, Staff Attorney

(1) Type and number of entities affected: 2,000 sex offenders currently incarcerated in Kentucky's prisons; 250 felony sex offenders convicted each year who are eligible for probation; approximately; 240 sheriffs and employees of sheriff's departments; and an undetermined number of victims and organizations who shall request notification under KRS 17.572 and 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: 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: Review by sheriff or designated staff of victim or organizational requests for notification, query into law enforcement data base, notification of Associated Press and Kentucky News Network for a high risk offender is estimated to take an average of 90 to 120 minutes per offender at a state wide average rate of \$11 per hour. Review by sheriff or designated staff of victim or organizational requests for notification, query into law enforcement data base, for a moderate risk offender is estimated to take an average of 90 minutes per offender at a state wide average rate of \$11 per hour. Review by sheriff or designated staff of victim requests for notification, query into law enforcement data base, for a low risk offender is estimated to take an average of 60 minutes per offender at a state wide average rate of \$11 per hour. The number of victim or organizational requests shall vary per offender and shall impact the total cost to each sheriff's department.

2. Second and subsequent years: It is estimated that notification costs shall increase as the number of sex offenders and requests for notification increase. Inflation shall also impact upon the state wide average rate per hour.

(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: Sheriff's budgets or grants obtained by individual sheriffs.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Should result in increased public safety through heightened public awareness of the presence of a sex offender in the community.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not quantifiable with a degree of accuracy.

(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.

STATEMENT OF EMERGENCY
503 KAR 1:140E

This emergency administrative regulation establishes the procedures necessary for peace officer certification as enacted through 1998 Ky. Acts ch. 606, secs. 98 through 110. An ordinary administrative regulation will not suffice since the certification requirements become effective on December 1, 1998. The implementation of certification required the formation of a staff to administer the process, the creation of a computer information system, development of necessary forms and procedures for mandatory testing, contracts for vendors to administer certain testing, and many other tasks to develop a fully functional system. In order to implement certification by December 1, 1998 as mandated by 1998 Ky. Acts ch. 606, sec. 109(1), 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 the ordinary administrative regulation was filed with the Regulations Compiler on November 30, 1998.

PAUL E. PATTON, Governor
JOHN THORPE, Chair

JUSTICE CABINET
Kentucky Law Enforcement Council

503 KAR 1:140E. Peace officer professional standards.

RELATES TO: KRS 15.330(1)(g)
STATUTORY AUTHORITY: KRS 15.330(1)(g), 15A.160
EFFECTIVE: November 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.560 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations. This administrative regulation establishes the guidelines and procedures necessary to implement and administer peace officer certification.

Section 1. Approval of agency's validated job task analysis and associated agency testing.

(1) Application. If an agency desires to use its own job task analysis and any associated agency testing, the agency shall submit to POPS completed KLEC POPS Forms J and Q, and a copy of the proposed job task analysis. The agency shall supply the name of the entity who completed the analysis, the date when the analysis was completed, a curricula vitae or resume, or a company profile of the entity who completed the analysis, and a listing of all job task analyses previously completed by the entity including the dates of the analyses.

(2) Criteria for assessment. The submitted job task analysis shall be assessed based upon the following criteria:

(a) Credentials and history of the entity conducting the analysis.

1. Education, with a preference given to degrees in law enforcement, statistics, or a related area.

2. Work experience, with a preference given to emphasis in law enforcement, statistics, or a related area.

3. Number and quality of job task analyses completed.

(b) Methodological approach.

1. Reasonable, standardized format of the study and the report.

2. Relative reliability and validity of the study's sampling techniques and practice.

3. Other considerations that reflect sound practice of the scientific method.

4. Specificity of the analysis. The job task analysis shall establish minimum entry qualifications, specific training requirements and description of duties of officers.

(3) Initial review. Within five (5) business days of receipt of the application POPS shall mail a notification to the agency that either:

(a) The application has been received and is complete; or

(b) The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency.

(c) If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for consideration of their job task analysis and associated agency testing.

(d) POPS recommendation. Within thirty (30) days of their receipt of the completed application, POPS shall forward the application to KLEC along with a recommendation to approve or reject the job task analysis and associated agency tests, and the specific reasons supporting a recommendation to reject.

(e) KLEC Review. The KLEC Committee on Certification shall review the application and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

Section 2. Agency Testing Procedures. (1) POPS shall receive completed KLEC POPS Form Q from each agency participating in certification as of December 1, 1998 prior to any applicant testing. If an agency initiates participation in certification after December 1, 1998, KLEC POPS Form Q shall be submitted to POPS with KLEC POPS Form E.

(2) Initial review. Within fifteen (15) business days of receipt of KLEC POPS Form Q POPS shall mail a notification to the agency that either:

(a) The form has been received and is complete; or

(b) The form is incomplete and the specific information which shall be supplemented in order to process the form. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. No applicants shall be tested or certified by KLEC until the form is complete.

(3) POPS review of requests for agency testing. Within thirty (30) days of receipt of the completed form, POPS shall review requests for agency testing from those agencies without a validated job task analysis to determine if the proposed tests are consistent with the minimum standards for KLEC testing as established in Section 4 of this administrative regulation. POPS shall mail a notice to the agency if the proposed testing is acceptable. If POPS determines that the minimum standards are not met, POPS shall forward the form to KLEC, along with the specific reasons supporting a recommendation to reject the agency testing.

(4) KLEC review. The KLEC Committee on Certification shall review the form and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the form KLEC shall issue written notice to the agency indicating whether the request for agency testing has been approved or rejected, and the specific reasons supporting the rejection.

(5) Appeal. An agency may appeal a decision made by KLEC to reject an agency test by filing a written notice of appeal to the Secretary of the Justice Cabinet. The notice shall be filed within thirty (30) days of receipt of the notice of rejection. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of agency testing attached. A copy of the notice of appeal shall be delivered to POPS by certified mail. The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

Section 3. Certification of Exempt Officers. (1) Officers exempted from certification requirements pursuant to KRS 15.380(5) who are requesting certification shall submit KLEC POPS Form E to POPS.

(2) State peace officers employed pursuant to KRS Chapter 18A who have had certification requirements adopted pursuant to KRS

15.380(2) shall submit KLEC POPS Form E to POPS.

(3) An agency may request certification of all agency officers exempted pursuant to KRS 15.380(4) by submitting KLEC POPS Form E to POPS.

(4) Officers entitled to certified status pursuant to the grandfather provision of KRS 15.400(1) shall submit KLEC POPS Form C.

Section 4. Suitability Minimum Requirements: The following minimum requirements and procedures are established for KLEC testing:

(1) The background investigation as specified in KRS 15.382(12) shall consist of the following minimum requirements:

- (a) Biographical history;
- (b) Family history;
- (c) Education;
- (d) Employment history;
- (e) Interview with the applicant's references;
- (f) Summary of the investigator's findings and conclusions regarding the applicant's suitability for the position of peace officer.

(2) Fingerprinting. An applicant shall be fingerprinted and a criminal background check shall be conducted as specified in KRS 15.382(5) through the following procedure: The agency shall submit two (2) completed FD 258 FBI Fingerprint Cards and all required fees to the Kentucky State Police, who shall complete a state records check, then forward the card to the FBI. The FBI shall forward the results of its records check to the employing agency. Final certification shall not be issued until results consistent with certification requirements and acceptable to the agency are received from the FBI. The agency may employ the peace officer contingent upon the pending FBI results.

(3) Psychological screening as specified in KRS 15.382(15) shall consist of the following minimum requirements:

(a) Screening shall measure a broad spectrum of abilities, personality characteristics, and related constructs such as integrity, conscientiousness, and vocational preference, which are relevant to job related duties;

(b) Screening shall contain a minimum of two (2) independent and objectively scored psychometric measures which shall be constructed and validated in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(c) Assessment results and predictions shall include a recommendation and summary statement regarding the applicant's overall suitability for employment as a peace officer. The summary statement shall classify applicants as "suitable", "not suitable", or borderline. In the case of borderline and not suitable the report shall contain specific concerns and negative indicators for investigation and reconciliation by the employing agency;

(d) Screening shall be administered in accordance with the "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association.

(4) Physical agility testing as specified in KRS 15.382(12) shall consist of the following minimum requirements:

(a) The applicant shall successfully complete the following battery of tests as instructed and evaluated by KLEC personnel who shall administer the test in conformity with Validation of Physical Fitness Standards for the Kentucky Department of Criminal Justice Training, Appendix I - Procedures for Physical Fitness Testing Procedures for Mandatory Physical Fitness Tests, September 25, 1998, Fitness Intervention Technologies. A failure of any one (1) test shall constitute a failure of the physical agility test:

- 1. One and five-tenths (1.5) mile run in seventeen (17) minutes twelve (12) seconds;
- 2. 300 meter run in sixty-five (65) seconds;
- 3. Twenty (20) push ups;
- 4. Sixteen (16) inch vertical jump;
- 5. One (1) bench press equal to sixty-four (64) percent of the applicant's body weight;
- 6. Eighteen (18) sit ups in one (1) minute.

(b) If an applicant fails the physical agility test the applicant may repeat the test in its entirety no sooner than thirty (30) days following

the date of the previous test. An applicant may repeat physical agility testing no more than two (2) times in a one (1) year period, for a total of three (3) physical agility tests per year.

(5) Medical screening as specified in KRS 15.382(10) shall consist of the following minimum requirements: the applicant shall complete KLEC POPS Form G-2, Medical History Statement, which along with KLEC POPS Form G-3, Medical Guidelines Implementation Manual, shall be provided to the physician, duly licensed to practice in the Commonwealth of Kentucky, who shall examine the applicant in conformity with the guidelines. The physician shall complete KLEC POPS Form G-1, Medical Examination Report and forward it to the employing agency.

(6) Drug screening as specified in KRS 15.382(11) shall consist of the following minimum requirements: the applicant shall execute KLEC POPS Form K-1 and submit a urine sample that shall be screened for: marijuana, amphetamines, cocaine, opiates, phencyclidine, barbiturates, benzodiazepines, propoxyphene, methadone, and methaqualone. The integrity of the urine sample shall be documented on KLEC POPS Form K-2, Drug Screening Chain of Custody. The testing shall be done in compliance with Federal DOT Work Place Standards, 49 CFR 40, subparts A and B.

(7) Polygraph examination as specified in KRS 15.382(17) shall consist of the following minimum requirements: the applicant shall complete KLEC POPS Form I-1, Polygraph Waiver, and KLEC POPS Form I-2, Polygraph Applicant Questionnaire, which shall be provided to the polygraph examiner, duly licensed in the Commonwealth of Kentucky, who shall perform a polygraph examination of the applicant consisting of the questions as listed in KLEC POPS Form I-3, Polygraph Test Questions.

Section 5. KLEC Administered Testing Procedures. (1) An applicant shall execute all releases required for KLEC testing, including KLEC POPS Forms I-1 - Polygraph Waiver; K-1 - Drug Screening Applicant Consent Form; T-1 - Medical Release - Phase I Testing, and T-2 - Liability Waiver - Phase I Testing.

(2) Testing schedule. POPS shall mail to all law enforcement agencies in the Commonwealth a list of sites and dates for KLEC administered testing. Testing sites shall be statewide and accommodations shall be made where reasonable to insure testing sites are accessible based upon need. Advance notice of the schedule shall be made public at least three (3) months prior to the testing. KLEC shall reschedule testing if cancellation is necessary due to inclement weather or other unforeseen circumstances. Emergency testing shall be made available when possible at the Richmond POPS office as needed.

(3) Registration for KLEC administered testing. POPS shall receive KLEC POPS Forms A from the employing agency at least five (5) business days prior to testing.

(a) Applicants shall provide current photographic identification at the time of testing.

(b) Applicants shall bring a copy of their present job application at time of physical agility and psychological testing.

(c) POPS shall receive the completed polygraph questionnaire KLEC POPS Form P five (5) business days prior to testing.

Section 6. Test Reporting. (1) Results of drug and psychological screening provided through KLEC shall be forwarded directly to the employing agency head by the entity administering the test. All other tests provided by or through KLEC will be forwarded to the employing agency head by POPS.

(2) The agency shall certify that the applicant has met all suitability requirements by submitting KLEC POPS Form D.

(3) Length of test result validity.

(a) Physical agility. Results shall be considered current and valid six (6) months from the passing date of the test.

(b) Psychological screening. Results shall be considered current and valid for six (6) months from the date of the screening. If the applicant experiences a significant life change during the six (6) month period, the applicant shall notify the employing agency who shall schedule a new psychological screening for the applicant.

(c) Polygraph examination. Results shall be considered current and valid for a period of one (1) year from the date of the examination. If the applicant experiences a significant life change during the

one (1) year period, the applicant shall notify the employing agency who shall schedule a new polygraph examination for the applicant.

(d) Drug screening. Results shall be considered current and valid only for the agency that requested or performed the test and only during that employment process. An applicant that leaves and reenters the testing process for preselection screening shall be required to submit to another drug screening.

(4) Updating test results. It shall be the responsibility of the employing agency to update test results when necessary by submitting KLEC POPS Form D to POPS.

(5) Agency access to prior test results. It shall be at the applicant and individual agency's discretion to allow another employing agency access and use of the initial agency's certification testing which is still current and valid. If agencies enter into such an agreement with the written permission of the applicant, the new employing agency shall receive the medical, psychological and polygraph results directly from the entity administering the examination.

Section 7. KLEC Administered Testing Costs. (1) The employing agency shall reimburse KLEC within sixty (60) days of receipt of the invoice for the cost of KLEC administered testing provided at the agency's request as follows:

- (a) Fifty (50) dollars for each psychological screening;
- (b) \$100 for each polygraph examination;
- (c) Sixteen (16) dollars for each drug screening.

(2) If an agency has scheduled KLEC testing for an applicant who fails to appear or complete the testing, the agency shall be responsible for fifty (50) percent of the cost of the test had it been completed.

(3) Financial hardship.

(a) Application. An employing agency may apply for a waiver of costs for KLEC testing pursuant to KRS 15.384(1) by demonstrating undue financial hardship. The agency shall submit to POPS the actual approved budget of the governmental unit for the current and the preceding year, the number of certification applicants for the current and preceding year, the actual revenue receipts of the governmental unit for the current and the preceding year, and a detailed explanation of why the governmental unit cannot meet the cost of providing the testing, including the reason that inadequate funding was not budgeted to cover the cost of testing.

(b) Initial review. Within five (5) business days of receipt of the application POPS shall mail a notification to the agency that either:

- 1. The application has been received and is complete; or
- 2. The application is incomplete and the specific information which shall be supplemented in order to process the application. POPS shall receive the necessary information within ten (10) business days of the agency's receipt of the notice of insufficiency. If the agency fails to submit the supplementary information within the specified time period, the application shall be considered abandoned and the agency shall resubmit an application for financial hardship.

(c) Recommendation. Within thirty (30) days of their receipt of the completed application, POPS shall forward the application to KLEC, along with a recommendation to approve or reject the application for financial hardship, and the specific reasons supporting a recommendation to reject.

(d) KLEC review. The KLEC Committee on Certification shall review the application and POPS' recommendation and forward their recommendation to KLEC for final review. Within sixty (60) days of their receipt of the application KLEC shall issue written notice to the agency indicating whether the application has been approved or rejected, and the specific reasons supporting the rejection.

(e) Appeal. An agency may appeal a decision made by KLEC to reject an agency's application for financial hardship by filing a written notice of appeal to the Secretary of the Justice Cabinet. The notice shall be filed within thirty (30) days of receipt of the notice of rejection. The notice of appeal shall be submitted on KLEC POPS Form S with a copy of the notice of rejection of financial hardship attached. A copy of the notice of appeal shall be delivered to POPS by certified mail. The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

(4) If an agency knowingly employs or appoints a person who fails to meet minimum certification standards pursuant to KRS 15.396(1) POPS shall immediately notify DOCJT.

Section 8. Employment Changes. Pursuant to KRS 15.392, when a certified peace officer leaves an agency, the agency shall submit KLEC POPS Form F. If the officer is reemployed by another agency as a peace officer the employing agency shall submit KLEC POPS Form F within five (5) business days of the employment or appointment.

Section 9. Records. (1) Records retention. KLEC shall retain all certification records in electronic or original medium consistent with the Records Retention Schedule established by the Kentucky Department of Library and Archives. KLEC shall devise and maintain a database management system that organizes records adequately to the tasks of associated with certification.

(2) Security. KLEC and employing agencies shall maintain records in a manner to insure their security.

(3) Agencies shall retain all documentation pertaining to certification for five (5) years following the cessation of certification of the peace officer, regardless of where the certified peace officer is employed in the Commonwealth.

Section 10. Applicant Conduct and Behavior. (1) An applicant who has engaged in behavior constituting dishonesty, cheating, falsification of documents, or any other fraudulent behavior for the purpose of wrongfully receiving certification shall be removed from the testing process and shall be barred from further consideration for certification.

(2) Use of alcohol or other intoxicants.

(a) An applicant shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while participating in the testing process.

(b) If an applicant has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in physical agility testing if he is under the influence thereof to the extent that the applicant may be impaired or may endanger himself or other persons or property. An applicant shall advise the KLEC test administrator in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician.

(3) Termination of a dangerous or disruptive situation. If the conduct or condition of an applicant constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of testing, a KLEC staff member may take all reasonable steps necessary to terminate the situation, including removal of the applicant from testing.

(4) A copy of KLEC POPS Form R shall be mailed to the applicant and the employing agency within five (5) days following the removal stating that the applicant has been removed or barred from testing, the supporting reasons and circumstances of the removal, and whether the agency may reschedule testing.

Section 11. Compliance. (1) Inspection. Test results, testing procedures and all other certification documentation shall be retained by the agency and be available for inspection and audit at any time by agents authorized by KLEC.

(2) KLEC may initiate an inspection and audit of an agency's certification documentation randomly to assure routine compliance or to investigate a specific complaint.

(3) KLEC shall have access to the services of the DOCJT Compliance and Audit Section, as coordinated through the DOCJT Commissioner, in order to audit specific applicants and agencies to assure compliance with certification requirements.

(4) If during the course of an audit conducted by the DOCJT Compliance and Audit Section a violation of certification is detected, the DOCJT Compliance and Audit Section shall report the possible violation to KLEC.

(5) Denial of participation in KLEFPF. If KLEC determines that an agency has knowingly employed or appointed a person who fails to meet minimum certification standards, KLEC shall immediately notify the administrator of KLEFPF.

Section 12. Issuance of Certification. All identification cards issued to a peace officer verifying certification remain the property of

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KLEC and shall be returned to POPS upon the peace officer's loss of certification.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Standards for Educational and Psychological Testing", Part IV - Standards for Administrative Procedures, (1985 Edition), American Psychological Association;

(b) Federal DOT Work Place Standards, 49 CFR 40, subparts A and B;

(c) KLEC POPS Form A - Attesting to Minimum Standards/Testing Registration;

(d) KLEC POPS Form B - Basic Training Completed (non-DOCJT);

(e) KLEC POPS Form C - Grandfather Information;

(f) KLEC POPS Form D - All Standards Met;

(g) KLEC POPS Form E - Request for Certification for Exempt Officers;

(h) KLEC POPS Form F - Status Update/Recertification;

(i) KLEC POPS Form G-1 - Medical Examination Report;

(j) KLEC POPS Form G-2 - Medical History Statement;

(k) KLEC POPS Form G-3 - Medical Guidelines Implementation Manual;

(l) KLEC POPS Form H-1 - Background Investigation;

(m) KLEC POPS Form H-2 - Personal History Statement;

(n) KLEC POPS Form I-1 - Polygraph Consent Form;

(o) KLEC POPS Form I-2 - Polygraph Applicant Questionnaire;

(p) KLEC POPS Form I-1 - Polygraph Test Questions;

(q) KLEC POPS Form J - JTA Submission;

(r) KLEC POPS Form K-1 - Drug Screening Applicant Consent Form;

(s) KLEC POPS Form K-2 - Drug Screening Chain of Custody;

(t) KLEC POPS Form L-1 - Code of Ethics;

(u) KLEC POPS Form L-2 - Canon of Ethics;

(v) KLEC POPS Form Q - Agency Submission Form;

(w) KLEC POPS Form R - Removal from Testing;

(x) KLEC POPS Form S - Notice of Appeal;

(y) KLEC POPS Form T-1 - Medical Release - Phase I Testing;

(z) KLEC POPS Form T-2 - Liability Waiver - Phase I Testing.

(2) This material may be inspected, copied, or obtained at Kentucky Law Enforcement Council, Office of Peace Officer Professional Standards, 415 Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN THORPE, Chair

STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: November 30, 1998

FILED WITH LRC: November 30, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: all peace officers in the Commonwealth who are required or choose to be certified and their agencies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost to law enforcement agencies for testing applicants and training officers as required for certification.

(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: Testing applicants and training officers (basic and annual in-service); documentation of applicants and officers meeting minimum standards for certification; reporting changes in employment.

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: Approximately \$412,800 (through the Kentucky Law Enforcement Foundation Program Fund - KLEFPF).

2. Continuing costs or savings: Estimated at \$362,500.

3. Additional factors increasing or decreasing costs: A long-term savings for the Commonwealth is anticipated due to reduction in injury to law enforcement officers and liability claims, and a reduction in costs for law enforcement agencies for hiring and training.

(b) Reporting and paperwork requirements: Informational publications to law enforcement agencies; design, implementation and maintenance of a data base to accomplish testing and officer certification.

(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 Kentucky Law Enforcement Foundation Program Fund - KLEFPF and testing fees charged to individual agencies.

(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: Increased professionalism of law enforcement personnel resulting in a safer public 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: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY 601 KAR 1:040E

On June 9, 1998 President Clinton signed into law the Transportation Equity Act of 2000. This federal law included a federal preemption of all states' economic regulation of intrastate charter bus operators. Since this administrative regulation currently requires all intrastate charter bus applicants to go through the economic regulation process included in KRS Chapter 281, it needs to be amended on an emergency basis to specifically exempt such applicants from state economic regulation. There are currently twenty-two (22) applications pending in Kentucky for authority to operate as an intrastate charter bus carrier. Promulgation of this emergency administrative regulation will allow the Transportation Cabinet to terminate the extensive and expensive application process for these carriers and comply with the new federal mandate. This emergency administrative regulation will be replaced with an ordinary administrative regulation as soon as possible.

PAUL E. PATTON, Governor
JAMES C. CODELL, III, Secretary

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Office of General Counsel

601 KAR 1:040E. Application for operating authority and registration of motor carriers [authorized to operate by the Interstate Commerce Commission].

RELATES TO: KRS Chapter 281, 281.615, 281.617, 281.618, 281.619, 281.620, 281.625, 281.627, 281.637, 281.650, 281.660, 49 CFR Part 1023

STATUTORY AUTHORITY: KRS 281.600, 281.620, 281.752, 49 CFR Part 1023, 49 USC 11501

EFFECTIVE: December 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation describes the procedure to follow in applying for intrastate operating authority in the Commonwealth and the registration of interstate motor carriers operating in Kentucky pursuant to authority granted by the United States Department of Transportation. [Interstate Commerce Commission].

Section 1. Kentucky Intrastate Passenger or Household Goods Authority. (1)(a) An application [All applications] for operating authority to engage in Kentucky intrastate commerce relating to the transportation of persons except for charter bus transportation or household goods shall be made on the following appropriate forms:

1. Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, effective April 1997;

2. Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, effective October 1996;

3. Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, effective November 1998;

4. Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, effective October 1996; or

5. Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, effective April 1997. [form, "Application for Operating Authority" form TC 93-13 effective October, 1994. This form is incorporated by reference in Section 8 of this administrative regulation.]

(b) The application shall be accompanied by a filing fee of twenty-five (25) dollars.

(c) ~~All applications for operating authority to engage in Kentucky intrastate commerce shall be made on the forms prescribed and furnished by the department and shall be accompanied by a filing fee of twenty-five (25) dollars.~~ All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) ~~If [When]~~ the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application.

(b) This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(c) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3) The application shall be accompanied by the applicant's financial statement prepared in accordance with 601 KAR 2:010.

(4)(a) An application [All applications] shall be sworn to by the applicant or a responsible official acting for the applicant.

(b) A hearing shall not be called or authority issued upon an incomplete application.

Section 2. Temporary Authority Applications. (1)(a) An application [Applications] for temporary authority shall be made to the department by petition filed in duplicate.

(b) The petition shall set forth the facts relied on by the applicant as showing an immediate and urgent need for the authority sought.

(c) All existing carriers having authority to perform the proposed

service between any of the points sought in the petition shall be fully identified and the authority of each as affected by the application shall be stated.

(d) 1. The applicant shall have the burden of proof in showing that any existing carriers with authority are not capable of meeting the need for service.

2. In lieu of meeting this burden, the applicant may submit a waiver from each carrier authorized to serve the area sought or any part thereof by filing a letter from each of the carrier waiving any objection to the temporary grant of authority.

(2) If the application is for authority as a contract bus carrier except for authority as a charter bus carrier, there shall also be filed with the petition verified statements from a supporting passenger. The supporting statement shall contain at least the following information:

(a) Name and address of the motor carrier who has filed the application for temporary authority;

(b) Statement of character and reputation of the applicant and a brief history of the applicant's work history, including any experience in providing transportation services;

(c) Name, address and interest of each person filing a supporting affidavit;

(d) A statement of how the transportation service, if any, is now obtained and how it was obtained in the past;

(e) How soon the transportation service is needed and the reasons for the time limit;

(f) How long the need for the transportation service likely will continue and if the person making the supporting statement would support a permanent service application;

(g) Statement of the consequences if this transportation service is not made available and the circumstances which create an immediate and urgent need for the requested service; and

(h) Whether efforts have been made to obtain the service from existing motor carriers and the dates and results of these efforts; name and address of all existing carriers who have either failed or refused to provide the service; and the reasons given for the failure or refusal.

(3) The department may issue temporary authority without following any of the requirements listed above if one (1) of the following conditions exists:

(a) There are no existing carriers with authority within the scope and area of the application;

(b) All existing carriers with authority within the scope and area of the application issue waivers for the issuance of temporary authority;

(c) There are unusual and emergency conditions; or

(d) The application is for temporary approval under KRS 281.632(2).

(4) If no application for corresponding permanent authority is made, applications for temporary authority shall be accompanied by a filing fee of twenty-five (25) dollars and the financial statement of the applicant prepared in accordance with 601 KAR 2:010.

Section 3. Application for Approval of Transfer of Certificate or Permit. (1)(a) An application [All applications] for approval to transfer a certificate or permit issued by the Department of Vehicle Regulation authorizing Kentucky intrastate commerce shall be accompanied by a filing fee of twenty-five (25) dollars.

(b) The application shall be made on "Application for Approval of Transfer of Certificate of Permit" form TC 93-17, effective April 1997. [October, 1994. This form is incorporated by reference in Section 8 of this administrative regulation.]

(c) All applications and exhibits shall be filed in duplicate with answers typewritten or printed legibly in ink. Each question shall be fully answered and all instructions with the application shall be read and fully complied with.

(2)(a) When the applicant is a corporation, a copy of the corporation's certificate of good standing from the Secretary of State in the jurisdiction in which it was incorporated shall be submitted with the application. This certification shall not be more than thirty (30) days old at the time the application is submitted to the department.

(b) If the applicant is a foreign corporation, a Kentucky process agent shall be listed.

(3)(a) The application shall be accompanied by the transferee's financial statement prepared in accordance with 601 KAR 2:010.

(b) An application [All applications] shall be sworn to by the applicant or a responsible official acting for the applicant.

(c) A hearing shall not be called or authority issued upon an incomplete application.

(4) A copy of the executed transfer agreement and a copy of the certificate or permit sought to be transferred shall accompany the application.

(5) If the application is for the transfer of contract carrier authority, a copy of the contract to be transferred and a duly executed assignment by the original shipper shall be attached to the application.

Section 4. ~~Interstate Operating Authority - Exempt, For-hire.~~ (1)(a) ~~All for-hire motor carriers transporting commodities that have been exempted from the authority requirements of the Interstate Commerce Commission or are performing transportation functions that are exempt from the authority of the Interstate Commerce Commission shall before engaging in the interstate transportation of persons or property in Kentucky secure from the department a certificate authorizing this interstate exempt transportation:~~

~~(b) All applications for this certificate shall be made on the form, TC 95-12, as revised January, 1995, "Uniform Application for Registration by ICG Motor Carriers Exempt from ICG Regulations". This form is incorporated by reference in Section 8 of this administrative regulation:~~

~~(c) The application shall be accompanied by:~~

~~1. A twenty-five (25) dollar filing fee; and~~

~~2. A statement of reasons the transportation activities are exempted from federal regulation:~~

~~(2)(a) All applications and exhibits shall be typewritten or printed legibly in ink:~~

~~(b) Each question shall be fully answered and all instructions with the application shall be read and fully complied with:~~

~~(c) All applications shall be sworn to by the applicant or a responsible official acting for the applicant:~~

~~(3) If the motor carrier is engaged solely in transportation activities exempted by federal law from regulation, the department shall issue any qualified applicant a Kentucky interstate irregular route common carrier certificate restricted to the federally exempted activities as may be appropriate:~~

~~(4)(a) When the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt:~~

~~(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority:~~

Section 5. ~~Interstate Operating Authority - For-hire Motor Carriers [Authorized by the Interstate Commerce Commission].~~ (1) 49 CFR Part 1023 [as effective May 18, 1993] shall govern the registration of the for-hire motor carriers which meet the following criteria:

(a) Those whose principal place of business is Kentucky; and

(b) Those which are operating in interstate commerce [pursuant to authority granted by the Interstate Commerce Commission].

(2) The "Procedure Manual for the Single State Registration System" prepared by the National Conference of State Transportation Specialists and effective July 12, 1993 shall govern the procedures of the Department of Vehicle Regulation in the registration of for-hire motor carriers operating in interstate commerce. [pursuant to authority granted by the Interstate Commerce Commission].

(3) A motor carrier which maintains its principal place of business in Kentucky shall apply to the Department of Vehicle Regulation for registration pursuant to 49 CFR Part 1023.

(4) The Kentucky fee for the issuance of the registration receipt required by the "Procedure Manual for the Single State Registration System" shall be ten (10) dollars per motor vehicle.

[(5) The "Procedure Manual for the Single State Registration System" is incorporated by reference in Section 8 of this administrative regulation.]

Section 5. [6.] Contract Bus Carrier Permit; Intrastate. (1) [All applications for operating authority to engage in intrastate commerce as a contract carrier shall be made on the form incorporated by reference in Section 1 of this administrative regulation and be in conformity with this administrative regulation and 601 KAR 1:045.

(2)] Each application for authority as an intrastate contract bus carrier shall include:

(a) A filing fee of twenty-five (25) dollars; and

(b)] two (2) copies of the contract under which the applicant desires to operate.

(2) [(3)] The contracts shall be executed by the applicant/buyer and seller or applicant and passenger, and shall set out:

(a) The rates applicable;

(b) The extent and scope of the activity covered by the contract; and

(c) The minimum number of persons to be transported.

(3) [(4)] Reference to a published common carrier tariff shall not be acceptable in defining rates or compensation.

(4) [(5)] At least one (1) of the contract copies shall have original signatures.

(5) [(6)] The extent of the authority of the contract carrier permit shall be:

(a) Limited to the scope of the contract on file with the department; and

(b) Made a part of the permit.

(6)(a) If [(7)(a) When] the motor carrier has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier an insurance receipt.

(b) The motor carrier shall keep a copy of the insurance receipt in each vehicle operating pursuant to this authority.

[Section 7. Kentucky Intrastate Authority by a Single State Operator who Intends to Register with the ICG. All applications for a certificate of public convenience and necessity authorizing motor common carrier operations in the transportation of property in intrastate commerce, by an applicant who is a single state operator but also desires to engage in transportation in interstate and foreign commerce shall file a copy of its final Interstate Commerce Commission authority with the application for intrastate authority.]

Section 6. Charter Bus Applications. (1) An application for operating authority as a charter bus operator as defined in KRS 281.637 shall be made on form TC 93-20 "Application for Charter Bus Operating Authority".

(2) Each application shall include a filing fee of twenty-five (25) dollars.

(3) The applicant shall certify knowledge of and compliance with Safety Administrative Regulation 601 KAR 1:005, Sections 2, 3(b) and 4 and with the provisions of KRS Chapter 281A relating to commercial drivers licenses.

(4) The applicant shall be required to file evidence of insurance as required in KRS 281.655(4).

(5)(a) If an applicant for a charter bus certificate has complied with the provisions of this administrative regulation, the Department of Vehicle Regulation shall issue the carrier a registration receipt authorizing charter bus operations between all points and places in Kentucky.

(b) The carrier shall keep a copy of this receipt in each vehicle operating pursuant to this authority.

Section 7. [8.] Incorporation by reference. (1) The following material is incorporated by reference:

(a) Transportation Cabinet form TC 93-10, Application for Operating Authority, Household Goods, effective April 1997;

(b) Transportation Cabinet form TC 93-11, Application for Operating Authority, Disabled Persons Carrier, effective October 1996;

(c) Transportation Cabinet form TC 93-12, Application for Operating Authority, Bus and Airport Shuttle, effective November 1998;

(d) Transportation Cabinet form TC 93-13, Application for Operating Authority, City Limousine and Taxi, effective October 1996;

(e) Transportation Cabinet form TC 93-15, Application for Operating Authority, County Limousine and Taxi, effective April 1997;

(f) "Application for Charter Bus Operating Authority", form TC 93-20 November 1998 edition; ["Application for Operating Authority", form TC 93-13, October 1994 edition;

(b) "Application for Approval of Transfer of Certificate or Permit", form TC 93-17, October 1994 edition;

(c) "Uniform Application for Registration by ICG Motor Carriers

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Exempt from ICC Regulations", TC 95-12, January 1995 edition;] and (g) [(d)] "Procedure Manual for Single State Registration System", July 12, 1993 edition.

(2) Copies of the material incorporated in subsection (1)(a) through (f) [and (b)] of this section may be inspected, copied or obtained at the Office of General Counsel, [Division of] Hearings Section, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-2548.

(3) Copies of the material incorporated in subsection (1)(g) [(e)] of this section may be inspected, copied or obtained at the Division of Motor Carriers, Third Floor of the State Office Building, 501 East High Street, Frankfort, Kentucky 40622. The mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-4540.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: December 14, 1998 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: We have 65 current charter bus operators in Kentucky. There are 22 pending applications for this 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 will be implemented, to the extent available from the public comments received: This administrative regulation will be implemented in all 120 counties across Kentucky. It is not anticipated to affect the cost of living.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation is not anticipated to have any affect on the cost of doing business in Kentucky.

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

1. First year following implementation: This regulation will result in fewer reporting and paperwork requirements for charter bus carriers operating in Kentucky. Competition will increase as a result of more charter bus operators in Kentucky.

2. Second and subsequent years: There is no change from the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will eliminate the hearing process from the charter bus application procedures in the Transportation Cabinet.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Not applicable.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet is implementing Section 4610 of the Transportation Equity Act of 2000.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: Not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. All affected entities will receive equal treatment as result of this administrative regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Transportation Equity Act of 2000 (TEA 21) Section 4016 - Authority Over Charter Bus Transportation.

2. State compliance standards. Kentucky will no longer require complex applications, public hearings for authority and economic regulations governing charter buses.

3. Minimum or uniform standards contained in the federal mandate. No state may enforce economic regulations on the charter bus industry.

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY
AND REVIEWING SUBCOMMITTEE

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, December 8, 1998)

9 KAR 1:015. Preadministrative [Preadjudicatory] proceedings.

RELATES TO: KRS 11A.080(1), (2), (3)

STATUTORY AUTHORITY: KRS 11A.110(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.080 requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes a number of procedures for the filing of complaints and commission investigations. In order to implement the investigation of complaints mandated by KRS 11A.080, this administrative regulation establishes procedures relating to investigations that are not established by KRS 11A.080.

Section 1. Complaint. (1) A complaint shall state the:

(a) Full name and address of the:

1. Complainant;

2. Complainant's attorney, if an attorney has been retained;

(b) Name of each person alleged to have violated KRS Chapter 11A;

(c) Employment of each alleged violator, if known;

(d) Alleged facts that are the basis of the complaint; and

(e) Statute alleged to have been violated, if known.

(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature.

Section 2. Answer to Complaint. (1) The copy of the complaint and the general statement of applicable law shall be mailed to the person against whom a complaint is filed, by certified mail, return receipt requested.

(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed shall:

(a) File with the commission a written, signed response to the complaint; and

(b) Mail a copy of the response to the complainant.

Section 3. Commission-initiated Investigation [Inquiry]. [(1) When the commission initiates a preliminary investigation [inquiry] on its own motion, within ~~ten (10)~~ [sixty (60)] days of initiation of the preliminary investigation [inquiry], it shall notify the person being investigated that he is the subject of a commission investigation [inquiry].

(2) The notice required by KRS 11A.080(1)(c) shall be mailed to the person being investigated by certified mail, return receipt requested, at the last known address, or by personal service.

Section 4. Meeting During Preliminary Investigation. (1) The person being investigated may request a meeting with the commission's attorney and the complainant, if any, at any time during the course of the commission's preliminary investigation [inquiry]. He may have an attorney represent him at this meeting.

(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.

(3) Nothing in this section shall be construed to prohibit the commission's attorney or any investigator acting on behalf of the commission from initiating contact with the person being investigated, or the person's attorney if he has retained counsel.

[Section 5. Initiation of Administrative [Adjudicatory] Proceeding. If the commission determines to initiate an administrative [adjudicatory] proceeding, it shall issue an initiating order.]

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, December 8, 1998)

9 KAR 1:030. Administrative [Adjudicatory] proceedings.

RELATES TO: KRS 11A.080, 11A.100

STATUTORY AUTHORITY: KRS 11A.080, 11A.100, [(4)(b); 11A.110(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.080(4)(b) authorizes [gives] the commission [the authority] to initiate an administrative [adjudicatory] hearing to determine whether there has been a violation. This administrative regulation establishes the procedures governing administrative [adjudicatory] proceedings.

Section 1. Initiating Order. To initiate an administrative [adjudicatory] proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the administrative [adjudicatory] proceeding. The initiating order shall:

(1) Include the information required by KRS 13B.050(3); [State the name of the respondent;]

(2) State the alleged facts upon which the initiating order is issued;

(3) State each violation which the commission found probable cause to believe occurred, or is occurring, referencing specific statutes and administrative regulations which relate to the violation involved;

(4) State that all material submitted to the commission by the respondent or his attorney shall be addressed to the Executive Branch Ethics Commission;

(3) [(5)] Establish the procedural schedule for the proceeding or state that it will be set by subsequent order.

[(6) Order the respondent to appear at a hearing scheduled or state that it will be sent by subsequent order. Any order specifying a hearing date shall include the:

(a) Date, time, place, and nature of the hearing;

(b) Name, official title, and mailing address of the hearing officer, if a hearing officer has been appointed;

(c) Name, official title, and mailing address of the chairman of the commission, if a hearing officer has not been appointed; and

(d) Names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the commission;

(7) State the respondent's right to legal counsel;

(8) State the respondent's right to examine, prior to the hearing, any evidence which will be used at the hearing and any exculpatory information in the commission's possession;

(9) State the respondent's right to subpoena witnesses on his own behalf;

(10) State that if the respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default; and

(11) State the respondent's right to appeal a final commission order to the Franklin Circuit Court within thirty (30) days of service.]

Section 2. [Service. An order shall be served on the parties by certified mail, return receipt requested, sent to the last known address of the respondent, or by personal service. Service by mail shall be complete upon the date on which the agency receives the return receipt or the return notice.] [considered issued the date it is signed by a majority of the commission and shall be served upon the respondent pursuant to the Kentucky Rules of Civil Procedure.]

[Section 3.] Answer. (1) A written answer to the initiating order shall be filed with the commission within twenty (20) days of service, by the:

(a) Respondent, if he has not retained counsel; or

(b) Respondent's attorney, if he has retained counsel.

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(2) The answer shall be verified by the respondent.

Section 3. [4.] Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.

(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the administrative [adjudicatory] proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 4. [5.] [Discovery. (1) The presiding officer shall issue subpoenas on written request of the respondent, his attorney, the commission or the commission's attorney.

(2) If the presiding officer is not the chairman, he shall forward any subpoena requests to the chairman for his signature.

(3) The respondent shall bear the cost of serving the subpoenas, paying any witness fees and expenses for subpoenas issued at his or his attorney's request.

Section 6. Prehearing Disclosure of Evidence. (1) By the commission:

(a) The respondent may inspect any evidence to be used at the hearing and exculpatory information in the commission's possession.

(b) No person shall have the right to examine or copy the personal notes, observations, conclusions, or work product of the commission's legal counsel.

(c) An appointment for the inspection of evidence shall be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation.

(d) The respondent may request copies of any evidence to be used at the hearing and exculpatory evidence.

(e) The commission shall not charge the respondent for providing such copies.

(2) By the respondent. At least thirty (30) days prior to the scheduled adjudicatory hearing, or as specified in the procedural schedule established by the initiating order or by the presiding officer, the respondent shall furnish to the commission's legal counsel:

(a) Copies of any documents which the respondent intends to introduce at the hearing;

(b) Copies of any documents or other items of tangible evidence within the respondent's possession or control which he intends to introduce at the hearing;

(c) A list of the names, addresses, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing; and

(d) Any other information as the presiding officer deems appropriate.

(e) The respondent shall not charge the commission for copies of material provided.

(3) Continuing duty to disclose:

(a) After disclosure has been completed, each party shall remain under an obligation to disclose items of evidence that may come to his attention, as soon as practicable.

(b) The presiding officer may refuse to allow a party to introduce evidence that was not properly and timely disclosed to the other party.

Section 7. Motions. Except for motions made during the course of an adjudicatory hearing, all motions shall be in writing, signed by the movant or his attorney, and filed with the commission.

Section 8. Prehearing Conferences. (1) The respondent may request a prehearing conference with the presiding officer and the commission's attorney if the request is made:

(a) At least five (5) days prior to the date scheduled for the hearing; or

(b) As designated in a commission order.

(2) The presiding officer shall conduct the prehearing conference unless the chairman designates another person to conduct it.

(3) The conference may be held to:

(a) Discuss jurisdictional matters;

(b) Prepare stipulations of facts or issues;

(c) Clarify issues;

(d) Rule on motions;

(e) Take evidence;

(f) Issue subpoenas and orders; and

(g) Consider other matters that promote the orderly and prompt conduct of the proceeding.

(4) At the conclusion of the prehearing conference, the presiding officer shall issue a prehearing order incorporating all matters determined at the prehearing conference.

(5) If a prehearing conference is not held, the presiding officer may issue a prehearing order to regulate the conduct of the hearing.

Section 9. Settlement. [Conferences. (1) The respondent may request a settlement conference with the commission's attorney, if the request is made at least five (5) days prior to the date scheduled for the hearing.

(2) If the commission's attorney recommends a settlement offer be approved, he shall sign the offer and forward it to the chairman.

(3) If a majority of the commission agrees to accept the settlement offer, each approving member shall sign the offer and the chairman shall notify the presiding officer and the commission's attorney that the offer has been approved.

(4) Within ten (10) days of the approval of the offer, the commission shall issue an order which states that the case is concluded by settlement.

(5) The commission shall not approve a settlement that provides for the confidentiality of:

(1) [(a)] The existence of the settlement; or

(2) [(b)] Any of the terms of the settlement.

[Section 10. A party may represent himself or be represented by counsel.

Section 11. Presiding Officer. (1) The presiding officer shall be:

(a) The chairman of the commission; or

(b) A person designated by the chairman to serve as the presiding officer. This person can be another member of the commission or a hearing officer appointed by the commission to preside over the proceeding.

(c) A presiding officer shall:

1. Conduct prehearing activities; and

2. Submit recommended findings of fact and conclusions of law to the commission.

(d) Hearings may be heard by one or more members of the commission, the commission's designated hearing officer, or both. One (1) person shall be designated the presiding officer for each hearing.

(2) If a person has served as an investigator with regard to the subject matter of a hearing, he shall not serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing.

(3) Except as provided by subsection (2) of this section, a person shall not be disqualified from serving as the presiding officer of a hearing if he has participated in the decision of the commission to initiate the adjudicatory proceeding.

Section 12. Disqualification of a Presiding Officer. (1) A presiding officer shall be disqualified, and shall not serve as a presiding officer if he:

(a) Served as an investigator or prosecutor in the proceeding or in the preadjudicatory stages of the proceeding;

(b) Participated in an ex parte communication which would prejudice the proceeding;

(c) Has a pecuniary interest in the outcome of the proceeding; or

(d) Has a personal bias toward any party to a proceeding which would cause a prejudgment of the proceeding.

(2)(a) A party may file a written motion to disqualify a presiding officer within twenty (20) days of the latter of the:

1. Receipt of notice of the identity of the presiding officer; or

2. Discovery of facts establishing grounds for disqualification of the presiding officer.

(b) The motion shall state the facts or reasons supporting it.

(c) The commission shall state in writing the facts or reasons for its decision on the motion to disqualify.]

Section 5. [6.] [13.] Ex Parte Communications. Once an administrative [adjudicatory] proceeding has commenced, the commission, its executive director, commission counsel, [a presiding officer, employ-

ees of the presiding officer;] the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or an issue of fact or law related thereto, except upon notice and opportunity for all parties to participate.

[Section 14. Order of Proceeding. (1)(a) The presiding officer shall call the hearing to order, identify the parties to the action, and read the initiating order.

(b) The presiding officer shall then ask the parties to state any objections or motions, and shall rule upon any objections or motions.

(c) Opening statements shall then be made, with the attorney for the commission proceeding first.

(d) Either party may waive opening statement.

(2)(a) The taking of proof shall commence with the calling of witnesses on behalf of the commission.

(b) Witnesses shall be examined first by the attorney for the commission, then by the respondent or that person's attorney, and finally by the presiding officer and any member of the commission hearing the case.

(c) Rebuttal examination of witnesses shall proceed in the same order.

(d) Documents or other items may be introduced into evidence as appropriate.

(3)(a) Upon conclusion of the case for the commission, the respondent shall call his witnesses.

(b) Witnesses shall be examined first by the respondent or that person's attorney, then by the attorney for the commission, and finally by the presiding officer and any member of the commission who is hearing the case.

(c) Rebuttal examination of those witnesses shall proceed in the same order.

(d) Documents or other items may be introduced as appropriate.

(4) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(5)(a) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the commission always proceeding last.

(b) The presiding officer may impose reasonable time limitations upon the time allowed for opening and closing statements.

(c) Either party may waive his right to give a closing statement.

(6)(a) During a proceeding, if a person's name is mentioned, he shall be permitted to make a verbal or written statement in opposition to the mention of his name if:

1. He notifies the presiding officer, a member of the commission, or commission staff of his opposition; and

2. The presiding officer determines that he may be affected adversely by the mention of his name.

(b) A person governed by the provisions of this section may be represented by counsel.

(c) If a written statement of opposition is accepted, it shall be incorporated into the record.]

Section 6. ~~[7.]~~ [15.] Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

(2)(a) A transcript of the testimony taken during the hearing shall be kept by the commission.

(b) Upon request and payment of the appropriate fee, a copy of the transcript shall be available to the respondent from the:

1. Court stenographer; or

2. Commission, if the stenographer is unable to furnish a copy.

(c) A copy of the transcript of the hearing shall be available to all commission members.

(d) Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the hearing [presiding] officer.

[Section 8. ~~[16.]~~ Official Record. For each administrative [adjudicatory] proceeding, the commission shall keep an official record of the proceedings which shall consist of:

(1) All notices, pleadings, motions, and intermediate rulings;

(2) Any prehearing orders;

(3) Evidence received and considered;

(4) A statement of matters officially noticed;

(5) Proffers of proof and objections and rulings thereon;

(6) Proposed findings, requested orders, and exemptions;

(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;

(8) All requests by the hearing [presiding] officer for an extension of time, and the response of the commission;

(9) Ex parte communications placed upon the record [by the presiding officer]; and

(10) The transcript of the hearing.]

[Section 17. Continuances. Proceedings in Absentia. (1) A request by the respondent for a continuance of the hearing shall be considered by the presiding officer if it is made:

(a) Three (3) days prior to the scheduled hearing date, and based upon good cause; or

(b) Later than three (3) days prior to the scheduled hearing, because of substantiated medical or other emergency.

(2) The decision whether to grant a continuance shall be made by the presiding officer.

(3) Unless the respondent establishes that his failure to appear at a scheduled hearing for which a continuance has not been granted in advance was due to an unforeseen medical or other emergency:

(a) The hearing may be held as scheduled; and

(b) The failure to appear shall constitute a waiver of the respondent's right to appear.]

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

**GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, December 8, 1998)**

9 KAR 1:040. Registration and expenditure statements; financial transactions and termination forms; handbook; and enforcement. [Initial and updated registration statements and registration cards for executive agency lobbyists, [and] lobbyist employers and real parties in interest; expenditure statements; financial disclosure forms; termination forms; [and] Executive Agency Lobbying Handbook; and enforcement procedure.]

RELATES TO: KRS 11A.211, 11A.216, 11A.221, 11A.231, 11A.233(1), 11A.241(4), (5), 11A.990

STATUTORY AUTHORITY: KRS 11A.110(3), (4), 11A.241(4), (5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.241(4) requires the Executive Branch Ethics Commission to prescribe the initial registration statement and the termination notice required by KRS 11A.211, the statement of expenditures required by KRS 11A.216, and the statement of financial transactions required by KRS 11A.221. [This administrative regulation establishes these forms.] KRS 11A.241(6) requires the commission to publish a handbook that explains the provisions of KRS 11A.201 to 11A.246. [This administrative regulation establishes that handbook.] KRS 11A.990 states that a lobbyist who fails to file a registration statement shall be subject to a civil penalty. This administrative regulation establishes the registration, financial transactions, and expenditure statements, termination notice, handbook, and enforcement procedure. [procedures for enforcing this penalty.]

Section 1. [Definitions. "Regular and substantial basis" means executive agency lobbying activity of more than one (1) time per year regarding a decision that involves state expenditures that exceed \$5,000 per year.

Section 2.] Initial Registration Statement. (1) The initial registration statement required by KRS 11A.211 shall be filed on the "Initial Registration Statement" form [incorporated by reference in Section 4 of this administrative regulation].

(2)(a) The brief description of the executive agency decision shall include the subject matter for which an executive agency lobbyist:

1. Has been engaged; or
2. Is responsible.

(b) Subject matters shall include:

1. An award of grant for social services;
2. A lease for office space or equipment;
3. A contract to provide food, clothing, or other consumable products;
4. Any other subject matter.

(3)(a) The signature on the "Initial Registration Statement" which is filed with the commission shall be an original signature in ink other than black.

(b) The forms incorporated by reference in this administrative regulation may be reproduced by an executive agency lobbyist or his employer.

Section 2. [3:] (1) The "Updated Registration Statement" [updated registration] form required by KRS 11A.211(2) shall be filed on the applicable "Updated Registration Statement" [updated registration] forms [incorporated by reference in Section 3 [4] of this administrative regulation].

(2) The notice of termination required by KRS 11A.211(4) shall be filed on the "Termination Notification As Executive Agency Lobbyist" form [incorporated by reference in Section 3 [4] of this administrative regulation].

Section 3. If an executive agency lobbyist, an employer of an executive agency lobbyist, or a real party in interest has not filed an "Updated Registration Statement" on or before the date the statement was due, the commission shall notify him, by certified mail, return receipt requested, that if he does not file the statement within fifteen (15) days of the receipt of notice he shall be fined as provided by KRS 11A.990(6). [Enforcement Procedure. (1)(a) Within ten (10) days of the due date of the Updated Registration Statement, the commission staff will determine those executive agency lobbyists, employers of executive agency lobbyists, and real parties in interest who have not filed an Updated Registration Statement by the due date. Commission staff will send a letter to the delinquent individuals or entities by certified mail within fifteen (15) days of the statement due date.

(b) If the individual or entity does not file within fifteen (15) days from the day the certified letter was served, the commission will impose a \$1,000 fine, payable within ten (10) days, unless the commission receives evidence indicating the filing has been received.]

Section 4. Material Incorporated by Reference. (1) The following documents are incorporated by reference:

(a) "Executive Agency Lobbyist/Employer or Real Party in Interest Initial Registration Statement (Rev. 090196 [030+95])";

(b) "Updated Registration Statement - Executive Agency Lobbyist (Rev. 090196 [030+95])";

(c) "Updated Registration Statement - Employer of Executive Agency Lobbyist (Rev. 090196 [030+95])";

(d) "Updated Registration Statement - Real Party in Interest (Rev. 090196)";

(e) "Termination Notification as Executive Agency Lobbyist (Rev. 090196 [030+95])";

(f) [(e)] "Executive Agency Lobbying Handbook (Rev. 090196 [030+95])"; and

(g) [(f)] "Commonwealth of Kentucky Registration Card Executive Agency Lobbyist (9/93)".

(2) These forms may be inspected, copied, or obtained from the Executive Branch Ethics Commission, Room 273, Capitol Annex, 702 Capital Avenue, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 30, 1998 at noon

GENERAL GOVERNMENT CABINET
Executive Branch Ethics Commission
(As Amended at ARRS, December 8, 1998)

9 KAR 1:050. Approval of outside employment of a public servant.

RELATES TO: KRS 11A.040(9)

STATUTORY AUTHORITY: KRS 11A.040(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 11A.040(9) requires the appointing authority to review administrative regulations established under KRS Chapter 11A when deciding whether to approve outside employment for a public servant. [KRS 11A.040(9) requires the Executive Branch Ethics Commission to promulgate administrative regulations establishing a procedure for approval of outside employment of a public servant.]

Section 1. (1) [On or after July 15, 1994:] A public servant who requests [wishes to request] approval of his appointing authority [the Executive Branch Ethics Commission] for outside employment shall submit a statement under oath to the appointing authority of his agency as follows:

"I request approval of off-duty employment with (name of outside employer). As a (public servant's job title), I am not involved in the (name of state agency's) decisions concerning (name of outside employer). If the request is approved, I agree that if, in the future, I realize that I will be involved in such decisions, I will immediately notify [the] (appointing authority) [and the Executive Branch Ethics Commission] and take steps to avoid any conflict of interest."

(2) The public servant shall attach to this statement:

(a) The public servant's current P-1 personnel form or comparable form, if applicable, and job description, and the name, title and location of the public servant's immediate supervisor.

(b) The name and address of the outside employer; description of its type of business, ownership, and all its business and regulatory relationships with the appointing authority's agency; and a description of the public servant's off-duty job.

(c) An explanation of the specific factors which separate the public servant's state job from the agency's decisions concerning the outside employer.

Section 2. The appointing authority shall review the request and consider, including but not limited to, the following factors:

(a) The degree of separation between the public servant's state duties and decisions concerning the outside employer. Example: whether the public servant is involved with the awarding of contracts to or regulation of the outside employer.

(b) The public servant's level of supervisory or administrative authority, if any. Example: whether the public servant has ultimate responsibility for a decision concerning the outside employer, although he is not involved in the decision-making process.

(c) Whether the outside employment will interfere or conflict with the public servant's state employment duties.

1. A conflict shall exist if a public servant cannot carry out an appropriate course of action for his agency because of responsibilities his outside employment would require.

2. A conflict shall exist if the outside employment will materially interfere with the public servant's independent judgment in considering alternatives or courses of action that reasonably should be pursued in his state employment.

(d) The duration of the outside employment; [and]

(e) Whether the outside employment would create an appearance of conflict of interest with state duties; and

(f) Whether the public servant is an auditor, inspector or other regulatory personnel of a division which is currently auditing, inspecting or reviewing or has scheduled an audit, inspection or review of the outside entity for which the public servant requests approval to work.

Section 3. The appointing authority shall consider the factors set forth in Section 2 of this administrative regulation and, if the appointing authority approves the outside employment request, certify in writing the following: [-]

(3)(a) The commission shall consider approval of the outside em-

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ployment if the public servant's appointing authority submits to the commission the following statement:]

"As appointing authority for the (agency), I certify that as a (public servant's job title), (public servant's name) is not involved in this agency's decisions concerning (outside employer); that his off-duty employment by (outside employer), in my opinion, will not create a real or perceived conflict of interest which would damage public confidence in government; and that I approve such off-duty employment."

[(b) The appointing authority shall attach to this statement:

1. The public servant's current P-1 personnel form and job description, and the name, title and location of the public servant's immediate supervisor;

2. The name and address of the outside employer; description of its type of business, ownership, and all its business and regulatory relationships with the appointing authority's agency; and a description of the public servant's off-duty job;

3. An explanation of the specific factors which separate the public servant's state job from the agency's decisions concerning the outside employer.]

Section 4. On January 15, April 15, July 15, and October 15 of each year, the appointing authority shall file with the Executive Branch Ethics Commission a list of all employees who have been approved for outside employment during the preceding quarter, along with the name of the outside employer of each.

DON WIMBERLY, Chair

DONNA G. DUTTON, General Counsel

APPROVED BY AGENCY: September 3, 1998

FILED WITH LRC: September 15, 1998 at noon

DEPARTMENT OF STATE Kentucky Registry of Election Finance (As Amended at ARRS, December 8, 1998)

32 KAR 2:050. Conciliation.

RELATES TO: KRS 121.130(1), 121.140

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.120(1)(g) authorizes the Registry of Election Finance to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 121. This administrative regulation establishes conciliation procedures. [The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with Acts 1992, Chapter 288, Section 46, which became effective July 14, 1992. The purpose of the amendment to this administrative regulation is to create an incentive for candidates and their treasurers to attend the training sessions conducted by the registry under KRS 121.130(1). It is necessary to promulgate this amendment to enable the registry to encourage voluntary participation in the training sessions, in an effort to maximize the dissemination of information to candidates, treasurers, depositories and the general public, as required under KRS 121.130(1).]

Section 1. Negotiations. (1) Upon a registry finding of probable cause, the general counsel and executive director shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(2) During conciliation negotiations, the general counsel and executive director shall [may] consider as a mitigating factor the attendance by a candidate or treasurer at one (1) or more training sessions sponsored by the registry, directly preceding the election during which the violation occurred. Based upon this and any other mitigating factors, the general counsel and executive director may reduce a fine, if proposed by the registry. [the proposed fine.]

(3) A conciliation agreement shall not be binding upon either party until it is signed by the respondent, the general counsel, and the executive director and approved by the registry.

(4) [(3)] If the probable cause to believe finding is made within forty-five (45) days preceding an election, the conciliation attempt shall continue for at least fifteen (15) days from the date of the finding. In all other cases, conciliation attempts by the registry shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(5) [(4)] If a conciliation agreement is reached between the registry and the respondent, the general counsel shall send a copy of the signed agreement to both complainant and respondent.

Section 2. Public Disclosure of Registry Action. (1) If the registry makes a finding of no reason to believe or no probable cause or otherwise terminates its proceedings, it shall make public its determination and the basis for the determination no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(2) If a conciliation agreement is finalized, the registry shall make the agreement public.

(3) Except as provided in subsections (1) and (2) of this section, a complaint filed with the registry, any notification sent by the registry, any investigation conducted by the registry, or any findings made by the registry shall not be made public by the registry without the written consent of the respondent until a written response has been received or the expiration of the fifteen (15) day response period required by Section 3 of 32 KAR 2:030. Upon receipt of a response or the expiration of the fifteen (15) day period, the complaint, response, and materials related thereto, exclusive of materials exempted by KRS 61.878(1), shall be open for public inspection.

(4) Except as provided in subsections (1) and (2) of this section, an action by the registry or by any person, and information derived in connection with conciliation efforts shall not be made public by the registry until a final action with regard to a conciliation attempt is taken.

[(5) This administrative regulation shall not be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to applicable Rules of Evidence or Rules of Civil Procedure.]

DONALD L. COX, Chair

ROSEMARY F. CENTER, General Counsel

APPROVED BY AGENCY: October 12, 1998

FILED WITH LRC: October 12, 1998 at 4 p.m.

ATTORNEY GENERAL'S OFFICE Department of Law Consumer Protection Division (As Amended at ARRS, December 8, 1998)

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.46983 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing [To regulate] the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. This administrative regulation establishes procedures for the registration of merchants, telemarketing company, or telemarketers governed by the provisions of KRS 367.46951 to 367.46999.

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

(1) "Merchant" as defined by 1998 Ky. Acts ch. 581, sec. 1(7); or
(2) "Telemarketer" as defined by 1998 Ky. Acts ch. 581, sec. 1(11); or

(3) "Telemarketing company" as defined by 1998 Ky. Acts ch. 581, sec. 1(13). ["Material change" in reported information required by KRS Chapter 367 (SB 168, sec. 7) means any additions or deletions of factual matter which would have a significant consequence in the evaluation of the application if it were contained in the original filing;

such as but not limited to:

(1) Any association with any officer, director, trustee, general or limited partner, sole proprietor, owner, or person having management responsibility in the applicant's business activities whose past occurrences would have been required to have been reported in an original application pursuant to KRS 367.4697;

(2) Filing of any bankruptcy petition by applicant;

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

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

Section 2. Registration. (1)(a) If a telemarketer is exempt from registration pursuant to KRS 367.46951(2), he shall file upon written request of the Office of the Attorney General the "Commonwealth of Kentucky, Office of the Attorney General, Affidavit of Telephone Solicitation Merchant Exemption".

(b) A telemarketer who is not exempt from registration pursuant to KRS 367.46951(2), shall comply with the provisions of subsections (2) and (3) of this section, and Sections 3 and 4 of this administrative regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ALBERT B. CHANDLER III, Attorney General
TODD LEATHERMAN, Director, Consumer Protection Division
APPROVED BY AGENCY: October 13, 1998
FILED WITH LRC: October 14, 1998 at 4 p.m.

ATTORNEY GENERAL'S OFFICE
Department of Law
Consumer Protection Division
(As Amended at ARRS, December 8, 1998)

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

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

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983
NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.46983 authorizes the Attorney General to promulgate administrative regulations required to enforce KRS 367.46951 to 367.46999 governing the sales of goods and services to consumers in the Commonwealth of Kentucky by use of telephone solicitations. 1998 Ky. Acts ch. 581, sec. 3(15) establishes the right of consumers to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List". 1998 Ky. Acts ch. 581 sec. 3(15), requires the Office of the Attorney General to establish fees to defray the cost of the No Telephone Solicitation Calls Program. This administrative regulation establishes requirements relating to the "Commonwealth of Kentucky No Telephone Solicitation Calls List", fees and the notification procedure.

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

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

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

(c) "Telemarketing company", as [is] defined by 1998 Ky. Acts

ch. 581, sec. 1(13).

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

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

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

- (a) Name;
- (b) Address, including city, county, and zip code;
- (c) The number of each telephone to which the notification applies.

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

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

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

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

(6) If the telephone number of a holder of a telephone number on the list has changed, the holder's telephone number on the list shall be changed if he has notified the Office of the Attorney General in writing of the change.

Section 3. Publication. (1) Quarterly publication.

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. (1) A telemarketer that is exempted from the provisions of KRS Chapter 367 by KRS 367.46951(2) may obtain a certified copy of the "Commonwealth of Kentucky No Telephone Solicitation Calls List" in order to remove telephone numbers on the list from its sales list.

(2) A "Commonwealth of Kentucky No Telephone Solicitation Calls List" obtained pursuant to subsection (1) of this section shall not be used for marketing purposes.

(3) A telemarketer that obtains a "Commonwealth of Kentucky No Telephone Solicitation Calls List" pursuant to subsection (1) of this section shall comply with statutes and administrative regulations governing the "Commonwealth of Kentucky No Telephone Solicitation Calls List". [Complaints Relating to Violations of 1998 Ky. Acts ch. 581, sec. 3(15). (1) A holder of a telephone number who wishes to file a complaint shall complete a "Telemarketing Complaint Form".

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

- (a) Name, home and work phone numbers, address, city, county, state, and zip code;**
- (b) Name of the telemarketing company or person, address, city, county, state and zip code that is the subject of the complaint;**
- (c) Time and length of each call;**
- (d) Whether a fee was requested;**
- (e) Whether the caller used threatening, intimidating, profane or obscene language;**
- (f) Whether a holder of a telephone number had notified the Attorney General's Office that he wanted to be placed on the "Commonwealth of Kentucky No Telephone Solicitation Calls List";**
- (g) Whether a holder of a telephone number had advised the caller that he was not interested in the product. If so, how long it took for the caller to end the call; and**
- (h) A statement of the facts relating to the complaint.]**

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

- (a) "Request for Placement on No Telephone Solicitation Calls List", Form TS-7, 1998;
- (b) "Request for Commonwealth of Kentucky No Telephone Solicitation Calls List", Form TS-8, 1998; and
- (c) "Telemarketing Complaint Form", Form TS-9, 1998.

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

ALBERT B. CHANDLER III, Attorney General
TODD LEATHERMAN, Director, Consumer Protection Division
APPROVED BY AGENCY: October 13, 1998
FILED WITH LRC: October 14, 1998 at 4 p.m.

ATTORNEY GENERAL'S OFFICE
Department of Law
Consumer Protection Division
(As Amended at ARRS, December 8, 1998)

40 KAR 2:076. Procedures and notification of violations of
~~[the prohibited telephone solicitation act or practice of]~~ 1998
Ky. Acts ch. 581, secs. 3(1)-(14), (16)

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

STATUTORY AUTHORITY: KRS 15.180, 367.150, 367.46983

NECESSITY, FUNCTION, AND CONFORMITY: KRS
367.46983 authorizes the Attorney General to promulgate adminis-
trative regulations required to enforce KRS 367.46951 to 367.46999
governing the sales of goods and services to consumers in the
Commonwealth of Kentucky by use of telephone solicitations. 1998
Ky. Acts ch. 581, secs. 3(1)-(14), (16) establishes prohibited tele-
phone solicitation acts or practices for any telemarketing company.
This administrative regulation establishes requirements relating to
the enactment and enforcement of the prohibited telephone solici-
tation act or practice.

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

- (1) An oral complaint made either by telephone or in person; or
 - (2) A written complaint giving a statement of the facts; or
 - (3) A written complaint filed on "Telemarketing Complaint Form".
- (4) A person filing a complaint shall provide the following infor-
mation:
- (a) Name, home and work phone numbers, address, city,
county, state, and zip code;
 - (b) Name of the telemarketing company or person, including,
address, city, county, state and zip code, that is the subject of the
complaint;
 - (c) Time and length of each call;
 - (d) Whether a fee was requested;
 - (e) Whether the caller used threatening, intimidating, profane or
obscene language;
 - (f) Whether the person filing the complaint had advised the caller
that he was not interested in the product. If so, how long it took for
the caller to end the call; and
 - (g) A statement of the facts relating to the complaint.

Section 2. Incorporation by Reference. (1) "Telemarketing Com-
plaint Form" Form TS-9, 1998" is incorporated by reference.

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

ALBERT B. CHANDLER III, Attorney General
TODD LEATHERMAN, Director, Consumer Protection Division
APPROVED BY AGENCY: October 13, 1998
FILED WITH LRC: October 14, 1998 at 4 p.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:020. Other requirements for licensure.

RELATES TO: KRS 216A.070(1)(a), 216A.080(1)(e), (f)

STATUTORY AUTHORITY: KRS 216A.070(3), 216A.080(1)(e),

- (f) NECESSITY, FUNCTION, AND CONFORMITY: KRS
216A.070(1)(a) requires [authorizes] the Kentucky Board of Licensure for Nursing Home Administrators to develop, impose, and enforce standards which shall [must] be met by an individual in order to receive a license. KRS 216A.080(1)(f) authorizes the board to establish [set] other requirements to be met if the requirements

~~[so long as they]~~ are uniform and applied to each applicant for a
license. KRS 216A.080(1)(e) requires an applicant to pass an ex-
amination administered by the board. This administrative regulation
establishes the other requirements for licensure and sets limits on
the taking of the examination.

Section 1. An applicant for a license as a nursing home admin-
istrator shall in addition to meeting all of the requirements provided
by KRS 216A.080(1):

(1) Have satisfactorily completed a course of study for, and have
been awarded a baccalaureate degree from an accredited college or
university;

(2)(a) Except as provided in paragraph (b) of this subsec-
tion, have six (6) months of continuous management experience in
a health care facility within three (3) years of the date of application.
The management experience shall include evidence of responsibility
for:

1. Personnel management;
2. Budget preparation;
3. Fiscal management; and
4. Public relations.

(b) A preceptorship or internship, that is at least six (6) months
in length, which is a part of a degree in long-term care administration
or a related field, shall satisfy the experience requirement estab-
lished in paragraph (a) of this subsection.

Section 2. (1) The examination for licensure established by KRS
216A.080(1)(e) shall be the examination prepared by the National
Association of Boards of Examiners for Nursing Home Administra-
tors.

(2) An applicant shall be permitted to sit for the examination no
more than three (3) times within twenty-four (24) months.

DEBRA FINNERAN, Chairman
MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:030. Temporary permits.

RELATES TO: KRS 216A.070(4)

STATUTORY AUTHORITY: KRS 216A.070(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS
216A.070(4) authorizes the board to issue a temporary permit to an
individual to practice the art of nursing home administration. This
administrative regulation establishes the requirements for issuance
of a temporary permit.

Section 1. (1) A temporary permit to practice as a nursing home
administrator shall [may] be granted to an applicant if:

(a) The applicant has applied for licensure under the provisions
of KRS Chapter 216A;

(b) The applicant has completed all of the requirements for li-
censure except the examination; and

(c) The facility where the applicant is to be employed as the
administrator is without a licensed administrator; and

(d) [1-] The facility owner provides [shall provide] a written
request and supporting information to the board indicating that an
emergency situation exists. [2-] An emergency situation shall be
deemed to exist if:

1. [exists when] The facility is without a licensed nursing home
administrator; and

2. A [no] licensed nursing home administrator is not [reasona-
bly] available to fill the position.

(2) The request for temporary permit shall include payment of
the temporary permit fee as established in 201 KAR 6:060, Section
3 [(2)].

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Section 2. A temporary permit shall not be transferred.

DEBRA FINNERAN, Chairman
MARK BRENGELMAN, Legal Counsel
APPROVED BY AGENCY: August 11, 1998
FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:040. Renewal of license.

RELATES TO: KRS 216A.090
STATUTORY AUTHORITY: KRS 216A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.090 requires the holder of a license to renew his license biennially. This administrative regulation establishes the requirements for renewal, late renewal, inactive licensure and reinstatement of a license.

Section 1. (1) A license shall be renewed every two (2) years from date of issue or from date of last renewal. To apply for renewal, a licensee shall:

(a) Submit a completed Renewal Form B130-7 to the board; and

(b) Pay

~~[(a) A licensee shall pay]~~ to the board the appropriate renewal fee established in 201 KAR 6:060 for the renewal of his license.

~~[(b) A license not renewed on or before the renewal date shall expire based on the failure of the licensee to renew in a timely manner.]~~

(2) A sixty (60) day grace period shall be allowed after the renewal date, during which time a licensee may continue to practice and may renew his license upon payment of the late renewal fee established in 201 KAR 6:060.

(a) A license not renewed by the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner.

(b) Upon termination, the licensee shall not ~~[is no longer eligible to]~~ practice in the Commonwealth.

(3) A license shall be deemed inactive if:

(a) A licensee submits to the board a written request seeking inactive status;

(b) A licensee pays to the board the inactive licensee fee established in 201 KAR 6:060 for an inactive license;

(c) The grace period established in subsection (2) of this section has not expired; and

(d) The license is in good standing when the inactive status request is received.

(4)(a) After the sixty (60) day grace period, an individual with a terminated license shall ~~[may]~~ have his license reinstated upon payment of the reinstatement fee established in 201 KAR 6:060.

(b) A person who applies for reinstatement after termination of his license shall not be required to meet current licensure requirements, except those established in 201 KAR 6:070, Section 10 ~~[(9)]~~, if reinstatement application is made within two (2) years from the date of termination.

(5) A licensee who fails to reinstate his license within two (2) years after its termination shall ~~[may]~~ not have it renewed, restored, reissued, or reinstated. A person may apply for and obtain a new license by meeting the current requirements for licensure established in KRS Chapter 216A and 201 KAR Chapter 6. ~~[of this chapter.]~~

(6) A suspended license shall be ~~[is]~~ subject to expiration and termination and shall be renewed as provided in this administrative regulation. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended, or is otherwise removed by the board and the right to practice is restored by the board.

(7) A revoked license shall be ~~[is]~~ subject to expiration or termination and shall ~~[but may]~~ not be renewed. If it is reinstated, the licensee shall pay the reinstatement fee as set forth in subsection (2) of this section and the renewal fee as set forth in subsection (1)

of this section.

(8) A licensee applying for renewal, late renewal, or reinstatement of licensure shall show evidence of completion of continuing education as established by 201 KAR 6:070.

Section 2. Incorporation by Reference. (1) "Renewal Form B130-7", (7/1/97 edition), is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Licensure for Nursing Home Administrators, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

DEBRA FINNERAN, Chairman
MARK BRENGELMAN, Legal Counsel
APPROVED BY AGENCY: August 11, 1998
FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:050. Licensure by endorsement.

RELATES TO: KRS 216A.130
STATUTORY AUTHORITY: KRS 216A.070(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.130 authorizes ~~[allows]~~ the board to issue a license to a nursing home administrator possessing a license issued by another ~~[any other]~~ state. This administrative regulation establishes the requirements for issuance of a license by endorsement.

Section 1. The board shall ~~[may]~~ issue a license by endorsement, without examination, to a nursing home administrator currently licensed by examination by the proper authorities of another ~~[any other]~~ state upon:

(1) Verification that he:

(a) Meets all current requirements for licensure as established by KRS 216A.080 and 201 KAR 6:020, except for KRS 216A.080(e); or

(b) ~~[that he]~~ Is currently designated as a certified nursing home administrator by the American College of Health Care Administrators;

(2) Payment of the fee for licensure by endorsement as established by 201 KAR 6:060;

(3) Verification of his license issued by another state which indicates that his license is:

(a) Active;

(b) Valid;

(c) In good standing; and

(d) There are no unresolved complaints pending against his license.

DEBRA FINNERAN, Chairman
MARK BRENGELMAN, Legal Counsel
APPROVED BY AGENCY: August 11, 1998
FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:060. Fees.

RELATES TO: KRS 216A.110(1), 216A.130
STATUTORY AUTHORITY: KRS 216A.070(3), (4), 216A.110(1), 216A.130
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(4) requires the board to establish a fee for a temporary permit. KRS 216A.110(1) requires the board to prescribe and collect reasonable fees and charges for processing applications, examination, and issuance of licenses, including re-

newals. KRS 216A.130 authorizes the board to establish a fee for licensure by reciprocity. This administrative regulation establishes those fees. [~~This administrative regulation is necessitated by KRS 216A.110(1) and 216A.130 and sets forth in detail all fees charged by the board.~~]

Section 1. Application Fee. (1) The application fee for board review of the application for licensure shall be fifty (50) dollars.

(2) The application fee shall be nonrefundable.

Section 2. Initial Licensure Fee. (1) The initial licensure fee shall be \$150 for an applicant for licensure.

(2) The fee for licensure by endorsement shall be \$250 for an applicant for licensure.

(3) If the applicant successfully completes all requirements for licensure, this fee shall cover licensure for the initial two (2) year period.

Section 3. Temporary Permit Fee. The fee for a temporary permit shall be fifty (50) dollars.

Section 4. Examination Fees. The fee for taking or retaking the written examination shall be \$125.

Section 5. Renewal Fee, Late Renewal Fee, Inactive License Fee and Reinstatement Fee. (1) The renewal fee shall be \$100.

(2) The late renewal fee shall be \$150.

(3) The inactive license fee shall be fifty (50) dollars.

(4) The fee for reactivating an inactive license shall be fifty (50) dollars.

(5) The reinstatement fee shall be \$300.

Section 6. Duplicate License Fee. The duplicate license fee shall be twenty-five (25) dollars.

Section 7. Licensure Verification Fee. The fee for verification of state licensure shall be fifteen (15) dollars.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET

Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:070. Continuing education requirements.

RELATES TO: KRS 216A.090

STATUTORY AUTHORITY: KRS 216A.070(3), **216A.090**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.090 authorizes the board to promulgate an administrative regulation requiring a licensed nursing home administrator to complete continuing education requirements as a condition of renewal of his licensure. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. [~~As used in this administrative regulation, unless the context otherwise requires:~~]

(1) "Approved" means recognized by the Kentucky Board of Licensure for Nursing Home Administrators.

(2) "Continuing education hour" means sixty (60) clock minutes of participation [~~participating~~] in a continuing educational experience [~~experiences~~].

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives, including an experience [~~;-programs may be~~] presented in one (1) session or in a series.

(4) "Provider" means an organization approved by the Kentucky Board of Licensure for Nursing Home Administrators for

providing a continuing education program. ["Academic courses offered by an accredited postsecondary institution" means:

(a) A nursing home administration course designed by a nursing home administration course title or content; or

(b) An academic course, relevant to nursing home administration:

(c) A general education course, either electives or designed to meet degree requirements, shall not be acceptable.

(d) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.]

(5) "Relevant" means having content applicable to the practice of nursing home administration as determined by the board.

[(6) "Provider" means an organization approved by the Kentucky Board of Licensure for Nursing Home Administrators for providing continuing education programs.]

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of thirty (30) continuing education hours shall be accrued by each person holding licensure during the two (2) year period for renewal.

(2) All continuing education hours shall be in or related to the field of nursing home administration.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a nursing home administrator. A continuing education hour shall [~~They may~~] be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of nursing home administration and shall be approved without further review by the board if it is:

(a) Sponsored or approved by the National Association of Boards of Licensure for Nursing Home Administrators (NAB) or another [~~any other~~] board of licensure which is a member of NAB;

(b) Sponsored by:

1. The American Association of Homes and Services for the Aging, or any of its affiliated state chapters;

2. The American College of Health Care Administrators, or any of its affiliated state chapters;

3. The American College of Healthcare Executives;

4. The American Health Care Association, or any of its affiliated state chapters;

5. The American Hospital Association or any of its affiliated state chapters;

6. The Kentucky Board of Nursing; or

(c) A college course directly related to business administration, economics, marketing, computer science, social services, psychology, gerontology, or health professions including [~~such as~~] nursing or premedicine;

(2) Programs requiring board review and approval. A program from one (1) of the following sources shall be approved by the board if the board determines the program is relevant; [~~Programs from the following sources shall be reviewed and determined if they are relevant and therefore subsequently approved by the board.~~]

(a) Relevant programs, including home study courses or [~~and~~] in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the licensee. A presenter of relevant programs or academic courses shall [~~may~~] earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit shall [~~may~~] be granted [~~only~~] for an article that was published within the two (2) year period immediately preceding the renewal date if the licensee has not received credit for another publication during that renewal period. A licensee shall [~~may only~~] earn one-half (1/2) of the continuing education

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hours required for a relevant publication. ~~[Only one (1) publication may be counted during each renewal period.]~~

Section 4. Procedures for approval of Continuing Education Programs. A course which has not been preapproved by the board may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review this program, the following information shall be submitted:

- (1) A published course or similar description;
- (2) Names and qualifications of the instructors;
- (3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (4) Number of continuing education hours requested;
- (5) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (6) Application for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2 of this administrative regulation; and

2. Does not exclude any licensee from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters which integrally relate to the practice of nursing home administration;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by individuals who have educational training or experience acceptance to the board.

Section 6. Responsibilities and Reporting Requirements of Licensees. Each licensee shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding licensure shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, ~~if [when]~~ applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain his own records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his renewal, as follows:

(a) Each person holding licensure shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) During the two (2) year licensure renewal period, up to fifteen (15) percent of all licensees shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the licensee by regular mail;

(e) Documentation shall take the form of official documents including:

1. Transcripts;

2. Certificates;
3. Affidavits signed by instructors; or
4. Receipts for fees paid to the sponsor; and
- (f) Each licensee shall retain copies of his documentation.

Section 7. Responsibilities and Reporting Requirements of Providers. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 4 ~~[5(4)]~~ of this administrative regulation, directly to the licensee.

(2) Providers of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. ~~If an [In the event of denial, in whole or part, of any]~~ application for approval of continuing education hours ~~is denied~~, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding a license [certification] and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements shall [may] be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding licensure shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Licensure. (1) A person requesting reinstatement or reactivation of licensure shall submit evidence of thirty (30) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) Upon request by a licensee, the board may permit ~~[He may request, and the board, at its discretion, may allow]~~ him to resume practice, with the provision that he shall receive thirty (30) hours continuing education within six (6) months of the date on which he is approved to resume practice.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

DEBRA FINNERAN, Chairman
MARK BRENGELMAN, Legal Counsel
APPROVED BY AGENCY: August 11, 1998
FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:080. Code of ethics.

RELATES TO: KRS 216A.070(1)(a), (c), (d)
STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(a) requires the board to develop, impose, and enforce standards which shall [must] be met by an individual [individuals] licensed as a nursing home administrator [administrators]. KRS 216A.070(1)(c) requires the board to discipline an individual [individuals] who fails [fail] to meet those standards after licensure. KRS 216A.070(1)(d) requires the board to establish and carry out procedures to insure compliance with the established standards. This administrative regulation establishes a code of ethics as a portion of the standards which shall be met in compliance with KRS 216A.070(1)(a),(c), and (d).

Section 1. Definitions. (1) "Nursing facility" means an institution licensed pursuant to 902 KAR 20:300 and 902 KAR 20:008.

(2) "Nursing home administrator" means an individual responsible for the operation of a nursing home, as defined under KRS 216A.010(2).

~~[(2) "Nursing facility" means an institution licensed pursuant to 902 KAR 20:300 and 902 KAR 20:008.]~~

(3) "Resident" means an individual who resides as a patient in a nursing facility, pursuant to 900 KAR 2:060(1), (4).

Section 2. Responsibility to Residents. (1) A nursing home administrator shall:

- (a) Advance and protect the welfare of the resident;
- (b) Respect the rights of a person [persons] seeking service;
- (c) Operate the facility consistent with laws and administrative regulations applicable to nursing facilities under KRS Chapter 216; and

(d) Have the duty to report to the proper authorities [any] knowledge of resident abuse, pursuant to KRS Chapter 209.

(2) A nursing home administrator shall not:

- (a) Provide services other than those for which he is prepared and qualified to perform;
- (b) Discriminate against or refuse professional service to anyone on the basis of race;
- (c) Misrepresent qualifications, education, experience or affiliations;

(d) Exploit the trust and dependency of a resident;

(e) Participate in activities that reasonably may be considered to create a conflict of interest, or have the potential to have a substantial adverse impact on the facility, its residents or its staff;

(f) Engage in a sexual relationship or sexual contact, as defined under KRS 510.010(7), with a resident; or

(g) Engage in sexual or other harassment or exploitation of a resident, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or disciplinary proceeding. [~~investigations and disciplinary proceedings.~~]

Section 3. Confidentiality. A nursing home administrator shall not divulge confidential information, except:

(1) As mandated, or permitted, by law;

(2) To prevent a clear and immediate danger to a person [or persons];

(3) In the course of a civil, criminal, or disciplinary action if:

(a) [If] The nursing home administrator is a defendant in that action; and

(b) The action arose from a service provided by the nursing home administrator; or

(4) To comply with the terms of a consent agreement if written informed consent has been obtained. [~~a civil, criminal, or disciplinary action arising from the services provided; confidences may be disclosed only in the course of that action; or~~

~~(4) If written informed consent has been obtained, confidential information shall be revealed only in accordance with the terms of the consent agreement.]~~

Section 4. Professional Competence and Integrity. A nursing home administrator shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:

(1)(a) Conviction of a felony, or a misdemeanor related to the practice as a nursing home administrator.

(b) Conviction shall include conviction based on:

- 1. A plea of no contest or an "Alford Plea"; or
- 2. The suspension or deferral of a sentence.

(2) Having been subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Impairment due to mental incapacity or the abuse of alcohol or another substance [other substances] which negatively impacts [impact] the practice of nursing home administration;

(4) Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of license;

(5) Refusing to comply with an order issued by the board; or

(6) Failing to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Furnishing documentation requested by the board regarding a complaint;

(c) Appearing before the board at the time and place designated; or

(d) Properly responding to a subpoena [subpoenas] issued by the board; or

(7) Violating a [any] state statute or administrative regulation governing the practice of nursing home administration.

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998

FILED WITH LRC: August 14, 1998 at noon

GENERAL GOVERNMENT CABINET
Kentucky Board of Licensure for Nursing Home Administrators
(As Amended at ARRS, December 8, 1998)

201 KAR 6:090. Complaint management process.

RELATES TO: KRS 216A.070(1)(e)

STATUTORY AUTHORITY: KRS 216A.070(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216A.070(1)(e) requires the board to investigate a person [persons] engaging in a practice which violates [practices which violate] the provisions of KRS Chapter 216A. This administrative regulation establishes [the detailed] procedures for the investigation of a complaint [complaints] received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 216A or the administrative regulations promulgated thereunder.

(3) "Complaint" means:

(a) A [any] written allegation alleging misconduct by a credentialed individual or other person which might constitute a violation of KRS Chapter 216A, the administrative regulations promulgated thereunder, or another [any-other] state or federal statute or regulation;

(b) A [-or-any] notification which relates to the credential of the individual pursuant to KRS Chapter 216A; or

(c) A "Notification of Substandard Care" issued by the Cabinet for Health Services, as defined in 42 CFR 488.301[-shall be considered a complaint].

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal action.

(5) "Informal proceeding [proceedings]" means a proceeding instituted during [the proceedings instituted at any stage of] the disciplinary process with the intent of reaching a dispensation of a [any] matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board

to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(7) "Standards of practice committee" means the committee appointed pursuant to Section 7 of this administrative regulation, [a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. At least one (1) of these persons shall be a board member who is a nursing home administrator and at least one (1) of these persons shall be a board member who is not a nursing home administrator. The executive director of the board or another staff member may be appointed to serve on this committee.]

Section 2. Receipt of Complaints. (1) A complaint [Complaints] may be submitted by an individual, organization, or entity. A complaint [Complaints] shall be in writing and shall be signed by the person offering the complaint. The board may [also] file a complaint based on information in its possession.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have five (5) days from the receipt to submit a written reply to the response.

(3) Upon receipt of a notification of substandard care, a copy of the notification shall be sent to the individual along with a letter from the board requesting the following information:

(a) The effective date of that administrator becoming the administrator of record for the facility. If that has occurred within the last 180 days, the facility shall furnish the name of the previous administrator.

(b) Copy of completed and approved 2567L and Notice of Acceptance of Allegation of Compliance as issued by the Cabinet for Health Services;

(c) Copy of Notice of Results of Revisit as issued by the Cabinet for Health Services; and

(d) Formal notice of each remedy imposed by the Cabinet for Health Services, [any remedies imposed,] if applicable.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the standards of practice committee shall consider the individual's response, complainant's reply to the response, and [any] other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If, [When] in the opinion of the board, a complaint does not warrant the formal investigation of a complaint against an individual, the board shall dismiss the complaint and shall notify both the complaining party and the individual of the outcome of the complaint.

(3)(a) If [When], in the opinion of the board, a complaint warrants a formal investigation against either a licensed individual or a person who may be practicing without appropriate credential, the board shall authorize an investigator to investigate the matter and make a report to the standards of practice committee at the earliest opportunity.

(b) In the case of a notification of substandard care, the board shall:

1. [may either] Open a formal investigation; or
2. Proceed under Section 4(3) of this administrative regulation.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the standards of practice committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there is enough evidence to believe that a violation of the law or administrative regulations may have occurred and whether a complaint shall [should] be filed.

(2) If, [When] in the opinion of the board, a complaint does not

warrant the issuance of a formal complaint and the holding of a hearing, the complaint shall be dismissed or other appropriate action taken. The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a licensee, the standards of practice committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS 13B.040 [Chapter 13B].

(4) If [When], in the opinion of the board, a person shall [may] be practicing without appropriate credential, it may:

(a) Issue a letter ordering that person to cease and desist from the unlicensed practice of nursing home administration;

(b) Forward information to the county attorney of the county of residence of the person allegedly practicing without appropriate credential with a request that appropriate action be taken under KRS 216A.150 and 216A.990; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of nursing home administration.

Section 5. Settlement by Informal Proceedings; Letter of Admonishment. (1) The board, through counsel and the standards of practice committee, may[-at any time during this process,] enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(a) An [Any] agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(b) The board may employ mediation as a method of resolving the matter informally.

(2)(a) The board may issue a written admonishment to the licensee if [when] in the judgment of the board:

1. An alleged violation is not of a serious nature; and

2. The evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur.

(b) A copy of the admonishment shall be placed in the permanent file of the licensee.

(c) Within thirty (30) days of receipt of an admonishment, the licensee shall file:

1. A response to the admonishment which shall be placed in the licensee's permanent licensure file; or

2. A [The licensee shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent licensure file:

(d) The licensee may alternatively, within thirty (30) days of the receipt, file a request for hearing with the board. Upon receipt of this request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

Section 6. Notice and Service Process. A [Any] notice required by KRS Chapter 216A or this administrative regulation shall be issued pursuant to KRS 13B.040.

Section 7. Standards of Practice Committee. The standards of practice committee shall:

(1) Be appointed by the chairman of the board to:

(a) Review a complaint or investigative report; and

(b) Participate in an informal proceeding to resolve a formal complaint;

(2) Consist of three (3) persons, including:

(a) A board member who is a nursing home administrator;

(b) A board member who is not a nursing home administrator; and

(c) One (1) other person, which may be the executive director of the board or another staff member. [Chapter 13B:]

DEBRA FINNERAN, Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: August 11, 1998
FILED WITH LRC: August 14, 1998 at noon

JUSTICE CABINET
Department of State Police
(As Amended at ARRS, December 5, 1998)

502 KAR 31:020. Sex Offender Registration System.

RELATES TO: KRS 17.510, 17.520, 17.530 [~~17.500~~]

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.500, 17.510

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 17.080 provide that the Secretary of the Justice Cabinet may promulgate such administrative regulations as are necessary to properly administer the cabinet. KRS 17.510 requires the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing witness" means an official identified in KRS 17.510(3), (4), and (5).

(2) "Cabinet" means the Justice Cabinet.

(3) "Department" means the Department of State Police.

(4) [~~"SORS" means the Sex Offender Registration System.~~

(5)] "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:

(a) The date of release from custody;

(b) Maximum date of sentence or supervision, whichever is longer;

(c) Date of registry expiration;

(d) Name of person completing the form, if registrant is assisted;

(e) Office phone number of the releasing entity;

(f) Signature of the registrant;

(g) Signature of the authorizing witness; and

(h) The date the form is signed.

(5) "**SORS**" means the Sex Offender Registration System.

Section 2. Sex Offender Duty to Register Notification Form. (1) A person as described in KRS 17.510 shall provide the information required by KRS 17.500(3) [~~(4)~~], 17.510 and this administrative regulation on the Sex Offender Duty to Register Notification Form #JC-4.

(2) Completion of Sex Offender Duty to Register Notification Form #JC-4.

(a) Probation and parole shall complete the Notification Form #JC-4 for the sentencing court.

(b) A person defined in KRS 17.510 shall, in the presence of the sentencing judge, sign the Notification Form #JC-4 in the "defendant's signature" block, in ink.

(c) A copy of the completed form shall be provided to the offender.

Section 3. SORS Registration Forms. A person described in KRS 17.510 shall provide the information required by KRS 17.500(3), 17.510 and this administrative regulation on one (1) of the following sex offender registry entry forms:

(1) Three (3) Sex Offender Registry Entry Forms have been established:

(a) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(2) or (3).

(b) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510(6).

(c) Sex Offender Registry Entry Form is to be completed by all persons required to register pursuant to KRS 17.510 [~~501~~](7).

(2) Completion of Sex Offender Registry Entry Registration Form.

(a) The Entry Form shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Entry Form.

(c) The offender shall sign the Entry Form in the "signature of offender" block of the form in ink.

(d) The authorizing witness shall sign the Entry Form in the "authorizing witness" block of the Entry Form.

(e) The authorizing witness shall mail one (1) copy of the completed Entry Form to the department on the day the form is completed.

(3) An Entry Form shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the Entry Form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign the appropriate block.

(4) If the department determines that an Entry Form is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness, without entry into the SORS, of:

(a) The reason the Entry Form was determined to be incomplete; and

(b) The action required to complete the Entry Form prior to inclusion to the SORS.

(5) Upon notification of the corrected deficiencies as described above, the department shall enter the record into the SORS.

Section 4. Sex Offender Registry Modification Form. A person as described in KRS 17.510 shall provide any change in the information required by KRS 17.500(3), KRS 17.510 and this administrative regulation on the Sex Offender Registry Modification Form.

(1) Completion of Sex Offender Registry Modification Form.

(a) The Modification Form shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the Modification Form.

(c) The offender shall sign the Modification Form in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the Modification Form in the "authorizing witness" block of the Modification Form.

(e) The authorizing witness shall mail one (1) copy of the completed Modification Form to the department on the day the form is completed.

(2) A Modification Form shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) [~~(7)~~] and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign in the appropriate block.

(3) If the department determines that a Modification Form is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness of:

(a) The reason the Modification Form was determined to be incomplete; and

(b) The action required to properly complete the Modification Form before that information may be included in the SORS.

(4) Upon notification of the corrected deficiencies, as described above, the department shall enter the corrected information into that offender's SORS record.

Section 5. Sex Offender Registry Information Verification Form. A person sentenced as described in KRS 17.510 shall verify the accuracy of the information contained in the SORS on the Sex Offender Registry Information Verification Form #SOR 1.

(1) Annually, the department shall mail, no later than fourteen (14) days prior to the anniversary date of each registrant, a Verification Form #SOR 1 to the last known address of the registrant.

(2) Completion of Sex Offender Registry Information Verification Form #SOR 1. A person defined in KRS 17.510 shall:

(a) Complete the Verification Form #SOR 1, and sign the Verification Form #SOR 1 in the "registrant signature" block, in ink; and

(b) Shall mail the completed Verification Form #SOR 1 to the department on the day the form is completed.

(3) A Verification Form #SOR 1 shall not be considered complete if:

- (a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or
 - (b) It contains erroneous or false information; or
 - (c) An item on the form cannot be read or understood; or
 - (d) The registrant fails to sign in the appropriate block.
- (4) If the department determines that a Verification Form #SOR 1 is incomplete pursuant to the provisions of this administrative regulation, the department shall return the form to the submitting registrant notifying the submitting registrant of:
- (a) The reason the Verification Form #SOR 1 was returned; and
 - (b) The action required by the registrant to properly complete the Verification Form #SOR 1 prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) The Sex Offender Duty to Register Form #JC-4;
 - (b) The Sex Offender Registry Entry Forms #P:225; #P:227; and #P:228;
 - (c) The Sex Offender Registry Modification Form #P:226; and
 - (d) The Sex Offender Registry Information Verification Form #SOR 1.
- (2) This material may be inspected, copied, or obtained at the Department of State Police, Data Processing Section, 1250 Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

E. DANIEL CHERRY, Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 14, 1998 at 10 a.m.

JUSTICE CABINET

Kentucky Department of Criminal Justice Training
(As Amended at ARRS, December 5, 1998)

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

RELATES TO: KRS 15A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.070 authorizes Department of Criminal Justice Training to establish, supervise and coordinate training programs and schools for law enforcement personnel. This administrative regulation prescribes conduct requirements of recruits [trainees] attending basic law enforcement training courses conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms and Operator's License Required. A recruit shall provide the uniforms required by the department and present a valid motor vehicle operator's license to participate in the basic training course.

Section 2. Removing a Recruit from the Course. (1) Unqualified recruit. The director or section supervisor shall remove from basic training a recruit who is not qualified to participate in the basic training course. The recruit shall receive no credit for the part of the course he has completed.

(2) Agency's request: A recruit shall be removed from basic training upon the department's receipt of a written request from the recruit's agency. The recruit shall receive no credit for the part of the course he has completed.

Section 3. Gifts. Gifts from recruits to department staff members shall conform with the Executive Branch Code of Ethics (KRS Chapter 11A).

Section 4. Penalties for Misconduct. (1) The following penalties shall apply to a recruit's failure to meet conduct or Honor Code re-

quirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The recruit is dismissed from the course, and all privileges are terminated.

(b) Suspension. The recruit is suspended from training for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The recruit's privileges as specified in the imposed penalty are rescinded for a stated period of time. The recruit's participation in training activities is not affected.

(d) Written reprimand. The recruit is reprimanded in writing for violating a conduct or Honor Code requirement.

(e) Verbal warning. The recruit is warned verbally that he has violated a conduct or Honor Code requirement.

(2) Second and subsequent violations.

(a) If a recruit has received a penalty for violating a conduct or Honor Code requirement, upon a second violation of any conduct or Honor Code requirement the next higher penalty shall be added to the list of penalties which may be imposed for the second violation.

(b) If a recruit has previously received two (2) penalties for violating two (2) conduct or Honor Code requirements, upon a third or subsequent violation of any conduct or Honor Code requirement the next two (2) higher penalties shall be added to the list of penalties which may be imposed for the third or subsequent violation.

(3) Giving notice of disciplinary action to recruit and recruit's agency. The department shall give written notice to a recruit of any penalty imposed upon him. The recruit's agency shall be given written notice of any penalty imposed upon the recruit except a verbal warning, and shall be given verbal notice when a recruit has been charged with a violation of a conduct or Honor Code requirement and has requested a hearing.

(4) Penalty records.

(a) The department shall keep a written record of any penalty imposed on a recruit.

(b) A copy of any penalty imposed on a recruit shall be placed in his basic training file.

(c) Only the department, the recruit, and the recruit's agency head shall have access to the penalty records in a recruit's basic training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a recruit constitutes an immediate danger or an immediate threat of danger to self or others, or is disruptive of, or is an immediate threat to be disruptive of a department activity, a department staff member may take all reasonable steps necessary to terminate the situation.

Section 6. Conduct Requirements. A recruit attending the basic training course shall meet the following conduct requirements:

(1) General conduct, chain of command. All communications shall follow chain of command of the department. Exceptions are the unavailability of a supervisor, or the recruit's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct, insubordination. A recruit shall:

(a) Obey a lawful order from a department staff member. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

(b) Refrain from vulgarity, rudeness, confrontation, or other disrespectful conduct directed toward a department staff member, recruit or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct, grooming. [(a)] The recruit shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the recruit has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the recruit receives permission from the department based upon a written request from the recruit's agency and good cause shown. A recruit's hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.

[(b) A recruit shall not wear obscene clothing, jewelry or other accessories while enrolled in a basic training course. Penalty: verbal warning or written reprimand.]

(4) General conduct, alcoholic beverages and other intoxicants.

(a) A recruit shall not possess, consume nor be under the influence of alcoholic beverages, controlled substances, or other intoxicating substances not therapeutically prescribed by a physician while enrolled in a basic training course. Penalty: written reprimand, loss of privileges, suspension or expulsion.

(b) If a recruit has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the recruit may be impaired or may endanger himself or other persons or property. A recruit shall advise the class coordinator or the section supervisor in writing of the use of controlled substance or medication whether or not it has been prescribed by a physician. Penalty: verbal warning, written reprimand or suspension.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, or branch manager observes an unlawfully-possessed intoxicating substance, he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(5) General conduct, weapons and other dangerous devices.

(a) A recruit shall not possess deadly weapons (as defined in KRS 500.080), ammunition, destructive devices or booby trap devices (as defined in KRS 237.030), hazardous substances (as defined in KRS 224.01-400), fireworks, or instruments used by law enforcement for control purposes (such as batons, stun guns, Mace, and pepper spray) on property used by the department except under circumstances specifically authorized by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension, or expulsion.

(b) Weapons specifically designated by the department to be used for training purposes shall be stored in a vault provided by the department at all times when they are not being used directly in training activities and may be removed only for scheduled training, servicing, cleaning, or repair. Servicing, cleaning, and repairs of weapons (other than repairs which may require the expertise of a qualified gunsmith) shall be carried out only as authorized by the section supervisor and only in the presence of a certified firearms instructor. Penalty: verbal warning or written reprimand.

(c) Confiscation.

1. If a dormitory staff member, department instructor, section supervisor, branch manager, director or commissioner observes an unlawfully-possessed weapon or other dangerous device he shall immediately confiscate it.

2. Confiscated items shall be stored in a safe and secure facility of the department pending appropriate disposition.

(6) General conduct, department property.

(a) A recruit shall not damage, destroy, fail to return, or be wasteful of property of the department or any other facility used by the department. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) A recruit shall not have successfully completed basic training, and shall not be allowed to graduate until he has returned all issued items or made satisfactory arrangements to pay for unreturned or damaged items.

(7) General conduct, conduct unbecoming a recruit. A recruit shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in a basic training class. Depending on the nature of the conduct, the recruit shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion. [Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.]

(b) Engage in conduct which creates a danger or risk of danger to the recruit or another, possess obscene matter as defined in KRS 531.010, engage in conduct which is unreasonably annoying, engage in fighting or in violent, tumultuous or threatening conduct, engage in sexual harassment or conduct which is patently offensive. [dangerous, disruptive, disorderly, immoral, or obscene conduct, or possess obscene material while enrolled in a basic training class.] Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(8) Training activities, uniforms.

(a) A recruit shall acquire all necessary uniforms and wear them as required by the department. Penalty: verbal warning or written reprimand.

(b) Uniforms shall be:

1. Clean, pressed and in good condition;
2. Worn over a clean white tee-shirt, visible at the neck; and
3. Worn with a wide black police-type belt, clean black police-type footwear, black or navy blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) The only collar pins a recruit may wear are ones provided by his agency. Penalty: verbal warning or written reprimand.

(d) A name tag, provided by the department, shall be worn on the left shirt-pocket flap. Penalty: verbal warning or written reprimand.

(e) Sleeves on winter shirts shall not be rolled up outside the classroom. Penalty: verbal warning or written reprimand.

(f) The physical fitness uniform shall be provided by the recruit and shall consist of solid dark blue athletic shorts, solid dark blue sweat shirt and sweat pants, solid white athletic socks, and a pair of athletic shoes. A department-issued tee shirt shall be worn during physical training. Penalty: verbal warning or written reprimand.

(g) Additional clothing may be worn during a training activity if authorized by the instructor.

(9) Training activities, absences.

(a) A recruit is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A recruit is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A recruit shall give advance notice of an absence when possible. Penalty for an unexcused absence: verbal warning or written reprimand; penalty for an unexcused tardiness: verbal warning or written reprimand.

(b) All absences from basic training must be approved by the section supervisor or branch manager.

(c) If a trainee is absent, excused or unexcused, he shall make up for the absence by completing an assignment provided by the instructor who taught the missed unit. Failure to make up the work shall be deemed a failure for that training area.

(10) Training activities, breaks. Recruits shall be allowed a ten (10) minute break per hour of instruction if possible. Breaks shall be taken only in areas designated by the department. Penalty: verbal warning or written reprimand.

(11) Training activities, general conduct.

(a) A recruit shall be attentive during training activities. Penalty: verbal warning or written reprimand.

(b) A recruit shall not use tobacco products during, or bring food or drink into a training activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A recruit shall not engage in conduct which creates or may create a risk of injury to others during a training session.

(12) Training activities, dishonesty. A recruit shall not cheat or attempt to cheat on a test or on any other assignment or activity; or alter or attempt to alter a test grade or other evaluation result; or engage in any other conduct intended to gain an undeserved evaluation for himself or another. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(13) Residence hall.

(a) During the basic training course, when attending in Madison County, a recruit shall reside in the residence hall designated by the department.

(b) A recruit shall return to his residence hall at curfew times designated by the commissioner, Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported in writing through channels to the director. Penalty: verbal warning, written reprimand, loss of privileges.

(c) A recruit shall observe "lights out" by 11:30 p.m. Sunday through Thursday except on nights prior to an academic test when the time shall be extended to 12 midnight. Penalty: verbal warning or written reprimand.

(d) Each recruit shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a recruit shall ensure his

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room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A recruit residing at the residence hall shall not:

1. Have any person of the opposite sex in his room without the permission of the department. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

2. Have a visitor in his room after 9 p.m. Penalty: verbal warning or written reprimand, loss of privileges.

3. Keep pets, animals, or birds of any kind in his room. Penalty: verbal warning, written reprimand, loss of privileges.

4. Engage in dangerous, disruptive, immoral or obscene behavior. Penalty: verbal warning, written reprimand, loss of privileges, or suspension.

Section 7. Honor Code. (1) The recruit shall abide by the provisions of the Honor Code which reads as follows:

We are a dynamic team of individuals who possess a wide array of talent and strengths. In order for our team to grow and be successful, we will respect the leadership of the agency and follow directives to the best of our ability. We will make sacrifices for the benefit of the team. We will practice humility and show a spirit of compromise. As recruits of the Department of Criminal Justice Training, Law Enforcement Basic Training class, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature or confided to us in our official capacity shall be kept confidential unless revelation is necessary in the performance of duty. We will never allow personal feelings, prejudices, ill will or friendships to influence our decisions.

We know that each of us is individually responsible for standards of professional performance. Therefore, we will make the utmost effort to improve our level of knowledge and competence.

We recognize the badge of our office as a symbol of public faith and accept it as a public trust to be held so long as we are true to the ethics of the police service. We will constantly strive to achieve these ideals, dedicating ourselves to our chosen profession - law enforcement. Penalty: verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(2) The class shall elect an Honor Code representative during the first week of basic training.

(3) All recruits shall report Honor Code violations to the Honor Code representative who shall report the offense to the class coordinator. The representative will recommend the penalty to be imposed for the violation.

(4) All disciplinary procedures contained in this administrative regulation shall apply to the Honor Code violation. The department may pursue separately any additional offenses discovered during the investigation of the Honor Code violation.

Section 8. Department's Responsibilities to Recruit's Agency. In order to keep the agency advised of the recruit's progress and performance in basic training so that the agency may adequately assess the recruit's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the recruit's agency:

(1) Recruit performance report which shall be completed at four (4) week intervals and shall include recruit conduct, demonstrated leadership abilities, examination scores, physical fitness scores and overall effort on performance, observed social/interpersonal skills, and appearance.

(2) Immediate notice of specific nonperformance, misconduct or lack of progress.

(3) Immediate notice of any off-campus activity which reflects negatively on the profession, including the following:

(a) Parking a marked police vehicle at a:

1. Bar;

2. Tavern;

3. Lounge;

4. Nightclub; or

5. Other establishment with the primary purpose of serving alcoholic beverages;

(b) Disorderly conduct;

(c) Speeding; or

(d) Other behavior that gives rise to a citizen's complaint. [a marked police vehicle parked at a bar, tavern, lounge, nightclub, or other establishment with the primary purpose of serving alcoholic beverages, disorderly conduct, speeding, or behavior that gives rise to a citizen's complaint.]

Section 9. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a recruit unless charges have first been brought by the legal officer.

(1) The following department staff members have the authority to impose the specified penalties summarily without meeting the requirements of the formal disciplinary procedures provided by Sections 10 through 16 of this administrative regulation. To have the authority to impose summary discipline, the staff member must have reasonable grounds to believe the recruit has engaged in the misconduct.

(a) A department instructor may summarily impose a verbal warning.

(b) The section supervisor, branch manager, director, or commissioner may summarily impose a verbal warning, written reprimand, or loss of privileges.

(2) Before imposing a penalty summarily, the staff member shall give the recruit the opportunity to give an explanation.

(3) A summarily imposed penalty shall be reviewed by, and may be rescinded or modified by, the immediate supervisor of the staff member imposing the penalty. The reviewer shall provide the recruit with the opportunity to give an explanation.

Section 10. Removal From Training Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a recruit, the commissioner or director may remove the recruit from some or all training until the recruit's initial appearance before the commissioner if he has reasonable grounds to believe the alleged misconduct took place and:

(a) He has reasonable suspicion to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit may be charged with misconduct serious enough to authorize expulsion.

(2) A recruit who has been removed from training pending an initial appearance before the commissioner shall be provided the initial appearance within three (3) training days of the removal.

Section 11. Complaint. Anyone having reasonable grounds for believing that a recruit has violated any of the conduct or Honor Code requirements identified in this administrative regulation may file a complaint with the section supervisor. This complaint shall be in writing setting forth the facts upon which the complaint is based.

Section 12. Investigation by Section Supervisor. (1) If the section supervisor receives a complaint of or witnesses apparent misconduct, he shall take statements and otherwise investigate the matter.

(2) After investigating the matter, the section supervisor shall:

(a) Take no action if none is justified by the evidence; or

(b) Impose appropriate summary discipline; or

(c) File, with the legal officer, a written request that charges be brought against the recruit. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the complaint, and statements of the recruit and witnesses shall be forwarded to the legal officer.

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Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the recruit as he believes are justified by the evidence; or

(b) Deny the request for charges if the evidence does not support any charges. If the legal officer declines to file charges, he shall provide the commissioner with a statement of his reasons for not filing charges.

(4) The charging document shall:

(a) Be in writing;

(b) Particularly describe the alleged misconduct so as to reasonably inform the recruit of the nature of the allegation;

(c) State the time, date and place the recruit shall make an initial appearance before the commissioner to answer the charges;

(d) Be signed by the legal officer; and

(e) Be served upon the recruit at least one (1) hour before his initial appearance before the commissioner.

Section 14. Initial Appearance Before the Commissioner. (1) The initial appearance before the commissioner shall be held no more than three (3) training days after the charges have been served on the recruit. If the recruit after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the recruit shall be notified in writing of any action taken.

(2) At the initial appearance before the commissioner:

(a) The legal officer shall:

1. Read the charges to the recruit;

2. [and] Explain to the recruit:

a. The charges;

b. His right to a hearing in accordance with KRS Chapter 13B; and

c. His right to be represented by legal counsel. [them to the recruit if necessary.]

(b) The legal officer shall explain to the recruit the possible answers to the charges: admit the charges are true, deny the charges are true but waive a hearing, or deny the charges are true and ask for a hearing.

(c) The commissioner shall advise the recruit of the penalty which shall be imposed if the recruit admits the charges or waives a hearing.

(d) The recruit shall be requested to answer the charges.

(e) If the recruit **chooses to waive his rights and admits the charges or denies the charges but waives a hearing:**

1. He shall be permitted to make a statement of explanation; and

2. The commissioner shall impose a penalty.

(f) If the recruit denies the charges and requests a hearing, the commissioner shall set a date for the hearing. **A notice of administrative hearing as required by KRS 13B.050 shall be served on the recruit within forty-eight (48) hours of the initial appearance before the commissioner.**

(g) If the recruit remains silent or refuses to answer the charges, the commissioner may suspend the recruit from training until the recruit answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the recruit from some or all training until the hearing if:

(a) He has reasonable grounds to believe the recruit would be dangerous or disruptive if not removed; or

(b) The recruit is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the ap-

peal is based and shall be on a form provided by the department. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the commissioner of the department by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

[Section 1. Conduct. A trainee attending a basic training course conducted by the Department of Criminal Justice Training shall be subject to the following rules of conduct:

(1) Absences.

(a) For the purpose of this section, absence is defined as not being physically present in a class.

(b) Any absences of less than twenty (20) percent of the subject area, excused or unexcused, shall be made up by completion of an assignment in a manner approved by the section supervisor. Any absence, excused or unexcused, of twenty (20) percent or more, requires the trainee to repeat the area of instruction. Any test occurring during an unexcused absence cannot be made up by the trainee.

(c) To be excused, absences shall be for legitimate reasons such as sickness, court appearances, or other emergencies. Written notice shall be given when possible before the absence or on the first day upon returning in unexpected absence.

(2) Academy uniforms.

(a) Cadet uniform of the day. A uniform of the day is required by the Department of Criminal Justice Training. Cleaning and maintaining the uniform is the trainees' responsibility. Daily inspections will be made and the trainee shall wear the uniform in the manner prescribed below.

(b) The uniform shall be clean and well pressed. Department collar pins will be worn centered on the collar parallel to the top edge and three-fourths (3/4) inch back from the vertical edge of the collar. The collar pins shall be cleaned and shined.

(c) The trainee name tag shall be centered on the left breast pocket flap.

(d) One (1) pen, the same color as the officer's collar pins, may be carried in the left breast pocket.

(e) The shirt sleeves shall not be worn rolled up nor any button on the shirt unfastened except the collar button.

(f) Each trainee shall wear a clean white high neck polo shirt with an unstretched collar under his uniform shirt.

(g) A plain buckle black belt approximately one (1) inch or more in width shall be worn with the trousers (with the exception of female trainee trousers).

(h) Black or navy blue socks shall be worn while in uniform.

(i) All trainees shall wear clean, shined black leather, plain-toed, police type shoes, except as directed by class coordinator dependent on nature of course activity.

(j) Trainees shall wear the DOJT visored utility cap as part of the designated basic training uniform.

(k) The visored utility cap shall be worn during roll call, inspection (excluding graduation), and all outdoor exercises.

(l) The visored utility cap, when worn, shall not be tipped backwards or worn to one side; it shall be worn either straight away or slightly forward.

(m) The brim or visor of the visored utility cap shall not be rolled or creased.

(n) The DOJT tee shirt shall only be worn during physical training.

(3) Alcoholic beverages or other intoxicating substances.

(a) A trainee shall not possess, consume nor be under the influence of alcoholic beverages or controlled substances not therapeutically prescribed by a physician while on property utilized by the Department of Criminal Justice Training.

(b) If a trainee has taken a controlled substance as prescribed by a physician or has taken any other medication, whether prescribed or not, he shall not participate in any training activity if he is under the influence thereof to the extent that the trainee may be impaired or may endanger himself or other persons or property. A trainee shall advise

the basic course supervisor of the use of controlled substances or medication whether or not it has been prescribed by a physician.

(4) Breaks.

(a) Each class may be allowed a ten (10) minute break per hour of instruction when possible. The course instructor shall designate the specific time and place for breaks.

(b) Basic trainees, attending class in the Stratton Building, are prohibited from taking breaks (including lunch time before or after eating) except in the following designated areas:

1. Lower level of breezeway (outside, between main building and gym);
2. Upper level of the Stratton Cafeteria; and
3. Second floor vending area — only when cafeteria is closed.

(5) Chain of command.

(a) All communications shall follow chain of command of the Department of Criminal Justice Training.

(b) Exceptions are permissible when necessary in conducting a training session.

(6) Conduct unbecoming an officer trainee.

(a) A trainee shall not conduct himself in a manner unbecoming an officer trainee.

(b) For the purposes of this section conduct unbecoming an officer trainee shall consist of, but not be limited to:

1. Inefficient or wasteful use of materials, supplies and equipment issued by the Department of Criminal Justice Training for the use by trainees;
2. Disorderly or boisterous behavior which is or may become disruptive to a training session;
3. Careless, negligent, or inattentive conduct which creates or may create a risk of injury to others during a training session;
4. Malingering or sleeping during a training class;
5. Wearing clothing that is so dirty or tattered as to present a sloven appearance;
6. Wearing clothing in a manner that is sexually revealing or suggestive; or
7. Aiding or abetting another in any of the foregoing.

(7) Dishonesty.

(a) A trainee shall not cheat or attempt to cheat on an examination, other evaluation or assigned project; alter or attempt to alter an examination score; deceive for profit or gain; or steal.

(b) A trainee shall not encourage, aid or abet any trainee in any of the foregoing proscribed conduct.

(8) Dormitory conduct.

(a) Basic training course trainees unless excepted shall reside in the dormitory designated by the Department of Criminal Justice Training during basic training and shall not travel to their homes except on weekends or holidays when school is not in session. Circumstances which would require emergency leave will be addressed by the training director on a case-by-case basis. A trainee who lives in Clark, Estill, Fayette, Garrard, Jackson, Jessamine, Madison or Rockcastle County may be permitted to commute to training if the trainee's chief or chief law enforcement officer so requests in writing and agrees to accept the condition that if such trainee is tardy for roll call three (3) times the trainee's privilege to commute shall be withdrawn and required to live in the dormitory for the remainder of the course.

(b) Basic training course trainees shall return to their dormitory rooms by 10:30 p.m., Sunday through Thursday evenings, and remain there until 5 a.m. the next morning. Exceptions shall be approved by the class coordinator and reported through channels to the director, in writing.

(c) Backing into parking spaces is prohibited.

(d) Basic training course trainees shall observe "lights out" by 11 p.m. Sunday through Thursday except on nights prior to an academic test when the time will be extended to 12 midnight.

(e) Trainees living in the dormitory shall conduct themselves in an orderly manner. Any dangerous or disruptive behavior such as but not limited to rowdiness, loud noise, theft, immoral or obscene conduct shall not be committed.

(f) Each trainee will be responsible for cleaning his area. Each morning, prior to leaving for class, the trainee shall ensure his room is clean, free of trash, beds made and the room ready for inspection.

(g) Doors shall be locked whenever a room is unattended. While the room is unoccupied during training hours (8 a.m. — 5 p.m.), the window coverings shall be left open to their widest extension.

(h) The use of cooking appliances such as hot plates, electric skillets and ovens is prohibited.

(i) All dorm rooms and lockers are subject to inspection search for purposes of safety, sanitation and rule violations by the staff of the Department of Criminal Justice Training.

(j) The lobby of the dormitory is available to entertain visitors and guests and is not to be used as a group study area.

(k) A trainee residing at the dormitory shall:

1. Turn off all lights upon departure from the room;
2. Turn off air conditioner when leaving the room for a long period of time, including school hours and weekends while away; and
3. Turn off heating unit when leaving the room for a long period of time unless the temperature is near freezing — then leave the heater on low.

(l) A trainee shall not have any person of the opposite sex in his or her dormitory room without written permission of the class coordinator or higher staff member. No visitation shall be permitted after 10:30 p.m.

(m) Pets, animals or birds of any kind shall not be kept in rooms of the dormitory facilities.

(9) General classroom conduct.

(a) Trainees conducting themselves in a boisterous or disruptive manner which does or may interfere with the orderly presentation of training materials or instruction is prohibited and may be removed from the classroom at the option of the instructor.

(b) The use of tobacco, drink or food products and the wearing of hats or caps is prohibited in all classrooms in which Department of Criminal Justice Training classes are being conducted. The use of head cover may be permitted by an instructor in outdoor classroom training sessions.

(c) As used in this section, classroom includes all indoor facilities and outdoor areas utilized by the Department of Criminal Justice Training for training purposes whether the facilities are regularly utilized by the department or periodically utilized such as state parks, hotels/motels, law enforcement agencies or colleges and universities.

(10) Gifts. A trainee, individually or as a participant in group action, shall not give or contribute toward the giving of a gift of value to a staff member or guest instructor of the Department of Criminal Justice Training while participating as a trainee in any course conducted by the Department of Criminal Justice Training.

(11) Grooming (personal).

(a) The training shall be clean-shaven with sideburns no longer than the bottom of the ear lobe. Mustaches are permitted if they are neatly kept, but only if the trainee has the mustache upon arrival. Beards shall not be permitted without the trainee's written departmental approval. The trainee shall not have hair that is unkempt nor longer than medium length. The hair shall not be over the collar, with the exception of female trainees.

(b) Personal appearance shall be such as to project an image which will reflect favorably upon the trainee as well as the Department of Criminal Justice Training and the trainee's employing agency.

(c) Clothing, jewelry or other accessories which depict obscenities (either pictorially or written) or any symbol representing objects not considered in good taste (based on professional police standards, or which depict words considered abusive) cannot be worn while attending Department of Criminal Justice Training classes or while on Department of Criminal Justice Training or campus property.

(12) Improper charges to the Department of Criminal Justice Training.

(a) A trainee shall not charge any item or service to the Department of Criminal Justice Training without written approval of an authorized Department of Criminal Justice Training representative.

(b) A trainee shall not willfully or negligently damage, destroy, or fail to return property of the Department of Criminal Justice Training or university. Failure to comply with this administrative regulation shall result in a trainee having to replace or pay for the damaged, destroyed or lost property.

(c) A trainee cannot be considered to have successfully completed basic training, and will not be allowed to graduate, until he has returned all issued items or made satisfactory arrangements to pay for nonreturned items or damaged items.

(13) Insubordination.

(a) A trainee shall not be insubordinate.

(b) For the purpose of this section insubordination means:

1. A refusal to obey a lawful order from an instructor or other staff member of the Department of Criminal Justice Training authorized to convey the order;

2. Disrespectful conduct consisting of, but not limited to, use of vulgarity, rude remarks, obscene comments or gestures.

(14) Tardiness:

(a) Class shall begin and end promptly as scheduled unless otherwise specified. All trainees are expected to be punctual for class and school functions.

(b) Those who are late during the first ten (10) minutes of a class without justification shall be considered tardy.

(c) Arrival after ten (10) minutes will be considered an absence.

(15) Weapons, explosive substances, and other devices:

(a) Weapons:

1. Deadly weapons (as defined in KRS 500.080) or ammunition therefore shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training except those specifically authorized by the Department of Criminal Justice Training. Weapons specifically designated by the Department of Criminal Justice Training for training purposes and which are not provided by the Department of Criminal Justice Training shall only be brought directly to the facilities of the department at specific times and removed all as may be deemed appropriate by the department. Such weapons may not be stored in trainee vehicles parked on property utilized by the Department of Criminal Justice Training.

2. Weapons specifically designated by the Department of Criminal Justice Training to be used for training purposes shall be stored in a vault to be provided by the department at all times when they are not being used directly in a training session and may be removed only for scheduled training, servicing, cleaning, or repair purposes. Servicing, cleaning, and repairs of weapons shall be effected (other than repairs which may require expertise of a qualified gunsmith) only at times, places and subject to such conditions and supervision as may be approved by the supervisor of the basic training section. Such activity shall only be conducted in the presence of a certified firearms instructor.

(b) Devices other than firearms:

1. Destructive devices (as defined in KRS 237.030), booby trap devices (as defined in KRS 237.030), "stun" guns, or fireworks (in all forms) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training.

2. Exceptions may occur for training purposes and then only as they may be provided by the department.

(c) Hazardous substances:

1. Hazardous substances (as defined in KRS 224.877) shall not be possessed on university, college or governmental property used by the Department of Criminal Justice Training.

2. Exceptions may occur for training purposes and then only as they may be provided by the department.

(d) Confiscation:

1. Any instructor, supervisor, assistant director or director who observes any violation of this section, shall immediately confiscate the offending item or substance.

2. These items shall then be stored in a safe and secure facility of the Department of Criminal Justice Training pending appropriate disposition.

Section 2. Summary Action. (1) Recognizing that conduct of a trainee may constitute an immediate danger or a immediate threat of danger to self or others, an instructor, section supervisor, training assistant director, director or the commissioner, having knowledge of such conduct, may summarily discipline the trainee by reprimand, suspension from the particular training activity or by other appropriate action.

(2) Following such disciplinary action, the foregoing rules of procedure set forth in Section 4 of this administrative regulation shall be applicable.

Section 3. Penalties. (1) For the following violation:

(a) Alcoholic beverages or other intoxicating substances, i.e., being on property utilized by the Department of Criminal Justice Training while under the influence of alcoholic beverages or controlled substances not prescribed by a doctor, or if prescribed by a doctor participating in a training exercise while under the influence thereof to

the extent that it endangers the trainee or other persons or property;

(b) Conduct unbecoming an officer trainee, i.e., willful, careless, negligent or inattentive conduct which causes injury or creates a grave risk of injury to another person or property;

(c) Dishonesty;

(d) Dormitory conduct, consisting of disorderly conduct proscribed by Section 1(7)(e) of this administrative regulation;

(e) Property loss or damage, i.e., willfully or negligently damaging, destroying or failing to return property of the Department of Criminal Justice Training or university;

(f) Weapons and explosives;

(g) A second violation of the rules described in Section 1(1)(b) of this administrative regulation. The following penalty may be imposed:

1. Expulsion from training with or without prejudice. (Such expulsion shall be deemed a course failure);

2. Loss of privileges (meals, housing or both);

3. Suspension from training. (Such suspension shall be deemed a failure for that portion of training);

4. Written reprimand (with a copy filed with trainee's employing agency);

5. Probation.

(2) For the following violations:

(a) Alcoholic beverages or other intoxicating substances, i.e., the use or possession thereof not prescribed by a doctor on or about property utilized by the Department of Criminal Justice Training; possession of alcoholic beverages or intoxicating substances in a dormitory room shall result in loss of housing privilege;

(b) Conduct unbecoming an officer trainee except that which causes injury or damage to others or property per subsection (1) of this section;

(c) Curfew violation as prescribed by this subsection;

(d) Improper charges to the Department of Criminal Justice Training;

(e) Insubordination;

(f) Two (2) violations of other rules. The following penalty may be imposed:

1. Loss of privileges (meals, housing or both);

2. Suspension from training not to exceed five (5) days (such suspension shall be deemed a failure for that portion of training);

3. Written reprimand (with a copy filed with trainee's employing agency);

4. Probation.

(3) For all other violations not specifically noted in subsections (1) and (2) of this section the following penalty may be imposed:

(a) Written reprimand;

(b) Written warning;

(c) Probation.

Section 4. Who May Impose Penalties. (1) Instructor. An instructor may only impose a penalty consisting of a written warning.

(2) Supervisor. A supervisor may only impose a penalty consisting of a written warning, a written reprimand or a probation.

(3) Training director. The director of the training division may only impose a penalty consisting of a written warning, written reprimand, suspension from training, a loss of privileges or probation.

(4) Commissioner. The commissioner may impose a penalty consisting of any of the previously identified penalties, expulsion from training or probation.

Section 5. Complaint Process. (1) Complaint. any employee of the Department of Criminal Justice Training, guest instructor, guest or any basic course trainee having reasonable grounds for believing that a trainee has violated any of the rules of conduct identified herein or any violation of the law may file a complaint with the supervisor of the basic training section. This complaint should be but is not required to be in writing setting forth the facts upon which the complaint is based. If an instructor or the supervisor observes a violation of a rule for which only a penalty of a written warning or reprimand is provided a complaint need not be filed.

(2) Review of complaint.

(a) Upon receiving a complaint of a violation of these rules of conduct or of a violation of law the supervisor of the basic training section shall inquire into the matter and take such statements as may be advisable.

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(b) After an inquiry into and review of the complaint the supervisor of the basic section may dispose of the complaint by the issuance of a written warning or reprimand or file charges.

(c) If the supervisor of the basic section deems it advisable to file charges the file together with the written request specifying the proscribed conduct shall be forwarded to the legal officer.

(3) Charges:

(a) Upon receipt of a request for charges, the legal officer shall review the request and the file to determine the sufficiency of the requested charge.

(b) The legal officer may make or cause further inquiry into the matter for additional information.

(c) The legal officer shall file such charges against a trainee as the legal officer believes is justified from the file and further inquiry or may deny the request for charges if the facts do not support any charges. If the legal officer declines to proceed with charges he shall notify the commissioner with a statement of reasons and the commissioner shall review the decision.

(4) Form:

(a) Charges shall be in writing.

(b) The proscribed conduct shall be particularly described so as to reasonably inform the trainee of the nature of the allegation.

(c) The charges form shall state the time, date and place the trainee shall be required to appear and plead to the charges.

(d) The legal officer shall sign the charges form and have a copy served upon the trainee either in person or by mail.

Section 6. Summary Disposition. (1) At the appearance of the trainee the charges shall be read to the trainee and explained if need be.

(2) The trainee shall be advised of a proposed penalty to be assessed in the event the charges are admitted or in the event the trainee denies the charge but waives a hearing.

(3) The trainee shall be requested to enter a plea.

(4) If the trainee admits the charge he shall be permitted to make a statement of explanation.

(5) If the trainee admits the charge or denies the charge but waives a hearing, penalty shall be assessed and an order entered.

(6) If the trainee denies the charge and requests a hearing a date and place shall be forthwith determined and the trainee notified either in person or by mail.

Section 7. Hearing. (1) The hearing shall be open.

(2) A trainee charged with a violation shall have the right to be present at a hearing, to testify, to present evidence in his own behalf, present witnesses, and to question those testifying against him.

(3) Formal rules of evidence and procedures shall not be applicable.

(4) The hearing shall be recorded by audio means but need not be transcribed.

(5) Affidavits may be received provided a copy is served on the other side not less than five (5) days prior to the hearing.

(6) The legal officer shall prepare a finding of fact, conclusion of law and order at the conclusion of the hearing pursuant to direction of the staff member conducting the hearing.

Section 8. Review. (1) A penalty imposed by an instructor, supervisor or director shall be automatically reviewed by the next highest level in the chain of command.

(2) The review shall be made on the record only, i.e., on the audio recording of evidence, documents and statements introduced at the initial hearing.

(3) The review shall be limited to a determination of whether there are reasonable grounds for believing that the charge or charges have been sustained by the evidence and whether the penalty imposed is commensurate with the seriousness of the evidence.

Section 9. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the point (reasons) on which the appeal is based and shall be on a form provided by the Department of Criminal Justice Training. The form is made a part hereof by reference.

(b) A copy of the order being appealed shall be attached to the notice of appeal.

(c) A copy of the notice of appeal shall be delivered to the Commissioner of the Department of Criminal Justice Training by certified mail.

(2) The appeal shall not be heard de novo but shall be determined upon the audio record and any written or physical evidence introduced at the initial hearing.

(3) The Secretary of the Justice Cabinet shall render an opinion within sixty (60) days of receipt of the notice of appeal.

COMMONWEALTH OF KENTUCKY JUSTICE CABINET

In the matter of: (Name)

NOTICE OF APPEAL

Comes _____ (name) who appeals from an Order of the Commissioner of the Department of Criminal Justice Training dated _____, 19____, a copy of which is annexed hereto and made a part hereof, and requests that said Order be reversed and held for naught.

The basis and reasons for this appeal are as follows:

This the _____ day of _____, 19____.

NAME AND ADDRESS:

Served on the Department of Criminal Justice Training by mailing a true copy hereof to the Commissioner thereof by certified mail this the _____ day of _____, 19____.

NAME:]

JOHN W. BIZZACK, Commissioner

STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Division of Finance (As Amended at ARRS, December 8, 1998)

702 KAR 7:125. Pupil attendance.

RELATES TO: KRS 157.320, 157.350, 157.360, 158.030, 158.060, 158.070, 158.100, 158.240, 159.010, 159.030, 159.035, 159.140, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.320, 158.060, 158.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Education Excellence in Kentucky (SEEK) program; KRS 157.360 bases SEEK funding upon average daily attendance; KRS 158.030, 158.100, and 159.030 require the age for compulsory school attendance; KRS 158.060 defines the school day and month and make-up of school days missed; KRS 158.070 defines the school term; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation establishes a uniform method of recording pupil attendance.

Section 1. (1) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year prior to May 15 of each year. The calendar shall establish the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days and days on which schools shall be dismissed.

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(2) Opening day, for planning activities without the presence of pupils, shall be scheduled to occur prior to the first instructional day of the school term.

(3) Closing day, for planning activities without the presence of pupils, shall be scheduled to occur following the completion of the last instructional day of the school term.

(4) Local school districts shall plan appropriately for the make-up of instructional time missed due to emergency. In addition to the minimum 1,050 hour instructional term, the school calendar shall include days [hours] equal to the greatest number of days [hours] missed system-wide in the local school district over the preceding five (5) school years.

(5) Graduation ceremonies shall be scheduled to occur following completion of the instructional term.

Section 2. (1) The local board of education shall file the adopted school calendar with the Department of Education prior to June 1 of each year. The local school district shall not be paid any installment of its SEEK program allotment until the school calendar has been approved by the Department of Education.

(2) The local board of education, upon recommendation of the local school district superintendent, may amend the school calendar.

(3) An amended school calendar shall be submitted for approval to the Department of Education prior to May 1 of each year. Subsequent amendments to the school calendar shall be submitted to the Department of Education no later than five (5) calendar days after the meeting of the local board of education at which the amendment is approved.

Section 3. (1) The regularly scheduled school day shall not be shortened after the school calendar has been adopted by the local board of education and approved by the Department of Education except in cases of emergency declared by the local school district superintendent in accordance with policies of the local board of education.

(2) The local school district shall be allowed a total of five (5) hours missed each school year which do not have to be made up, which occurred as a result of school days shortened due to emergency. These hours shall be reported to the department on the amended school calendar. ~~[may miss up to a total of five (5) hours each school year as a result of school days shortened due to emergency without making up those hours.]~~

(3) Except for the provisions of subsection (2) of this section, all time missed on school days shortened due to emergency shall be made up and shall be reported to the Department of Education on the amended school calendar.

Section 4. (1) A local board of education request for district-wide disaster days shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

(2) A school district shall not be considered for disaster days unless the district has missed more than twenty (20) regular instructional days system-wide. The local school district shall make up at least the first twenty (20) regular instructional days missed in a school year by adding these hours back into the school calendar.

(3) A local board of education request for disaster days if one (1) school, or part of the district, is forced to miss school on a particular day due to an emergency shall be submitted to the Commissioner of Education for approval. A copy of the local board order shall accompany this request.

Section 5. (1) The following shall constitute the activities to be conducted during the instructional school day:

(a) Courses and content [activities] included in the "Program of Studies for Kentucky Schools, Grades Primary-12", pursuant to 704 KAR 3:303;

(b) Courses and activities included in the local school district program of studies for which a letter of assurance of compliance has been submitted to the Department of Education pursuant to 704 KAR 3:305; [not included in the "Program of Studies for Kentucky Schools, Grades Primary-12", which have been approved for the current school year by the Commissioner of Education pursuant to 704 KAR 10:050]

(c) Cocurricular activities which are unequivocally instructional in nature, directly related to the instructional program and scheduled to minimize absences from classroom instruction; and

(d) A maximum of five (5) minutes passing time between instructional periods [each-class], and travel time required to participate in regular instructional programs off of the school campus including vocational schools, day treatment centers, and alternative schools. Travel time to off-campus facilities shall be scheduled to minimize absence from classroom instruction.

(2) The local board of education shall adopt a policy specifying cocurricular instructional activities which may be included in the instructional school day, as described in subsection (1)(c) of this section.

(3) Each school shall have available a schedule that delineates instructional time periods and noninstructional time periods for all grade levels served and schedules provided.

Section 6. (1) Daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time in the morning, one (1) time in the afternoon and maintaining a student entry and exit log at each school.

(2) Daily attendance of pupils in middle and high school shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(3) The student entry and exit log shall include the date, student name, grade or homeroom, time of late arrival, time of early departure, parent or legal guardian signature and other information required by the local board of education.

(4) Pupils shall be physically present in the school to be counted in attendance except under the following conditions:

(a) The pupil is a participant in a cocurricular instructional activity which has been authorized by the local board of education and is a definite part of the instructional program of the school; or

(b) The pupil is a participant in an activity as provided in either KRS 158.240 or 159.035.

(5) Even if a pupil's absence is due to factors beyond the pupil's control, including inclement weather or failure of the transportation system to operate, the pupil shall be counted absent.

(6) The local board of education shall determine by local board policy what constitutes an excused and an unexcused absence.

(7) A pupil shall not be allowed to make up absences for the purpose of including make-up activities in the calculation of average daily attendance.

Section 7. (1) A full day of attendance shall be recorded for a pupil who is in attendance 100 percent of ~~[instructional time in]~~ the regularly scheduled school day for his grade level.

(2) A tardy shall be recorded for a pupil who is absent less than thirty-five (35) percent of [one (1) to thirty-four (34) percent of instructional time in] the regularly scheduled school day for his grade level.

(3) One-half (1/2) day of attendance shall be recorded for a pupil who is absent thirty-five (35) to eighty-four (84) percent of ~~[instructional time in]~~ the regularly scheduled school day for his grade level.

(4) A full-day absence shall be recorded for a pupil who is absent greater than eighty-four (84) percent of [eighty-five (85) to 100 percent of instructional time in] the regularly scheduled school day for his grade level.

(5) The percentages described in this section shall apply to the regularly scheduled school ~~[instructional]~~ day approved by the local board of education and shall be [are] ~~[is]~~ applicable to entry level through grade level twelve (12).

Section 8. A local board of education may permit released time as an arrangement whereby a pupil has a shortened school day in accordance with KRS 158.060 or local board of education policy. Released time shall not be included in calculating the district's average daily attendance.

Section 9. A local board of education may permit shared time as an arrangement in which a pupil concurrently attends a public common school part time and a nonpublic school part time pursuing part of his education under the direction and control of the public common school and part of his education under the direction and control of the nonpublic school. The time the student is served by the public school

district shall be included in calculating the district's average daily attendance.

Section 10. If a local school district, under the provisions of KRS 157.360(6), enrolls a child with a disability in a private school or agency, the private school or agency shall certify the attendance of the child to the local school district at the close of each school month.

Section 11. (1) If a local school district enrolls a pupil in the entry level program who will not be five (5) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(2) If a local school district enrolls a pupil in the second level of the primary program who will not be six (6) years of age by October 1 of the year of enrollment, the total aggregate days attendance for the pupil shall not be included in calculating the district's average daily attendance.

(3) If a local school district enrolls a pupil who [that] is at least twenty-one (21) years of age, the aggregate days attendance for the pupil upon age twenty-one (21) and following shall not be included in calculating the district's average daily attendance.

Section 12. The Growth Factor Report for the first two (2) school months of the school year pursuant to KRS 157.360(8) shall be submitted to the Department of Education prior to November 1 of each year.

Section 13. (1) A copy of the written agreement local boards of education execute for enrollment of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the Department of Education prior to November 1 of each year. The written agreement shall include the names of nonresident pupils enrolled in the district covered by the agreement.

(2) A change may be made to the original nonresident pupil agreement up to the close of the school year to include the nonresident pupils enrolling after the close of the second school month. The amendment shall be submitted to the Department of Education with the local Superintendent's Annual Attendance Report prior to June 30 of each year.

Section 14. The superintendent's annual attendance report shall be considered the request to substitute prior year's average daily attendance for up to ten (10) designated weather-related low attendance days, and certification that the low attendance was due to inclement weather in accordance with KRS 157.320. Documentation that the low attendance was due to inclement weather shall be retained at the central office.

Section 15. (1) The school's records of daily attendance and teacher's monthly attendance reports, daily and class period absentee lists, and student entry and exit logs shall be the original source of attendance data for all pupils enrolled in the public common schools.

(2) The school's records of daily attendance and tenth month teacher's monthly attendance reports shall be retained at least twenty (20) years. The daily and class period absentee lists, and student entry and exit logs shall be retained at least two (2) full school years.

Section 16. [15:] The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(1) E01 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(2) E02 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(3) E03 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who has withdrawn as a W06, W07 [W6, W7], [W10;] W13, [W14;] W16 or W18 during the previous school year;

(4) R01 - A pupil received from another homeroom in the same school;

(5) R02 - A pupil received from another public school in the same public school district;

(6) R03 - A pupil received from a nonpublic school in the same public school district;

(7) R04 - A pupil received from a public school in Kentucky outside this public school district;

(8) R05 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(9) R06 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(10) R07 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E01, E02, or E03 [E1, E2 or E3];

(11) R10 - An expelled pupil received from a state agency in the current school year prior to the completion of the expulsion period;

(12) R11 - An expelled pupil received in the current school year, from a regional alternative facility not run by the expelling school district, prior to the completion of the expulsion period;

(13) W01 - A pupil transferred to another homeroom in the same school. The reentry code to use with W01 [W1] shall be R01 [R1];

(14) [(12)] W02 - A pupil transferred to another public school in the same public school district. The reentry code to use with W02 [W2] shall be R02 [R2];

(15) [(13)] W03 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W03 [W3] shall be R03 [R3];

(16) [(14)] W04 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W04 [W4] shall be R04, R05, or R07 [R4, R5 or R7];

(17) [(15)] W05 - A pupil who has moved out of this public school district and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W05 [W5] shall be R04, R05, or R07 [R4, R5 or R7];

(18) [(16)] W06 - A pupil who is at least sixteen (16), but not yet eighteen (18) years of age; has completed the required sixty (60) day waiting period pursuant to KRS 159.010 and has withdrawn. The reentry code to use with W06 [W6] shall be R06 [R6];

(19) [(17)] W07 - A pupil withdrawn due to those communicable medical conditions that pose a threat in school environments listed in 902 KAR 2:020, Section 1(1), accompanied by a doctor's statement certifying the condition, or any other health related condition for which the student is too ill to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W07 [W7] shall be R06 [R6];

(20) [(18)] W08 - A pupil withdrawn due to death;

(21) [(19)] W09 - A pupil graduated prior to the end of the school term or year;

(22) [(20)] W10 - A pupil who has been expelled for behavioral reasons withdrawn to a state agency. The reentry code to use with W10 shall be R06 [R6] if the student returns to the expelling local school district in the current school year after the expulsion period has been completed. The reentry code to use with W10 shall be R10 if the student returns to the expelling local district in the current school year prior to completion of the expulsion period; [discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;]

(23) W11 - A pupil who has been expelled for behavioral reasons withdrawn to a regional alternative facility not run by the expelling local school district. The reentry code to use with W11 shall be R06 [R4] if the student returns in the current school year after the expulsion period has been completed. The reentry code to use with W11 [E11] is R11 if the student returns in the current school year prior to completion of the expulsion period;

(24) [(21)] W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R06 [R6]. For end of year adjustments, for accountability purposes, a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(25) [(22)] W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W06, W07 [W6, W7], W10, W13, [W14;] W16 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be

R06 [R6];

~~[(23)] W14 - A pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;~~

~~(26) [(24)] W16 - A pupil who has moved out of the public school district for whom enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;~~

~~(27) [(25)] W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian and the school in accordance with 704 KAR 5:060; and~~

~~(28) [(26)] W18 - A pupil eighteen (18) years of age or over who has withdrawn. The reentry code to use with W18 shall be **R06 [R6]**.~~

Section 17. (1) The following suspension codes shall be used to indicate the suspension status of pupils:

(a) S - Suspension from school for one (1) full day; and

(b) N - Suspension from school for one-half (1/2) day.

(2) Suspension shall be considered an unexcused absence.

Section 18. The following expulsion codes shall be used to indicate the expulsion status of pupils:

(1) XP1 - A student expelled from school during the current school year for behavioral reasons, being provided educational services by the expelling local school district;

(2) XP2 - A student expelled from another local school district during the current school year for behavioral reasons, being provided educational services by a regional alternative facility not run by the expelling local school district;

(3) XP3 - A student expelled from school during the current school year for behavioral reasons, not being provided educational services.

(4) XE1 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by the local school district;

(5) XE2 - A student expelled from another local school district during the prior school year for behavioral reasons whose expulsion extends into the current school year and is being provided educational services by a regional alternative facility not run by the expelling local school district; and

(6) XE3 - A student expelled from school during the prior school year for behavioral reasons whose expulsion extends into the current school year and is not being provided educational services.

Section 19. [Section 16:] The following ethnic codes shall be used to indicate the ethnic origin of pupils until June 30, 2000:

(1) 1 - White (not Hispanic) - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(2) 2 - Black (not Hispanic) - A person having origins in any of the black racial groups of Africa;

(3) 3 - Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture of origin regardless of race;

(4) 4 - Asian or Pacific Islander - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

(5) 5 - American Indian or Alaskan Native - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition; and

(6) 6 - Other.

Section 20. (1) Beginning July 1, 2000, the following ethnic codes shall be used to indicate the ethnic origin of pupils:

(1) H - Hispanic or Latino - A person of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin, regardless of race; and

(2) N - Not Hispanic or Latino.

Section 21. (1) Beginning July 1, 2000, the following race codes shall be used to indicate the racial categories of pupils:

(a) W - White - A person having origins in any of the original peoples of Europe, North Africa or the Middle East;

(b) B - Black or African American - A person having origins in any of the black racial groups of Africa;

(c) H - Native Hawaiian or Other Pacific Islander - A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

(d) A - Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam; and

(e) I - American Indian or Alaska Native - A person having origins in any of the original peoples of North America and South America (including Central America), and who maintains tribal affiliation or community attachment.

(2) More than one (1) racial category may be selected. Local school districts must be able to identify the number of students that have selected more than one (1) racial category as described in this section.

Section 22. (1) The Student Dropout Questionnaire shall be completed during the one (1) hour counseling session mandated in accordance with KRS 159.010. Information obtained from this survey shall be submitted to the Department of Education on the local Superintendent's Annual Attendance Report prior to June 30 of each year.

(2) [Section 17:] The request for records and other information involving the withdrawal and transfer of pupils shall be processed by the local superintendent or his designee pursuant to KRS 159.170, and shall be maintained in the student's permanent file. The local board of education shall adopt a form or process to comply with the requirements of KRS 159.170.

Section 23. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) [18:] The "Growth Factor Report" file layout, dated June 1, 1998;

(b) [July 1, 1996, and] The "Superintendent's Annual Attendance Report" file layout, dated July 1, 1996; and

(c) The "Student Dropout Questionnaire" dated June 1, 1998, [are incorporated herein by reference and may be obtained, copied and inspected]

(2) This material may be inspected, copied, or obtained at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

WILMER S. CODY, Commissioner

HELEN W. MOUNTJOY, Chair

KEVIN NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

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

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Office of Learning Results Services

(As Amended at the Education Assessment and Accountability Review Subcommittee on December 14, 1998)

703 KAR 5:010. Writing portfolio procedures. [Strategies for reducing time required for writing portfolio preparation.]

RELATES TO: **KRS 158.6453** [1998-Ky. Acts ch. 598]

STATUTORY AUTHORITY: KRS 156.070, **158.6453** [1998-Ky. Acts ch. 598]

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 158.6453** [1998-Ky. Acts ch. 598] requires the Kentucky Board of Education to promulgate an administrative regulation which reduces the

teacher and student time involved in preparing a writing portfolio. This administrative regulation establishes procedures to accomplish that goal.

Section 1. (1) To ensure that a reasonable amount of time is devoted to writing portfolios, a five (5) piece portfolio shall be produced in 12th grade, a five (5) piece portfolio shall be produced in 7th grade, and a four (4) piece portfolio shall be produced in 4th grade.

(2) To ensure that a reasonable amount of time is devoted to the production of writing portfolio pieces, schools and districts shall develop a procedure to collect writing pieces at nonaccountability levels that are appropriate types of writing for portfolio categories. These pieces may serve as rough drafts that can be revised and edited for inclusion in the accountability portfolio or they may be used as finished products and included in the accountability portfolio.

(3) To ensure that the teacher and student time spent on generating pieces for the writing portfolio is productive, each public school and district shall provide support for teachers across the curriculum and across grade levels to attend professional development focused on the types of writing assessed in the portfolio.

(4) To ensure that a reasonable amount of individual teacher time is spent on scoring writing portfolios, each public school and district shall develop procedures for scoring of student portfolios that include an adequate number of teacher scorers on the school scoring team to limit the number of portfolios scored by any one (1) teacher to thirty (30), unless teachers agree to score a larger number of portfolios.

(5) To ensure that a reasonable amount of time is used in conferencing on writing portfolio pieces, teachers and other responders shall limit a conference's focus to one (1) or two (2) areas of need, addressing patterns of errors or problems that occur frequently.

(6) To ensure that a reasonable amount of time is used in word processing final pieces, teachers shall allow students to use word processing during the development of writing pieces (for example, during revision, or editing) or allow students to submit pieces in their own handwriting.

(7) To ensure that a reasonable amount of time is used in the generation of student writing for the writing portfolio, teacher-assigned writing tasks shall relate to the content being studied in the class.

(8) To ensure that a reasonable amount of time is used in the generation of student writing for the writing portfolio, teachers shall choose content-area readings that represent the kind of writings the students are asked to include in the portfolio, allowing the covering of content and the discussion of writing form to occur at the same time.

WILMER S. CODY, Commissioner

HELEN W. MOUNTJOY, Chair

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: October 8, 1998

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

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, December 8, 1998)

704 KAR 20:460. Examination prerequisites for principal certification.

RELATES TO: KRS 161.020, 161.027, 161.030

STATUTORY AUTHORITY: KRS 156.070, 161.027

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires a certificate of legal credentials for any public school position for which a certificate is issued. KRS 161.027 requires the Education Professional Standards Board to develop or select appropriate tests, establish minimum scores for successful completion, and establish a reasonable fee to be charged for actual cost of administration of the tests, for an applicant [applicants] seeking certification as principal,

and further requires that each applicant [all applicants] for certification as school principal with less than two (2) years of appropriate experience complete a one (1) year internship program developed by the Education Professional Standards Board; and KRS 161.030 rests certification with the Education Professional Standards Board. This administrative regulation specifies the prerequisite tests, minimum scores for successful completion, and establishes a reasonable fee for administration of the prerequisite tests for certification as principal required under KRS 161.027.

Section 1. (1) A new applicant for certification as a school principal, including vocational school principal, shall successfully complete prerequisite tests specified in Section 2 of this administrative regulation prior to certification as a school principal.

(2) In addition to the examination requirement specified in Section 2 of this administrative regulation, an applicant for certification shall successfully complete [both the prerequisite examinations specified in Section 2 of this administrative regulation and] a one (1) year internship program if the applicant has had less than two (2) years of successful experience as a principal in another state.

Section 2. Until October 1, 1999 [in order to satisfy the prerequisites for principal certification], each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) [NTE Core Battery Tests:

(a) Communication skills - 646;

(b) General knowledge - 643;

(2) NTE Specialty Test of Educational Administration and Supervision - 540; and

(2) [-

(3) Kentucky Specialty Test of Instructional Responses and [Correct] Administrative Practices - eighty-five (85) percent correct responses.

Section 3. Beginning on October 1, 1999, each applicant for certification as principal shall complete the following tests and attain the minimum score specified for each test:

(1) School Leaders Licensure Assessment established - 155;

(2) Kentucky Specialty Test of Instructional and Administrative Practices - eighty-five (85) percent correct responses. [An initial applicant for principal certification who has previously attained the minimum score required by this administrative regulation on the NTE Core Battery for communication skills or general knowledge may meet the requirement for the test by:

(1) Having the score previously recorded at the Kentucky Department of Education for other professional certifications; or

(2) Having the Educational Testing Service (ETS) furnish a score report to the Kentucky Department of Education. A request for the score report shall comply with all policies and procedures of the ETS.]

Section 4. The requirement to successfully complete the School Leaders Licensure Assessment shall be waived for an applicant who meets [these applicants who meet] the following qualifications:

(1) Two (2) years of experience as a certified principal in another state; and

(2) Previous successful completion of a nationally administered test in the area of educational leadership and administration.

Section 5. (1) An applicant for certification as principal shall [may] take the required School Leaders Licensure Assessment [NTE tests] on a date established by the ETS. An applicant shall authorize that test results be forwarded to the Kentucky Department of Education by the ETS.

(2) An applicant for certification as principal may take the Kentucky Specialty Test of Instructional and Administrative Practices on a date established by the Kentucky Department of Education. Scoring and reporting of scores shall be the responsibility of the Kentucky Department of Education or its designated agent.

(3) Public announcement of a testing date and location shall be issued sufficiently in advance to permit registration as required by the ETS and the Kentucky Department of Education.

(4) An applicant shall [it shall be the responsibility of each appli-

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~~cant to~~ seek information regarding the dates and location of the ~~test~~ and ~~[tests and to]~~ make application for the appropriate ~~examination~~ [examinations] prior to the ~~deadline~~ [deadlines] established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 6. [5:] (1) For the required School Leaders Licensure Assessment [NTE tests], the applicant shall pay all fees assessed by the ETS.

(2) An applicant shall be assessed a fee of thirty (30) dollars for taking the Kentucky Specialty Test of Instructional and Administrative Practices.

Section 7. [6:] An applicant who fails to achieve a minimum score on a required test as specified in Section 2 of this administrative regulation shall be permitted to retake the test or tests during a regularly-scheduled test administration.

Section 8. [7:] A temporary certificate issued in accordance with KRS 161.027(6)(a) shall not be extended for an applicant who does not successfully complete the assessments within the year.

Section 9. [8:] (1) For an applicant applying for a certificate under KRS 161.027(6)(b), the school superintendent of the employing district shall submit a request that shall include an affirmation that the applicant pool consisted of three (3) or less applicants who met the requirements for selecting a principal.

(2) Upon successful completion of the assessments and the principal internship, a certificate shall be issued for an additional four (4) years.

(3) The temporary certificate issued in accordance with KRS 161.027(6)(b) shall not be extended beyond the one (1) year period.

Section 10. [9:] (1) To provide for confidentiality of information, the Kentucky Department of Education shall report individual scores on the Kentucky Specialty Test of Instructional and Administrative Practices to the individual applicant. The scores shall not be released to other individuals or agencies.

(2) A score shall not be used by the Kentucky Department of Education in an individually identifiable form other than for purposes of determining eligibility for certification as school principal.

Section 11. [10:] On an annual or biennial basis, the Kentucky Department of Education shall collect and analyze data provided by the Educational Testing Service through [NTE-Gore-Battery-and-Praxis H]-score and institution reports which permit evaluation of the examination prerequisites covered by this administrative regulation.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: September 28, 1998

FILED WITH LRC: September 30, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(As Amended at ARRS, December 8, 1998)

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

RELATES TO: KRS 161.028, 161.030, 161.048

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for issuance and renewal of a professional certificate for secondary education based on exceptional work experience. ~~[This administrative regulation is not required by federal law.]~~

Section 1. Definitions. (1) "Exceptional work experience" means

a person with recognized superiority as compared with others in rank, status, and attainment or superior knowledge and skill in comparison with the generally accepted standards in the area in which certification is sought.

(2) "Secondary education" means the area in which certification is sought in a ~~[any]~~ subject taught in grades 9 - 12 in a Kentucky school.

Section 2. Verification of exceptional qualifications of an applicant for certification, in a field of endeavor taught or service practiced in a public school ~~[the public schools]~~ of Kentucky, shall include:

(1) Sufficient documentation that demonstrates to the local school district and the Education Professional Standards Board that an applicant is one who has exceptional work experience as defined in Section 1 of this administrative regulation and has talents and abilities commensurate with the new teacher standards, established in 704 KAR 20:670, Section 6;

(2) Documentation of achievement that may include advanced degrees earned, distinguished employment, evidence of related study or experience, publications, professional achievement, or recognition attained for contributions to an applicant's field of endeavor; and

(3) Recommendations from professional associations, former employers, professional colleagues, or any other individual or group whose evaluations shall support exceptional work in the field.

Section 3. Certification Requirements. An eligible candidate who meets the requirements of KRS 161.048(1) and character and fitness review established in KRS 161.040 shall be issued the provisional certificate, limited to secondary education and valid for one (1) year. Upon successful completion of the Kentucky Teacher Internship Program as established in KRS 161.030(5) to ~~[161-030](8)~~, the professional certificate, limited to secondary education, shall be issued and shall be valid for an additional four (4) years.

Section 4. Renewal Requirements. Each five (5) year renewal of the professional certificate identified in Section 3 of this administrative regulation shall meet the renewal requirements established in 704 KAR 20:060.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Attorney

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: September 24, 1998 at 2 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
(As Amended at ARRS, December 8, 1998)

808 KAR 12:020. Claims of exemption.

RELATES TO: KRS 294.020

STATUTORY AUTHORITY: KRS 294.140(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 294.020(3) requires a person relying upon an exemption established in KRS 294.020(2)(c) or (d) to file with the commissioner a claim of exemption. This administrative regulation establishes the procedure for filing a claim of exemption pursuant to KRS 294.020(3). ~~[To establish procedures for filing a claim of exemption.]~~

Section 1. A person filing a claim of exemption under KRS 294.020(3) shall: ~~[Pursuant to KRS 294.020(2), any person relying on an exemption under KRS 294.020(1) shall file with the commissioner a claim of exemption. In submitting the application to the commissioner, the applicant shall:]~~

(1) Submit a completed application for a mortgage loan company and/or mortgage loan broker exemption form ~~[an (the) application on the form prescribed by the commissioner];~~

(2) Enclose with the application [any] documentation that supports ~~[which the commissioner may require to support]~~ the applicant's claim of exemption; and

(3) Enclose a [the] fee in the amount of \$150 [or the application in the amount of fifty (50) dollars].

Section 2. Within ten (10) days of the change, a person who submits an application under Section 1 of this administrative regulation shall notify the commissioner:

- (1) Of a change of address of the applicant; or
- (2) That the applicant has ceased to do business in Kentucky. [Information contained in applications for exemption which are approved shall be updated on a yearly basis on July 1. The yearly update shall be:
- (1) Submitted on the form prescribed by the commissioner;
- (2) Accompanied by a fee of twenty-five (25) dollars;]

Section 3. Incorporation by Reference. (1) "Application for a Mortgage Loan Company and/or Mortgage Loan Broker Exemption, 1998 edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Attorney

APPROVED BY AGENCY: October 12, 1998

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

PUBLIC PROTECTION AND REGULATION CABINET

**Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal**

(As Amended at ARRS, December 8, 1998)

815 KAR 45:025. Commission meetings and proceedings.

RELATES TO: KRS 95A.040, 95A.050(1)[-HB-62]

STATUTORY AUTHORITY: KRS 95A.050[(+);] (3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth definitions as well as rules and procedures governing the manner and form of meetings and proceedings initiated and conducted by the Commission on Fire Protection Personnel Standards and Education, and to clarify by what means the commission will provide training for firefighters and conduct its meetings.

Section 1. Definitions. (1) "Commission" means commission as defined by KRS 95A.210(1). [~~means the Commission on Fire Protection Personnel Standards and Education;~~]

(2) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(3) "Department" means the Department of Housing, Buildings and Construction.

(4) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.

(5) "Fire department" means and includes a fire department organized under KRS Chapter 75, a fire protection district, a volunteer fire department, [or] a municipal, county or urban-government fire department or other agency or organization recognized by the commission.

(6) "Fire protection personnel" means an employee or member of a "fire department" whether paid or unpaid, who is engaged in any of the following:

- (a) Fire prevention;
- (b) Inspecting buildings for compliance with building, fire, energy and life-safety codes and compliance with the Architectural Barriers Act;
- (c) Fire suppression;
- (d) Fire and arson investigation;
- (e) Fire-related emergency medical and rescue work;
- (f) Other allied fields recognized and approved by the commission.
- (7) "Fire protection instructor" or "fire service training officer" means any person certified, pursuant to KRS 95A.040(2)(b) as qualified to instruct fire protection personnel.
- (8) "KCTCS" means the Kentucky Community and Technical

College System.

Section 2. (1) Voting on reports, recommendations, and contracts. In order for any of the following decisions or actions to be made, a majority of the commission members shall have cast affirmative votes.

(a) Recommending administrative regulations to the commissioner pursuant to KRS 95A.050(3) to establish procedures for certification that training and education programs meet minimum standards pursuant to KRS 95A.040(2)(a);

(b) Entering into contracts with other agencies or persons pursuant to KRS 95A.050(2);

(c) Recommending to the commissioner administrative regulations prescribing the qualifications and certification procedures for fire protection instructors pursuant to KRS 95A.040(2)(b); or

(d) Making studies, recommendations and reports to the governor or legislature pursuant to KRS 95A.040(1).

(2) Public meetings. It shall be the policy of the commission that all its proceedings shall be open to the public and to the press and other news media representatives, unless forbidden by law. This policy shall also apply to the proceedings of any subcommittee of the commission.

(3) Parliamentary rules. The commission shall be governed by Roberts Rules of Order for the orderly conduct of commission meetings or subcommittee meetings. [~~adopt appropriate rules for the orderly conduct of commission or subcommittee meetings;~~]

(4) Complaints; advisory opinions. At any regular meeting, the commission may receive complaints, render decisions, deliver advisory opinions, or authorize or request studies and reports by personnel in the State Fire Marshal's Office for any of the purposes set forth in KRS 95A.040, 95A.050, and any administrative regulation adopted thereunder.

(5) Subcommittees. The commission may establish and govern the subcommittees of its members as it may deem advisable or desirable for the orderly conduct of its business.

Section 3. Administrative Support for Commission. (1) Staff services. Personnel of the division shall provide administrative and technical services to the commission as the commissioner deems necessary or desirable, upon the request of the commission.

(2) Training services. The commission may contract with whom it deems necessary as approved by the commission [~~the Department for Adult and Technical Education~~] [~~to develop curricula and training delivery plans, in conjunction with that department's advisory committee,~~] for the entire range of local fire department duties, technology and activities. In addition, KCTCS [~~the Department for Adult and Technical Education~~] may furnish school facilities in and among the vocational and technical schools under its jurisdiction for this training. [~~The Department for Adult and Technical Education may be awarded a sum from the commission's budgeted funds in order to pay the salary of a clerk to assist the Department for Adult and Technical Education with maintenance of records and files and the performance of other clerical tasks associated with training of fire protection personnel and instructors and the certification of fire protection personnel, instructors and training programs;~~]

(3) ~~Codes enforcement. The commission may contract with the division to provide training to fire protection personnel in building, fire and life safety codes enforcement, energy code enforcement, Architectural Barriers Act enforcement, and the legal and administrative aspects of fire safety and building inspections.~~

Section 4. ~~Coordination Among Agencies. Upon approval by the commission, the Department for Adult and Technical Education may provide on-job field training and classroom training of instructors and fire protection personnel and may be reimbursed by the commission for such functions as may be permitted by law. Jefferson Community College, Northern Kentucky University, Eastern Kentucky University, and any other qualified person or agency, may provide faculty or educational services, lodging, meals or other administrative support for the training of instructors and fire protection personnel, and may be reimbursed in accordance with a contract entered into by the commissioner pursuant to KRS 95A.050(2) and in furtherance of any purpose assigned by the law to the commissioner, the department, or the commission relating to the training or provision of technical assistance~~

to fire protection personnel.]

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(As Amended at ARRS, December 8, 1998)

815 KAR 45:035. Education incentive.

RELATES TO: KRS Chapter 95A

STATUTORY AUTHORITY: KRS 95A.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.240(1) authorizes the Commission on Fire Protection Personnel Standards and Education to establish ~~[issue such]~~ administrative regulations ~~[as are]~~ necessary to properly administer the Firefighters Foundation Program Fund. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of local governments and individual paid firefighters to share in the fund, and to clarify the eligibility requirements for a qualified firefighter who has been off duty for illness or other reasons to return to the service and receive incentive pay without having to be treated as a new firefighter. ~~[This amendment is necessary to comply with technical requirements of KRS Chapter 13A and to add the forms for applying for incentive pay.]~~

Section 1. Definitions. (1) "Allowable sickness, injury or other medical causes" means reasons for which time off the job is granted by the local government for sickness, injury, or other medical causes.

(2) "Certified training" means firefighter training given by a certified instructor and approved and recorded by the commission.

(3) "Commission" means commission ~~[means]~~ as defined by KRS 95A.210(1).

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Fiscal year" means the period July 1 through June 30 of each twelve (12) month period.

(6) "Fund" means fund as defined by KRS 95A.210(2).

(7) "Professional ~~[Full-time]~~ firefighters" means an individual described in KRS 95A.210(4) [individuals] who work a minimum of 2,080 hours per year as a member of a fire department or fire protection district. This definition is intended to cover jobs involving the suppression, investigation, inspection and prevention of emergency situations, but does not include a public safety officer ~~[officers]~~ or a ~~[any]~~ peace officer who has responsibility for the prevention and detection of crime other than arson.

(8) "Incentive pay" means monies from the fund used to supplement compensation paid to professional ~~[full-time-paid]~~ firefighters.

(9) "Leave of absence" means [for the purpose of this administrative regulation shall mean] a leave granted by the local government for [by] which the firefighter is employed and for which leave the fire department or its workers' compensation carrier provides a form of compensation.

(10) "Local government" means local government as defined by KRS 95A.210(3).

Section 2. Eligibility. (1) A [Each] local government which meets the following requirements shall be eligible to participate and share in the distribution of funds if it has made application on Form KPF-1, July 14, 1998, [forms prescribed by the commission and outlined in Section 6 of this administrative regulation] and if the commission has determined that the local government has met the eligibility criteria as stated in KRS 95A.230.

(a) ~~[(4)]~~ The commission shall review the qualifications of firefighters employed by local fire department units after the effective date of this administrative regulation to determine the basic training, if any, which the firefighter may be required to successfully complete prior to

being eligible to participate in the fund;

(b) ~~[(2)]~~ The fire department shall comply with all rules and administrative regulations issued by the commission to facilitate the administration of the fund and further the provisions of KRS Chapter 95A;

(c) ~~[(3)]~~ The fire department shall comply with all provisions of law applicable to local firefighters; and

(d) A [4] Any firefighter who does not possess a high school degree or its equivalent and who has been deemed eligible to participate in the fund pursuant to KRS Chapter 95A who terminates firefighter service, forfeits his eligibility and shall meet the minimum educational requirement to reparticipate in the fund.

(2) ~~[(5)]~~ A firefighter who possesses sufficient training to meet the basic training requirements established by the commission and who terminates or is granted a leave of absence from firefighter service for a period exceeding one (1) year (365 days) shall forfeit his eligibility. Eligibility [and] shall be reestablished for a firefighter who returns to service upon completion of 100 hours of training and meets [meet] the minimum training requirements set forth in subsection (6) of this section [to reparticipate in the fund]. If his separation or leave of absence does not exceed one (1) year, he shall be considered eligible for participation in the fund. After the first year, a firefighter shall also have the additional amount of time equal to his [the required] time off to acquire his 100 hours of required annual training to maintain his eligibility.

(3) ~~[(6)]~~ If a ~~[an individual]~~ firefighter is off duty due to allowable sickness, injury, or other medical cause in his first year of employment, he shall have an additional amount of time equal to the required time off to acquire the balance of his initial 400 hours of required training. After the first year, a firefighter [an individual] shall also have the additional amount of time equal to his [the required] time off to acquire his 100 hours of required training to maintain his eligibility. The firefighter shall be eligible to receive incentive pay upon completion of 100 make-up hours.

(4) ~~[(7)]~~ A copy of the high school diploma or GED certificate for each firefighter, if required, shall be maintained by the local unit and shall be available for review by appropriate commission personnel.

(5) ~~[(8)]~~ If, after having successfully completed a certified basic training course, a firefighter transfers from one (1) participating local unit to another, he shall be eligible to receive payments from the fund if he continues to meet the requirements of the fund as established by the commission.

(6) ~~[(9)]~~ If a firefighter transfers from one (1) fire department to another, paid or volunteer, all certified training he has received shall be recognized by the fire department to which he has transferred and shall be credited ~~[considered]~~ toward his eligibility for participation in the fund.

(7) ~~[(10)]~~ A firefighter shall not receive monies from this fund for employment with more than one (1) employer and shall not receive dual payment.

Section 3. Participation Requirements. (1) Application shall be made by local governments for new participation. Applications shall be filed on Form KPF 1, July 14, 1998, [the applicable forms in Section 6 of this administrative regulation] and shall be accepted from February 1 through April 30 of each year for payment to begin July 1 of that fiscal year. A local government [Local governments] failing to make application within the specified dates shall not be considered for participation until the next application filing period.

(2) The commission shall determine which local governments are eligible to share in the fund and may withhold or terminate payments to a ~~[any]~~ local government that does not comply with the requirements of KRS Chapter 95A or the rules and administrative regulations issued by the commission.

(3) If the commission finds, upon audit or by any other means that a local government has received funds in violation of the provisions of this administrative regulation and applicable statutes, the commission shall require reimbursement for all payments erroneously or falsely made, or it may refuse to grant future eligible incentive pay awards until the amount owed is recovered by the commission.

Section 4. Local Unit Distribution of Funds. (1) The local unit shall submit a monthly incentive request on Form KPF-2, July 1, 1998,

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requesting incentive pay for their eligible firefighters. Upon receipt of the incentive check, the local unit shall return Form KPF-2A, July 1, 1998, to the commission to acknowledge receipt of the monthly incentive pay.

(2) The local unit shall include the incentive compensation paid to each firefighter from the fund as a part of the firefighter's salary in determining all payroll deductions.

(3) [(2)] The local unit shall provide each firefighter with a check stub or separate receipt upon which the gross amount of incentive funds paid to the firefighter shall be identified.

(4) [(3)] The local unit shall disburse incentive funds during the month for which the funds are requested.

(5) [(4)] The local unit shall maintain records to document that each participant devotes sufficient hours performing fire service training to qualify him for incentive pay.

(6) The local unit shall submit to the commission a quarterly report on Forms KPF-3 and 3A, July 1, 1998, to reconcile disbursement of incentive pay.

Section 5. Local Audits. (1) The local unit may be audited by the department pursuant to established procedures.

(2) For audit purposes, the local unit shall maintain accurate financial records. These records shall include, but are not limited to, the following:

- (a) Books of original entry;
- (b) Source documents supporting accounting transactions;
- (c) The general ledger;
- (d) Subsidiary ledgers;
- (e) Personnel and payroll records;
- (f) Cancelled checks; and
- (g) Any related document and record.

(3) These records shall be retained by the local unit until destruction is authorized by the commission or applicable requirements of the Department of Libraries and Archives.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Application for Incentive Pay, Form KPF-1, July 14, 1998.
- (b) Paid Firefighters Foundation Incentive Program Form, Form KPF-2, July 1, 1998.
- (c) Professional Firefighters Foundation Incentive Program Check Verification, Form KPF-2A, July 1, 1998.
- (d) Quarterly Fiscal Report, Form KPF-3, July 1, 1998.
- (e) Professional Firefighters Foundation Incentive Program Form KPF-3A, July 1, 1998 (to be used with Form KPF-3).

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1047 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Application Forms for Incentive Pay. (1)(a) Application for incentive pay.

APPLICATION FOR INCENTIVE PAY

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601
(502) 564-3473

CHECK ONE
() New Application
() Renewal
Paid Firefighters
Incentive

ATTENTION: Please type or print the following information.

1. Applicant:
City of:
Date:
County of:
2. Name of Fire Department:
F.D.#:
3. Name of Fire Chief:
Phone:
4. Name and Title of the Authorized Fiscal Office of Local Unit:
Name:
Title:
5. Attach a sheet of paper with the name of all full-time paid firefighters, their position (i.e., chief, lieutenant, engineer, driver, etc.)

within the fire agency and their annual base salary, if applicable.

6. Name of Chief Executive Officer of Jurisdiction:

I hereby certify that the information contained herein is true and correct to the best of my knowledge. In addition, if this application is approved, I accept and will comply with provisions of KRS Chapter 95A and the general conditions contained herein, and such further rules, regulations and policies as may be reasonable prescribed by the Commission on Fire Protection Personnel Standards and Education.

Signature of Chief Executive Officer:

Date Signed:

Title:

Subscribed and sworn before me this _____ day of _____, 19____.

My commission expires:

Notary Public:

XXXXXXXXXXXXXXXXXXXX

(b) Paid Firefighters Foundation Incentive Program Form. To be completed and filed with application form in (1)(a).

PAID FIREFIGHTERS FOUNDATION INCENTIVE PROGRAM

TO BE RETURNED WITH APPLICATION

Local Unit Name:

Local Unit #:

Fire Department Name:

Fire Department #:

Quarter ending:

Name of Firefighter last name first	New X	Social Security Number	Date Employed	Annual Comp.	Total # Hours Annually	Assigned Duty Position
=====	=====	=====	=====	=====	=====	=====
=====	=====	=====	=====	=====	=====	=====

=====

XXXXXXXXXXXXXXXXXXXX

(2) For requesting funds from the Paid Firefighter's Foundation Incentive Program:

REQUEST FOR FUNDS PAID FIREFIGHTER'S FOUNDATION INCENTIVE PROGRAM

RETURN TO:

Commission on Fire Protection
Personnel Standards and Education
1047 U.S. 127 South
Frankfort, KY 40601

Application #:
1A Fire Dept. Name:
1B Fire Dept. #:

INCENTIVE REQUEST

1. Requesting unit:
Name:
Address:
City:
State:
Zip Code:
2. Funds requested for the month of:
3. Number of eligible firefighters:
4. Incentive pay funds requested:
5. Preceding month's incentive funds requested:
6. Preceding month's incentive funds paid out:
7. Difference between lines 5 and 6:
8. If difference exists, explain reason for shortage or overage in incentive pay funds or pension funds:

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PENSION REIMBURSEMENT

9. Number of firefighters
x HAZCERS 18.47% = \$38.48 per person =
x CERS 8.83% = \$18.40 per person =
x OTHER _____% = \$_____ per person =
TOTAL PENSION FUNDS REQUESTED

10. Signature of Authorized Fiscal Officer:

Title:

Date:

IMPORTANT: Please report at the bottom of this form any change in the name, address or phone number for the Mayor, County Judge, Fire Chief or Fiscal Officer.

Change of Name, Address, Phone Number:

Name: _____ Mayor or
Address: _____ County Judge
Phone Number: _____ Fire Chief
_____ Fiscal Officer]

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(As Amended at ARRS, December 8, 1998)

815 KAR 45:050. Requirements for obtaining firefighter's training facility grants.

RELATES TO: KRS 95A.040, 95A.262(3), (4)[, 45A.080, 322.360]
STATUTORY AUTHORITY: KRS 95A.260(1), 95A.262

NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.262 requires that prior to the expenditure [any expenditures] of funds for the purpose of constructing new or upgrading existing training facilities for firefighters, plans shall be submitted to and reviewed by the Commission on Fire Protection Personnel Standards and Education. The purpose of this administrative regulation is to set out standards and procedures for determining the amount and use of the funds to be expended from the Firefighter's Training Facility [Center] Fund. This amendment is necessary to comply with KRS Chapter 13A drafting rules as requested by LRC staff and to add the forms to apply for firefighters training facility grants.

Section 1. Definitions. (1) "Commission" means commission as defined by KRS 95A.210(1).

(2) "Cost estimate or quotation or bids" means an itemized list of labor, items or materials needed and their estimated cost at the time of bidding. It may also mean the estimated cost of land or buildings to be purchased.

[(3) "Quotations or bids" means it shall contain the same information as cost estimates.]

(3) "Training facility" means a mechanism fixed or mobile where firefighters may be trained.

Section 2. Eligibility. [(1)] To qualify to receive aid under the Firefighter Training Facility [Center] Fund, all fire departments [~~as recognized by the commission~~] [in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 76, county districts established under authority of KRS 67.083 and all other organized fire departments] or groups or associations of fire departments operated and maintained on a nonprofit basis in the interest of the health, safety, prosperity and security of the inhabitants of the Commonwealth, shall be eligible. [maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus.

(2) Any fire department or entity eligible for and receiving funding

pursuant to this administrative regulation shall have a minimum of fifty (50) percent of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.]

Section 3. Participation Requirements. (1) Application shall be made to the commission on Form TFG-1, July 14, 1998, [An application as outlined in Section 5 of this administrative regulation shall be submitted to the commission.] The application shall contain, but not be limited to the following:

- (a) A letter of application, containing a general statement of intent;
- (b) A list of fire departments and agencies that will use the facility;
- (c) A list of what is available to the applicant, such as land, free labor or materials, etc.;
- (d) The name of an agent or contact person;
- (e) A drawing or sketch of the proposed training facility [center], as well as building drawing if applicable; and
- (f) A cost estimate.

(2) All applications shall comply with KRS 45.750 through 45.800 applicable to capital construction projects statutes and the requirements stated in subsection (1) of this section.

(a) Quotations or bids shall be obtained from at least three (3) suppliers for all expenditures of less than \$10,000.

(b) Expenditures exceeding \$10,000 or in excess of the requirements of KRS 424.260, whichever applies, shall require advertisement in newspapers prior to letting the bid to inform the public and suppliers of the needs of the recipient [fire department] and assure that purchases will be at the lowest cost.

(c) Capital construction exceeding the cost of \$25,000, shall require bidding, advertisement and the services of an architect or professional engineer registered in the state of Kentucky.

(d) Equipment expenditures exceeding \$50,000 shall comply with paragraphs (a), (b) and (c) of this subsection and shall be submitted to and approved by the Capital Construction and Equipment Oversight Committee.

(3) Permits shall be obtained for all electrical installations; all plumbing installations; all fuel installations; and boiler and pressure vessel installations.

Section 4. Processing Applications. (1) The commission shall review the applications and, subject to funds available, shall determine [~~recommend to the State Fire Marshal~~] which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.

(2) Funds shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(3) If funds are granted to an applicant and are not to be used for the purpose granted, the applicant's agent shall contact the commission through its administrator directly, giving the reason any change is required or desired in the original plan; and resubmit new plans and cost estimates which shall be approved by the commission; or return the funds.

(4) Granted funds shall not be held longer than twelve (12) calendar months after the date of the grant check without reasonable progress toward the purpose of the grant. If no progress has been made or there is insufficient progress in the consideration of a majority of the commission members after twelve (12) months, the remaining funds shall be returned.

(5) If expenditures or progress is [are] made during the quarter, receipts for funds expended or progress made [~~during each quarter~~] shall be forwarded to the commission [sent] by the 15th of the following month. Progress shall be reported on Form TFG-2, July 14, 1998, and expenditures shall be reported on Form TFG-3, July 14, 1998. Receipts for January, February and March shall be in the hands of the Commission Administrator by the 15th of April and so on.

(6) Maintenance of the training facilities and equipment purchased with the granted funds shall be the responsibility of the applicant. A reasonable fee may be charged for use of the facilities by others than the applicant's members. These fees are to be used for the maintenance of the facilities or equipment.

(7) Any false statements made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

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

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(a) Training Facility Grant Application, Form TFG-1, July 14, 1998 (2 pages).

(b) Quarterly Progress Report, Form TFG-2, July 14, 1998.

(c) Quarterly Financial Status Report, Form TFG-3, July 14, 1998.

(2) This material may be inspected, copied or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Training Facility Grant Application Forms. (1) Training Facility Grant Application.

TRAINING FACILITY GRANT APPLICATION

Commission on Fire Protection
Personnel Standards & Education
1047 U.S. 127 South
Frankfort, KY 40601

ALL QUESTIONS MUST BE ANSWERED OR APPLICATION WILL BE REJECTED

Please type or print

Name of Requesting Agency:

Address:

City:

County:

Zip:

Contact Person:

Telephone Number:

- | | | | |
|-----|----|-----|---|
| Yes | No | 1. | Does each department of the requesting agency maintain twelve (12) firefighters, one (1) chief and operate at least one (1) operational fire apparatus? |
| Yes | No | 2. | Does each department of the requesting agency maintain a roster of a minimum of fifty (50) percent certified firefighters? |
| Yes | No | 3. | If applicant is an organization, are all member departments aware of the application? |
| | | 4. | List all departments which will utilize the facility on a separate sheet. |
| | | 5. | Number of personnel utilizing facility? |
| | | 6. | Number of days the facility was used last year? |
| | | 7. | List departments and agencies utilizing facility last year on a separate sheet. |
| | | 8. | Nearest similar facility. |
| Yes | No | 9. | Will your facility be available to other/all departments? |
| | | 10. | Explain on a separate sheet your facility maintenance funding method. |
| Yes | No | 11. | Does requesting agency hold the title to the property? If no, please explain. |
| | | 12. | Location of facility. |
| | | 13. | List of completed projects on facility as of this date. |

- | | |
|----------|----------|
| 1. _____ | 2. _____ |
| 3. _____ | 4. _____ |

14. Please check the project this application is for:

- _____ I Drill tower
_____ II Burn/smoke building
_____ III Drafting pit
_____ IV Multipurpose building
_____ V Special project

- | | | | |
|-----|----|-----|---|
| Yes | No | 15. | Are blueprints or drawings available? If no, they must be submitted prior to disbursement of funds if your request is approved. |
| | | 16. | Estimated cost of this project: |

I, the undersigned, hereby attest that all questions have been truthfully

answered to the best of my knowledge. I have read and will comply with 815 KAR 45:050 and if reasonable progress is not made on the project granted, the grant is subject to forfeiture. I further attest that I have full authority to sign this document.

Signature:

Title:

Date:

(2) Quarterly Progress Report Form.

QUARTERLY PROGRESS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:

Quarter of _____ through _____

_____ Quarterly Report

_____ Final Report

Title of Project:

Start report here (add continuation pages as needed)

Signature of Recipient:

Typed Name and Title of Recipient:

Date:

(3) Quarterly Financial Status Report Form.

QUARTERLY FINANCIAL STATUS REPORT

Commission on Fire Protection
Personnel Standards and Education
Firefighter's Training Facility Grant

Project Number: _____

Recipient:

Quarter of _____ through _____

_____ Quarterly Report

_____ Final Report

Monies Paid to:

Amount Paid:

1.

2.

3.

4.

5.

Total Spent this Quarter:

I certify that to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

Signature of Authorized Certifying Official:

Typed Name and Title of Certifying Official:

Date:

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(As Amended at ARRS, December 8, 1998)

815 KAR 45:060. Survivor benefits for death of a firefighter.

RELATES TO: KRS Chapter 95A, 136.392

STATUTORY AUTHORITY: KRS 61.315(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315 authorizes the payment of [a] survivor benefits of \$50,000 to the survivor of a paid or volunteer firefighter who is killed in the line of duty after July 1, 1991. This administrative regulation establishes the procedures and criteria which shall be utilized to determine the eligibility of the firefighter's survivor benefits. This administrative regulation applies to both paid and volunteer firefighters. ~~[Administrative regulation 815 KAR 45:040, Survivor benefits for volunteer firefighters, shall be repealed. This amendment is necessary to implement statutory changes and to bring the administrative regulation into technical compliance with KRS Chapter 13A.]~~

Section 1. Definitions. (1) "Active member" means a paid firefighter that is listed on the department roster and participates in the department's training programs and other various activities.

(2) "Commission" means commission as defined by KRS 95A.210(1). ~~[means the Commission on Fire Protection Personnel Standards and Education established pursuant to KRS 95A.020.]~~

(3) "Death in the line of duty" means death which occurs as a direct result of an act or acts in the performance of duty as described in these administrative regulations and shall include death which results from a heart or circulatory malfunction which is treated within forty-eight (48) hours after participation in the performance of ~~these~~ [said] duties or as the result [results] of illness, sickness or injury caused by the performance of these [said] duties which result in death within twelve (12) months of the [such-stated] activities as described elsewhere in these administrative regulations providing death is not caused by suicide or self-inflicted injury.

(a) If death occurs after twelve (12) months and is believed to be related to the above stated causes, the commission has the right of review with the possibility of determination of death in performance of duty.

(b) These activities shall not include participation in any sports or athletic event or contest, whether for the purpose of fund raising or any other purpose.

(4) "Child or children" means stepchildren, legally adopted children and children born posthumously.

(5) "Firefighter" means firefighter as defined in KRS 61.315(1).

(6) "Heart or circulatory malfunction" means myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident which the symptoms of such malfunction are first medically treated within forty-eight (48) hours after participation in the performance of the duties of a paid firefighter as described in these administrative regulations.

(7) "Performance of duty" means a firefighter acting in the performance of his duties ~~[for the purpose of these administrative regulations]~~ when engaged in the following activities if the activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization:

(a) ~~[of]~~ Firefighting;

(b) Fire drills or other related training;

(c) Rescue or emergency activities; ~~[provided such activities are performed at the direction or with the knowledge of an officer of the fire department or when immediate action is required at the scene of an emergency not involving his department or other emergency organization.]~~

(d) ~~[(a) These activities shall include]~~ Repairing or doing other work about or in the fire or emergency apparatus or building and grounds of the fire department;

(e) ~~[upon the authorization of the chief of the fire department or other authorized person in charge or while]~~ Answering an ~~[any]~~ emergency call;

~~(f) [calls for any purpose or while]~~ Riding in or upon the fire or emergency apparatus which is owned or used by the fire department;

(g) ~~[or while]~~ Performing other duties of the ~~[such]~~ fire department as authorized by the jurisdiction which the department serves; and

(h) Attending ~~[-~~

~~(b) These activities shall include organized]~~ meetings related to the fire service and travel to and from the ~~[such]~~ meetings whether local, state, or national, as long as he is representing his local, state or national fire related organization.

Section 2. Requirements for Eligibility. (1) Survivors. Benefits shall be paid to the surviving spouse, surviving children or both; or the surviving parents, as set forth in KRS 61.315(2).

(2) Heart or circulatory malfunction limitations. If an individual becomes an active member of a fire department and has not within five (5) years prior to the date of membership been medically diagnosed as having had or has received any medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident, his eligible survivors shall receive the benefits if the firefighter is killed in the line of duty.

(a) If the firefighter has been medically diagnosed as having had or receiving ~~[any]~~ medication for the above illnesses within five (5) years prior to becoming an active member of a fire department and presents a medical statement to the commission from the firefighter's doctor that the firefighter has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting, the eligible survivors shall be eligible to receive the benefits granted through KRS 61.315 if the firefighter is killed in the line of duty.

(b) If a firefighter ~~[an active member]~~ of a fire department is medically diagnosed as having had or is prescribed medication for myocardial infarction, angina pectoris, coronary thrombosis, cardiac arrest or a cerebral vascular accident and returns to active fire service, their survivors shall not be eligible to receive benefits from this program in event of the firefighter's death caused by heart or circulatory malfunction until a medical statement from their doctor that the individual has recovered or has been medically rehabilitated sufficiently to meet the physical demands of firefighting is supplied the commission. Upon review and approval of the ~~[said]~~ statement by the commission, the firefighter's survivors shall again become eligible to receive benefits from this program.

(3) Autopsy. The commission reserves the right to request an autopsy providing sufficient cause can be shown for this request. If an autopsy is performed for any reason, a copy of the report signed by the individual who performs the autopsy and a notary public shall be furnished to the commission.

Section 3. Application. (1) Upon the death in the line of duty~~[as defined by this administrative regulation;]~~ of a ~~[paid]~~ firefighter, the fire department of which the firefighter was a member at the time of death shall ~~notify[-in writing;]~~ the commission's administrator ~~[in the Office of State Fire Marshal;]~~ of the death immediately. Upon receipt of the notification, the administrator shall send Form KPF-4, July 14, 1998, ~~[the forms outlined in Section 7 of this administrative regulation]~~ to the notifying fire department in care of the chief as well as Form KPF-5 ~~[the forms]~~ to the known survivors of the deceased firefighter.

(2) Upon receipt of Forms KPF-4 and KPF-5, July 14, 1998, ~~[the forms furnished by the commission;]~~ the chief and survivors or their representative shall properly fill out the ~~[said]~~ forms and return them to the commission in care of the administrator.

(3) Upon the receipt of the properly completed ~~[filled-out]~~ forms, a committee of the commission appointed by the chairman of the commission shall review the forms ~~[applications]~~ and forward them with their recommendations to the full commission for determination of eligibility. If there are questions about the forms ~~[application]~~, the committee and the administrator may seek clarification of the questions on behalf of the commission.

Section 4. Certification of Payment of Benefits. Upon certification of survivorship rights to the Firefighter's Death Benefit, the sum of \$50,000 shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the commission's administrator for payment to the eligible survivor or survivors.

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Section 5. False and Fraudulent Statements. A [Any] person who knowingly or willfully makes any false or fraudulent statements or representation in any record or report to the commission under KRS Chapter 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds and those survivors may be responsible for the return to the state treasury of those funds which were received through these false or fraudulent statements or representations.

Section 6. Appeals. (1) Decisions of the commission negatively affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the [said] survivor shall have been afforded an opportunity to be heard on the matter [matters].

(2) An appeal may be taken from a final decision of the commission to withhold payment from the fund to any survivor. The [Said] appeal shall be to the circuit court of the circuit where the controversy originated.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Report of Firefighter's Death, Form KPF-4, July 14, 1998.

(b) Claim for Survivor Benefits, Form KPF-5, July 14, 1998.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Application Forms for Reporting Firefighters Death. (1) Form for notifying commission of the death of a firefighter.

Commission on Fire Protection Personnel Standards and Education 1047 U.S. 127 South Frankfort, KY 40601	For Commission Use Only Case No. _____ S.S. No. _____ Date _____
--	---

REPORT OF FIREFIGHTERS DEATH

- Name and address of public safety agency, organization or unit in whose service death occurred (include zip code).

PART I. NOTICE OF LINE OF DUTY DEATH OF FIREFIGHTER

- Name of deceased firefighter:
- Date of injury:
- Date of death:
- S.S. No.:
- Deceased firefighter's last mailing address:
- Name of decedent's superior officer:
- Supervisor's area code and phone number:
- Was injury contributed to by: Yes No Unknown

Firefighter's intentional misconduct?	==	==	==
Firefighter's intent to bring about his own death?	==	==	==
Firefighter's voluntary intoxication?	==	==	==
Any person who may be entitled to benefit? (Attach explanations for any "yes" answers)	==	==	==

- Firefighter's employment status when injury occurred
Full time Part time Volunteer Other (Specify)

PART II. PLEASE CHECK AND ATTACH ALL APPLICABLE REPORTS RELATING TO THE DIRECT CAUSE OF OR PROXIMATE CAUSE OF DEATH.

- Certified copy of original reports
Medical report (attending physician) _____
Coroner's report _____
Autopsy report _____
Investigation report* _____

*If no investigation report exists, please provide statement of circumstances leading to death.

- If known, give name and address of witness(es) with whom firefighter was involved when injured, if not provided in the above re-

ports.

PART III. INFORMATION CONCERNING POSSIBLE CLAIMANTS (Provision of this information does not constitute finding for or against an interim payment of benefits or final award of benefits).

- Names, relationship and address of persons in precedence order and applicability categorized as follows:

Name (last-first- middle)	Date of birth	Address (include city- state-zip)
---------------------------------	------------------	---

Surviving Spouse
Children
Surviving Dependent
Parent(s)*

*List surviving dependent parents only when neither spouse nor children survive decedent.

- Has a legal guardian been appointed for any of the above mentioned children? (If yes, give name and mailing address of guardian)

GUARDIAN(S) NAME	ADDRESS (include zip code)	GUARDIAN FOR (list children)
------------------	-------------------------------	---------------------------------

PART V. CERTIFICATIONS. A false answer to any question in this statement may be grounds for nonpayment of benefits and may be punishable by fine or imprisonment. All the information you give will be considered in reviewing the claim and is subject to investigation.

- Employing organization To the best of my knowledge and belief, the above stated information is true and complete.

TYPED NAME AND TITLE	SIGNATURE	DATE
----------------------	-----------	------

ORGANIZATION	ADDRESS (include zip code)	PHONE NO.
--------------	-------------------------------	-----------

- Is there a retirement/disability board which will consider the facts of this case in order to determine eligibility for other benefits?
Yes No
If yes, please give address and telephone number of the board.

REMINDER: ARE ALL REQUIRED DOCUMENTS ATTACHED (SEE PART II)?

(2) Form for notifying commission of claim for survivor benefits following the death of a firefighter.

Commission on Fire Protection Personnel Standards & Education 1047 U.S. 127 South Frankfort, KY 40601	For Commission Use Only Date received _____
--	--

CLAIM FOR SURVIVOR BENEFITS

- Name of deceased (last first middle):
- Social Security #:
- Date of injury:
- Date of death:
- Name and address of (public safety agency, organization or unit in whose service death occurred)

INSTRUCTIONS: A claim should be filed when an eligible firefighter (regardless of employment status) has died of a personal injury sustained in the line of duty. WHO SHOULD FILE: (1) surviving spouse (complete Part I); (2) child or children of the deceased (complete Part II); and (3) dependent parent or parents of the deceased (complete Part III). All claimants must complete Part IV. When documentation is required, a properly certified copy of the record will suffice.

PART I. INFORMATION ON SURVIVING SPOUSE. When at the time

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of the firefighter's death, the firefighter was survived by a husband or wife, this Part should be completed. If there are qualified children of the deceased, Part II must also be completed. (Attach marriage certificate, divorce decree or separation agreements as applicable to marital relationship with decedent.)

6. Name (last-first-middle):
7. Social Security No.:
8. Mailing address (include zip code):
9. Marital status at time of firefighter's death:
☐ Married ☐ Separated ☐ Divorced ☐ Other
 Attach necessary documentation such as marriage certificate, divorce decree or separation agreement.
10. Was the firefighter married at any time to anyone else?
☐ Yes ☐ No ☐ Unknown
 If yes, submit documents to show dissolution of prior marriage such as death certificate.
11. Does deceased firefighter have any eligible children from previous marriage? ☐ Yes ☐ No
 If yes, include under Part II or explain on separate sheet and attach to this form.

PART II. INFORMATION ON CHILDREN. If the firefighter was survived by a natural, illegitimate, adopted or posthumous child or step-child (or children) who, at the time of the firefighter's death, was eighteen (18) years of age or under, over eighteen (18) and a student; or over eighteen (18) and incapable of self support because of physical or mental disability, this Part should be completed. Attach copy of birth certificates, adoption papers or other evidence of parent-child relationship, as appropriate.

12. Name (last-first-middle):
 Date of birth:
 Address (if not same as item #8):

Has a legal guardian been appointed for any of the above mentioned children? (If yes, give name and mailing address of guardian of each child.) (Legal guardianship documents will be required in the event benefits will be awarded to children under guardianship.)

GUARDIAN(S) NAME	ADDRESS	GUARDIAN FOR
	(include zip code)	(list children)

PART III. OTHER CLAIMANT. If at the time of death, the firefighter was not survived by a spouse or children and there was a parent or parents of the deceased dependent upon him for support, this Part should be completed. Attach a copy of the firefighter's birth certificate or other evidence of parent-child relationship as appropriate.

NOTE: IF ANSWER TO EITHER ITEM 13 OR 14 IS YES, DO NOT COMPLETE PART III.

13. Is there a surviving spouse of deceased firefighter? ☐ Yes ☐ No
14. Is there a surviving child or children of deceased firefighter? ☐ Yes ☐ No

CLAIMANT(S) IN THE CIRCUMSTANCE OF NO SURVIVING SPOUSE OR CHILDREN

15. Name (last-first-middle):
 Mailing address (include zip code):
16. Statement of dependent parents where there is no surviving spouse or children.
 - A. Amount contributed by firefighter toward claimant's support during the twelve (12) months prior to injury or death: \$ _____
 - B. Claimant's earnings from his employment during the twelve (12) months prior to firefighter's injury or death: \$ _____
 - C. Other income of claimant from all other sources during the twelve (12) months prior to firefighter's injury or death: \$ _____
 - (1) Investments: \$ _____
 - (2) Pensions: \$ _____

- (3) From people other than deceased firefighter: \$ _____
- (4) Other sources: \$ _____

PART IV. STATEMENTS AND CLAIM. All claimants are required to complete this Part. The purpose of this claim is to establish survivorship eligibility and assert the rights to benefits. The filing of this claim does not constitute a determination by the Commission on Fire Protection Personnel Standards and Education that benefits will or will not be awarded to the claimant(s). This claim may be prepared by a person acting on behalf of the claimant(s) such as a parent, legally appointed guardian, other legal representatives, or duly designated representatives of the claimant(s). Evidence of authority to represent claimant(s) should be attached.

17. Statement of financial need: Has an immediate financial hardship been incurred as a result of this death? ☐ Yes ☐ No. If yes, provide a brief statement of financial circumstances and need. If more room is needed, use additional sheets.

I hereby make claim for compensation for myself as, or in behalf of, (spouse, child/children or other eligible claimants) listed above, as a result of the death of the above named firefighter who sustained fatal injury in the line of duty. Every statement and information set forth above is true to the best of my knowledge and belief.

A false answer to any question in this statement may be grounds for nonpayment of benefits and may be punishable by fine or imprisonment. All the information you give will be considered in reviewing the claim and is subject to investigation.

Signature of claimant or authorized representative:
 Date:
 Phone number:]

GERALD STEWART, Chairman
 LAURA M. DOUGLAS, Secretary
 JUDITH G. WALDEN, Office of General Counsel
 APPROVED BY AGENCY: October 5, 1998
 FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Commission on Fire Protection Personnel Standards and Education Office of State Fire Marshal (As Amended at ARRS, December 8, 1998)

815 KAR 45:080. Volunteer fire department aid.

RELATES TO: KRS Chapter 95A, 136.392
 STATUTORY AUTHORITY: KRS 95A.262(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Commission on Fire Protection Personnel Standards and Education is required by KRS 95A.262 to allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment. This administrative regulation sets out standards and procedures for determining the use of volunteer fire department aid. [This administrative regulation contains the substance of 815 KAR 46:010 which has been repealed.]

Section 1. Definitions. (1) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training as defined [recognized] by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of defined and certified training annually.

(2) "Certified training" means firefighter training given or verified by an instructor certified pursuant to 815 KAR 45:090 and recorded by the commission.

(3) "Commission" means commission [means] as defined by KRS 95A.210(1).

(4) "Fire apparatus" means a motorized vehicle specifically designed to perform firefighting operations, equipped with a pump having a minimum capacity of pumping 250 gallons per minute and with suffi-

cient space to carry fire hose and other fire suppression equipment.

(5) ~~["Full-time paid firefighter" means an individual who works for a minimum salary of \$8,000 annually and works a minimum of 2,080 hours per year as an employee of a fire department or fire protection district that is recognized by the Department of Housing, Buildings and Construction or the Commission on Fire Protection Personnel Standards and Education.~~

(6) ~~"Volunteer fire department" means a fire department recognized by the commission as having [Department of Housing, Buildings and Construction upon recommendation of the commission, which has] a membership [consisting] of more [less] than fifty (50) percent of its members being full time volunteer [paid] firefighters.~~

(6) ~~[(7)] "Newly formed department" means a fire department which has organized to the point of having a minimum of twelve (12) members, a chief and having either in their possession or on order at least one (1) operational fire apparatus. The department shall also have available from any source for the year in which the allotment is to be made funds, equipment, land and buildings of sufficient value to match or exceed the amount of the aid allotment.~~

Section 2. Eligibility. (1) To qualify to receive aid under the volunteer fire department aid law, volunteer fire departments in cities of all classes, fire prevention districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083 and all other organized volunteer fire departments registered as nonprofit corporations shall maintain at least twelve (12) firefighters, a chief and at least one (1) operational fire apparatus, as required by KRS 95A.262(2).

(2) ~~A [Any] fire department or entity eligible for and receiving aid; pursuant to this administrative regulation; shall have a minimum of fifty (50) percent of its firefighters [personnel] certified as required by this administrative regulation. [recognized by the commission.]~~

(3) ~~Effective January 1, 2001, no firefighter who is listed on a fire department roster for purposes of qualifying that department for volunteer fire department aid may be listed as part of a roster qualifying any other fire department for volunteer fire department aid.~~

(4) ~~A fire department or entity anticipating receiving aid shall maintain a current roster of those firefighters who qualify them for the following year's volunteer fire department aid check and submit a copy of the roster to the commission.~~

(5) ~~After December 31, 2000, if two (2) or more fire departments contain the name of the same firefighter on its roster, no fire department shall use that firefighter in its calculation toward qualification for receiving aid. [that firefighter shall not be used to qualify a fire department.]~~

(6) ~~A fire department or other eligible entity requesting aid for any year shall provide proof of purchase expenditures for the previous year's aid. The proof shall be submitted by June 30 of each year.~~

(7) Certification of personnel shall be determined from Form KFS-2, July 14, 1998 ~~[the firefighter application form outlined in Section 6 of this administrative regulation]~~ which shall be submitted to the commission regarding active or inactive status of existing members as well as departure of members and entry of new members.

(8) ~~[(4)] New members of a fire department shall have two (2) years to become certified before being counted as personnel to determine qualification of the fifty (50) percent of personnel certified for eligibility of state-aid funding.~~

(9) ~~[(5)] To be eligible to receive funds, a newly formed fire department shall have fifty (50) percent of its membership with at least half of their training hours toward certification by July 31 within their first year of existence and plans to receive the balance of the required hours for certification within the second year of their existence. Each successive year [thereafter], they shall meet the requirements of the commission to retain certification.~~

Section 3. Participation Requirement. (1) It shall be the responsibility of the chief officer or his appointed representative of the [each] department to furnish the [any] information required by the commission for determination of eligibility.

(2) All training hours for the department for the previous twelve (12) months shall be submitted by December 31st.

(3) A [Any] volunteer fire department seeking aid pursuant to the

authority of KRS Chapter 95A shall file Form KSA-1 and KFS-3, July 14, 1998, and submit to [an application form as outlined in Section 6 of this administrative regulation which may be obtained from] the office of the commission.

Section 4. Purposes for which Volunteer Aid May be Used. (1) An approved equipment list of items which can be purchased with volunteer fire department aid pursuant to this administrative regulation shall be supplied with each check. [Verification and inspection. (1) The application for aid shall contain or have attached a detailed statement of the following:

- (a) Equipment to be purchased;
- (b) Repairs to be made;
- (c) Other purposes for which the allotment is to be expended;
- (d) Other information as the commission may require to give proper consideration to the request.]

(2) Funds shall not be expended for an item not on the approved list unless written permission to spend the funds for other purposes is granted by the fire department aid administrator. [If a new fire department is being established, there shall be furnished with the application additional information as to the territory to be served and plans and specifications for the establishment of the department.]

(3) Proof of purchase shall be submitted in the form of invoices and cancelled checks and shall be recorded on Form KSA-2, July 14, 1998, and submitted to the commission. [The fire department aid coordinator shall upon receipt of the application advise the commission as to the validity of the qualifications and approval for grant-in-aid.]

(4) Proof of purchase documentation shall be returned by June 30 of the year following receipt of the check.

(5) The commission or its designee may make an inspection of the applicant's fire department to determine comparative needs within the department before making the allotment. The inspection may also include an accounting to assure that equipment previously purchased is currently in the possession of the fire department.

Section 5. Processing Applications for and Expenditure of Aid. (1) Allotment shall not be expended for any purpose other than that for which it is approved without the approval of the commission.

(2) If approved allotment is insufficient to cover the cost of equipment or other approved purposes, funds granted for a [any] fiscal year may be deposited in any bank authorized by the applicant to be held for a period not to exceed five (5) years from the initial request. If additional time beyond the five (5) years is needed, a written request shall be made to the commission giving reasons why additional time is needed. This shall be held in a special and separate bank account marked "Fire Department Aid Fund."

(3) If an allotment is granted to a fire department and is ~~[not]~~ to be used for the purchase of equipment other than that listed on the approved equipment list or for any other purpose, [for which it was granted;] the chief of the fire department shall:

(a) Request, in writing, permission to use the allotment for other equipment or purposes; or [Contact the commission directly giving the reason why he wishes to make a change in the original equipment list; and

(b) Resubmit a new equipment list which shall be approved; or]

(b) [(c)] Refund the grant-in-aid allotment.

(4) An amount [Amounts] expended for expense of firefighters in attending fire related school or classes shall not exceed ten (10) percent for a [any one (1)] fire department. This shall be an item entered on Form KSA-2, July 14, 1998, with receipts [the regular equipment list].

(5) If expenditure is made of any allotted funds, copies of receipted bills shall be forwarded by the volunteer fire department aid coordinator to the commission. If the grant is to be used toward the retirement of a preexisting debt for purchase of land, buildings or equipment, proof of the expenditure in the form of an affidavit or cancelled note shall be furnished to the commission. A [Any] false statement made knowingly by an applicant shall call for refund of grant monies and prosecution under existing statutes.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Fire Department Information, Form KSA-1, July 14, 1998.

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(b) Firefighter Application for Certification of Personnel, Form KFS-2, July 14, 1998.

(c) Fire Department Application, Form KFS-3, July 14, 1998.

(d) Proof of Purchase, Form KSA-2, July 14, 1998.

(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Participation Forms. (1) Firefighter application form for certification of personnel.

COMMONWEALTH OF KENTUCKY
COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION
FIRE FIGHTER APPLICATION

☐ Add new firefighter

☐ Change data on firefighter

☐ Delete firefighter record

(NOTE: Certified copy of
Death Certificate must
be attached on delete)

EDUCATION

(check highest level)

☐ 1. Less than 8th grade

☐ 2. 8th grade

☐ 3. Some high school

☐ 4. High school graduate

☐ 5. GED

☐ 6. Some college

☐ 7. Associates degree

☐ 8. Associates degree plus

☐ 9. Bachelors degree

☐ 10. Bachelors degree plus

☐ 11. Masters degree

☐ 12. Masters degree plus

Name (last, first, middle initial):

Social Security #:

Birthdate (month, date, year):

Race: (1) White ☐ (2) Black ☐ (3) Other ☐

Sex: Male ☐ Female ☐

Original employment date (month, day, year):

Years of Experience:

County #:

County Name:

Fire Department #:

Employment date in this dept. (month, day, year):

Status (Active/Inactive):

Status Date (month, day, year):

Classification (check one)

Paid: (1) ☐

Volunteer: (2) ☐

I.F.B.: (3) ☐

Other (specify) (4) ☐

Department Title:

CENTRAL OFFICE USE ONLY:

Certification Code:

Certification Date (month, day, year):

AUTHORIZING SIGNATURE:

Date (month, day, year):

X X X X X X X X X X X X

(2) Application for qualification of volunteer fire department seeking aid:

Date _____

APPLICATION FOR QUALIFICATION

Name of Fire Department:

City:

County:

Legislative District #:

City Classification:

Municipal Rating:

Insurance Rating:

Is department owned and governed by the city () county () or privately ()

If department is city owned and governed, give the amount of money appropriated by city to fire department for compensation of firefighter:

for purchase of new equipment:

for maintenance of present equipment:

or give lump sum of total allotment by city for any or all needs:

are appropriations granted annually or as needed?

If department is county owned and governed, give the amount of money appropriated by county to fire department for compensation of firefighter:

for purchase of new equipment:

for maintenance of present equipment:

or give lump sum of total allotment by county for all or any needs:

If department is privately owned, do you solicit fees from property owners on an annual basis for department? yes () no (). If so, how much yearly average:

are these fees allotted for compensation of firefighter:

or purchase of new equipment and buildings:

or for maintenance of present equipment and buildings:

Describe any other source of income received by the fire department:

Name of chief:

Address:

Name of assistant chief:

Address:

Number of firefighters on the department subject to call at all times:

Number of full-time paid firefighters:

Number of volunteer firefighters who receive some compensation:

Number of qualified (some training) extra firefighters who can be called to assist either a paid or volunteer department in emergency:

When and how much are the volunteers paid:

Is the chief paid? If so, how much:

Is the assistant chief paid? If not, does he receive compensation as a volunteer assistant chief? If so, how much:

Are all volunteer firefighters appointed by the chief or governing body:

Name of all full-time or regular volunteer firefighters who are carried on personnel roster:

Number of hours of drilling conducted each month:

Who conducts the drills:

How many firefighters attend Kentucky Fire School each year:

Do you have training classes each year conducted by Vocational Education:

How many attend?

Does the chief or any member of the fire department attend any district meetings?

Name of district meeting:

EQUIPMENT UNDER JURISDICTION
OF FIRE DEPARTMENT

Type of Apparatus:

Number and type:

Number and type:

Number and type:

Number and type:

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H.P. of motor:
Type of Pump (centrifugal, rotary, piston):
Capacity of Pump:
Pump single or double stage:
Front or midship mounted:
Size of booster tank (gallons):
Number of booster hose reels:

Describe briefly the year and model of each apparatus and give general condition:

Amount of 2 1/2 inch hose (in feet) carried on apparatus:
Amount of 1 1/2 inch hose (in feet) carried on apparatus:
Amount of 3/4 or 1 inch rubber covered hose (in feet) carried on booster reels:

Ladders carried on this apparatus (number, length, type):
Fire extinguishers carried on this apparatus (number, type, size):
Air packs carried on this apparatus (number, size):
Pike poles:
Plaster hooks (number, length):
Hand lights (number, volts):
Grow or claw bars (number):
Hydrant wrenches (number, type):
Spanners (numbers):
Suction hose (feet):
Rope (feet, size):
Hose adaptors (number, type/size):
Foam solution (kind/amount):
Foam nozzles (type):

How often are trucks inspected and motor started to test motor, battery and tires:

GENERAL INFORMATION

Firefighter coats (number):
Firefighter pants (number):
Firefighter helmets (number):
Firefighter gloves (number):
Fire blankets (number, size):
Firefighter boots (number):
Salvage covers (number, size):
Portable electric generator (number, capacity):
Flood and/or spot lights (number):
Smoke ejector (number, size):
Extra hose kept at fire station (feet, size):
Portable pumps in department (number, size):
On what apparatus is it carried:
Type of alarm system (kind, size):
Where is alarm system located:

Brief description of fire station, type of construction, location, owner, how heated:

How often is hose removed from apparatus to test, drain, clean and reloaded?

What facilities do you have for cleaning and drying dirty or wet hose?

Miscellaneous remarks concerning department:

1. Is your department organized under Chapter 75 as a fire prevention district?
2. Is your department organized under Chapter 67.320 as a county fire department?
3. Is your department incorporated by the Secretary of State? If so, please attach a copy of papers.
4. If none of the above, how is it organized?

Be absolutely sure that either of these four questions be answered correctly, if either question pertains to your department.

Fire Chief:
Approved by Mayor or County Judge Executive:
Chairman:]

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Commission on Fire Protection Personnel Standards and Education Office of State Fire Marshal (As Amended at ARRS, December 8, 1998)

815 KAR 45:090. Certification and qualifications of fire protection instructors.

RELATES TO: KRS 95A.040(2)(b)
STATUTORY AUTHORITY: KRS 95A.050(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 95.040(b) authorizes the Commission on Fire Protection Personnel Standards and Education to certify fire protection instructors. This administrative regulation sets forth the prerequisite for and justification of those instructors. [This administrative regulation contains the substance of 815 KAR 45:090, which is being repealed.]

Section 1. Definitions. (1) A "certified professional firefighter" means a firefighter who meets the requirement of KRS 95A.210 and 95A.230.

(2) "Certified volunteer firefighter" means an individual who has received at least 150 hours of certified training as recognized by the Commission on Fire Protection Personnel Standards and Education and who receives at least twenty (20) hours of certified training annually to maintain certification.

(3) [(2)] "Commission" means commission [means] as defined by KRS 95A.210(1).

[(3)] "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(4) "Department" means the Department of Housing, Buildings and Construction.

(5) "Division" means the Division of Fire Prevention, State Fire Marshal's Office.]

(4) [(6)] "Educational methodology course" means a course meeting the objectives of NFIPA 1041 and conducted by:

(a) KCTCS [Kentucky Tech];

(b) A Kentucky college or university;

(c) The National Fire Academy;

(d) A governmental entity authorized by the National Fire Academy to train within its jurisdiction and approved by the Fire Commission; or

(e) An agency approved by the Fire Commission to train within its jurisdiction.

(5) [(7)] "Fire department" means a fire department recognized by the commission as defined in KRS 75.400 and Chapter 95. [:

(a) A fire department organized under KRS Chapter 75;

(b) A fire protection district;

(c) A volunteer fire department; or

(d) A municipal, county or urban-county government fire department.]

(6) [(8)] "Fire protection personnel" means an employee or members of a fire department recognized by the commission. [as defined herein:

(a) Whether paid or unpaid; and

(b) Who is engaged in:

1. Fire prevention;

2. Inspecting buildings for compliance with building, fire, energy and life safety codes and the Architectural Barriers Act;

3. Fire suppression;

4. Fire and arson investigation;

5. Fire-related emergency medical and rescue work; or

6-Other allied fields-]

(7) [(9)] "Fire protection instructor" or "fire service training officer" means a person certified pursuant to KRS 95A.040(2)(b) and this administrative regulation as qualified to instruct or oversee fire protection personnel.

(8) "KCTCS" means the Kentucky Community and Technical College System.

Section 2. Level I Fire Protection Instructors. Persons certified as Level I fire protection instructors shall be authorized to deliver training to the fire department of which they are a member.

(1) Requirements for certification. An individual shall be certified by the commission as a Level I instructor if satisfactory written evidence is submitted to the commission that the individual meets the following criteria:

(a) Has submitted a completed application that has been approved by his fire chief;

(b) Is a high school graduate or the equivalent;

(c) Has two (2) years experience as a firefighter;

(d) Is a Kentucky certified firefighter; and

(e) Submits proof that he has completed a sixteen (16) hour National Fire Academy Instructional Techniques class or a class that has been approved by the commission.

(2) Certification terms. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) Certification shall be renewed if an applicant has:

1. Taught at least thirty-two (32) hours, prior to the expiration of his certification; or

2. Attended a sixteen (16) hour National Fire Academy Instructor class, or an equivalent approved by the commission.

(b) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on Form KFI-1, July 14, 1998. [~~renewal forms as outlined in Section 8 of this administrative regulation.~~]

Section 3. Level II Fire Protection Instructors. Persons certified as Level II instructors shall be authorized to deliver training to a [any] fire department within the Commonwealth upon invitation by that agency.

(1) Requirements for certification. An individual shall be certified by the commission as a Level II fire protection instructor if satisfactory written evidence is submitted to the commission that the individual:

(a) Is qualified by the following:

1. Has certified firefighter status;

2. Has submitted a completed application that has been approved by his fire chief;

3. Is a high school graduate or the equivalent; and

4. Has had four (4) years experience as a firefighter; and

(b) Is further qualified by having completed one (1) of the following:

1. Has completed a minimum of thirty-two (32) hours of an educational methodology course; or

2. Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter; or

3. Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum; or

4. Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by this commission.

(2) Certification term. Certification shall expire after a period of three (3) years, unless renewed.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor and his agency to submit an application for renewal on Form KFI-2, July 14, 1998. [~~renewal forms as outlined in Section 8 of this administrative regulation.~~]

(b) The following shall be required of an applicant seeking renewal of his certification:

1. He shall have taught a minimum of sixty (60) hours during his three (3) year certification period; or

2. He shall have taught a minimum of thirty (30) hours and shall reattend the thirty-two (32) hour educational methodology course.

Section 4. Level III Fire Protection Instructors. Persons certified as Level III fire protection instructors shall be authorized to deliver training to fire departments or to train persons for Level I and II certification and to train Level II instructors to become Level III fire protection instructors.

(1) An applicant shall be certified as a Level III instructor if the following has occurred:

(a) The fire department of which the applicant is a member applies for his recognition by the commission as a Level III instructor;

(b) The applicant interviewed with the commission, if requested; and

(c) The following written information has been submitted:

1. A completed application and resume;

2. Proof of the applicant's current certification as a Level II fire protection instructor; and

3. Sufficient evidence of having assisted with the delivery of at least one (1), thirty-two (32) [~~forty (40)~~] hour educational methodology course or instructional technique class prior to requesting approval as a Level III instructor.

(2) Certification term. Certification shall be made for a period of three (3) years unless the commission determines that the certification shall be revoked, for cause.

(3) Certification renewal.

(a) It shall be the responsibility of the individual instructor to submit an application for renewal prior to expiration of certification. Renewal [forms] shall be on Form KFI-3, July 14, 1998. [~~as outlined in Section 8 of this administrative regulation.~~]

(b) A renewal applicant shall have delivered at least one (1) educational methodology course or instructional technique class during his three (3) year certification period.

(c) A renewal applicant shall have taught a minimum of sixty (60) hours during his certification period.

(d) A renewal applicant shall attend at least one (1) instructor trainer workshop approved by the commission.

Section 5. Fire Protection Instructor Current Status. (1) A fire protection instructor who is certified by the commission pursuant to this administrative regulation shall be reclassified as a Level II fire protection instructor and shall conform to this administrative regulation.

(2) To retain current certified status as an instructor, an individual shall meet the renewal criteria for the level for which he is certified.

(3) If an instructor does not meet Level II requirements, he shall revert to Level I status.

(4) If an instructor does not meet the criteria for Level I status, his fire protection instructor certification shall be revoked.

Section 6. Revocation of Certification. The commission may revoke certification if, after reasonable notice and a hearing, it is determined that there was:

(1) A material misstatement or misrepresentation in any document furnished the commission to obtain the issuance or renewal of a certification;

(2) Falsification of training records; or

(3) An act of misconduct, negligence, malfeasance.

Section 7. Appeal. (1) A fire protection instructor notified of an intent to revoke his instructor certification, may request a hearing before the commission by submitting a request to be heard, in writing, within fifteen (15) days from the date of receipt of the letter of notification.

(2) A hearing shall be conducted at the next regularly scheduled meeting of the commission or within thirty (30) days, whichever is first.

(3) The decision of the commission shall be rendered in writing within ten (10) days of the termination of the hearing.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Level I Certification Application and Renewal, Form KFI-1, July 14, 1998.

(b) Level II Certification Application and Renewal, Form KFI-2, July 14, 1998.

(c) Level III Certification Application and Renewal, Form KFI-3, July 14, 1998.

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(2) This material may be inspected, copied, or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite #5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Application and Renewal Forms for Fire Protection Instructor. (1) Level I certification application and renewal form:

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL I FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT) FOR CENTRAL OFFICE USE ONLY
New Applicant _____
Renewal _____
Date certified ____/____/____
Code Level Certified to Teach: _____
Status Active/Inactive _____
Status Date: ____/____/____
Certification Type (V/P) _____

Social Security No.: _____
Name (last, first, middle initial): _____
Date of birth (month, day, year): _____
Fire department #: _____
Name: _____
County #: _____
Name: _____

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head: _____

Certification of a Level I Fire Protection Instructor shall be for the purpose of delivering training to the fire department of which they are a member.

Requirements for Certification: An individual may be certified by the commission as a Level I Fire Protection Instructor if satisfactory written evidence is provided to the commission that he is qualified by the following:

- High school graduate or equivalent (attach copy of diploma or GED certificate);
- Two (2) years experience as a firefighter. Entry date: _____
- Kentucky certified firefighter. Certification date: _____
- Applicant has successfully completed a sixteen (16) hour National Fire Academy Instructional Techniques class or its equivalent conducted by: _____

Agency: _____
Instructor (signature, #): _____

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked.

Certification Renewal:

- (a) It shall be the responsibility of the fire department to see renewal process is completed if recertification for that instructor is desired.
- (b) Renewal applicant must have taught a minimum of thirty-two (32) hours during his three (3) year certification period or reattended a sixteen (16) hour National Fire Academy Instructor Class or equivalent approved by the Fire Commission.

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the commission or the Com-

monwealth of Kentucky.

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith.

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification.

Date: _____
Signature of applicant: _____

XXXXXXXXXXXXXXXXXXXX

(2) Level II Certification Application and Renewal Form:

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL II FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT) FOR CENTRAL OFFICE USE ONLY
New Applicant _____
Renewal _____
Date certified ____/____/____
Code Level Certified to Teach: _____
Status Active/Inactive _____
Status Date: ____/____/____
Certification Type (V/P) _____

Social Security No.: _____
Name (last, first, middle initial): _____
Date of birth (month, day, year): _____
Fire department #: _____
Name: _____
County #: _____
Name: _____

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above.

Signature of Chief or Agency Head: _____

Certification of a Level II Fire Protection Instructor shall be for the purpose of delivering training to the fire department within the commonwealth upon invitation by that agency.

Requirements for Certification: An individual may be certified by the commission as a Level II Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she is qualified by the following:

- High school graduate or equivalent (attach copy of diploma or GED certificate)
- Four (4) years experience as a firefighter. Entry date: _____
- Kentucky certified firefighter. Certification date: _____
- Applicant has successfully completed a minimum of thirty-two (32) hours educational methodology course, meeting the objectives of NFPA 1041 conducted by: _____

Agency: _____
Instructor (signature, #): _____
or
Holds a valid teaching certificate issued by the Kentucky Department of Education and is a certified firefighter (attach copy of certification)
or
Is a full-time instructor or faculty member of an institution of higher education in Kentucky, teaching in a fire science or fire technology curriculum:

Name of institution _____
Department head signature: _____
or

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Holds a valid instructor's certificate issued by an out-of-state fire training agency approved by the fire commission. (attach copy of certificate)

Agency:
Agency head (signature):

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines sooner that the certification should be revoked:

Certification Renewal:
(a) It shall be the responsibility of the individual instructor and his agency to submit this application for renewal:

(b) Renewal applicant must have taught a minimum of sixty (60) hours during his three (3) year certification period or reattended a thirty-two (32) hour educational methodology course and taught a minimum of thirty (30) hours:

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky:

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith:

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification:

Date:
Signature of Applicant:

XXXXXXXXXXXXXXXXXXXX

(3) Level III Certification Application and Renewal Form:

COMMISSION ON FIRE PROTECTION PERSONNEL
STANDARDS AND EDUCATION

CERTIFICATION AS
LEVEL III FIRE PROTECTION INSTRUCTOR

(PLEASE PRINT) FOR CENTRAL OFFICE USE ONLY

New Applicant _____
Renewal _____
Date certified ____/____/____
Code Level Certified to Teach: _____
Status Active/Inactive _____
Status Date: ____/____/____
Certification Type (V/P) _____

Social Security No.:
Name (last, first, middle initial):
Date of birth (month, day, year):
Fire department #: _____
Name: _____
County #: _____
Name: _____

I do hereby verify that the above named applicant is a member of the Fire Department/Agency listed above:

Signature of Chief or Agency Head:

Certification of a Level III Fire Protection Instructor shall be for the purpose of qualifying Level I and Level II Fire Protection Instructors

and preparing Level II Fire Protection Instructors to become Level III Fire Protection Instructors:

Requirements for Certification: An individual may be certified by the commission as a Level III Fire Protection Instructor if satisfactory written evidence is provided to the commission that he or she:

- Attach a copy of resume;
- Presently certified as Level II Fire Protection Instructor
- Applicant has successfully assisted in delivery of an educational methodology class based on NFPA 1041 conducted by:

Agency:
Instructor (signature):

- Applicant may be required to undergo an interview by the commission:

Certification Terms:
Certification shall be made for a period of three (3) years, unless the commission determines that the certification should be revoked:

Certification Renewal:
(a) It shall be the responsibility of the individual instructor to submit this application for renewal prior to expiration of certification:
(b) Renewal applicant must have delivered at least one (1) educational methodology course during his three (3) year certification period; and
(c) Renewal applicant must have taught a minimum of sixty (60) hours during his certification period:
(d) Renewal applicant must attend at least one (1) instructor-trainer workshop approved by the Fire Commission:

I have completed this application with the knowledge and understanding that any and all items contained herein may be subject to investigation prescribed by law in KRS Chapter 95A, 815 KAR 45:090 or commission directive, and I consent to the release of information concerning my capacity and fitness by employers, educational institutions and other individuals and agencies to duly accredited investigators and other authorized employees of the Commission or the Commonwealth of Kentucky:

I certify that all of the statements made by me in this application and any and all documentation attached is true, complete and correct to the best of my knowledge and belief, and are made in good faith:

I do hereby understand that any violation under 815 KAR 45:090 is subject to suspension of instructor certification:

Date:
Signature of Applicant:]

GERALD STEWART, Chairman
LAURA M. DOUGLAS, Secretary
JUDITH G. WALDEN, Office of General Counsel
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 7, 1998 at 10 a.m.

PUBLIC PROTECTION AND REGULATION CABINET
Commission on Fire Protection
Personnel Standards and Education
Office of State Fire Marshal
(As Amended at ARRS, December 8, 1998)

815 KAR 45:100. Volunteer fire department loan fund.

RELATES TO: KRS 95A.262(4), (5), (13), (14)
STATUTORY AUTHORITY: KRS 95A.240
NECESSITY, FUNCTION, AND CONFORMITY: KRS 95A.262 authorizes the Commission on Fire Protection Personnel Standards and Education to make low interest loans for the purchase of major equipment and construction of facilities to properly trained volunteer

fire departments which do not have other sources of funds at rates which are favorable given their financial resources. This administrative regulation is necessary to establish the criteria for qualifying for the loan and the mandatory procedures to be followed in obtaining and repaying the loan.

Section 1. Definitions. (1) ~~["Act" means KRS 95A.262:~~

~~(2) "Accessory equipment" means ladders, hoses, self-contained breathing apparatus, portable pump and hard suction hoses, nozzles, power extrication tools and protective equipment necessary to carry out the ordinary functions of supporting fire fighting activities.~~

~~(2) [(3)] "Apparatus equipment" means pumpers, tankers and other large equipment used for fighting fires and emergencies. This equipment is more specifically categorized as follows:~~

~~(a) "Pumper" means any pumper which can pump 500, 750, 1,000, 1,250 or 1,500 gallons per minute at 150 pounds per square inch net pumping pressure.~~

~~(b) "Tanker" means a mobile water supply fire apparatus with a water capacity of 1,000 gallons or more and a minimum flow rate to pump connection of 500 gallons per minute except when a booster pump is provided.~~

~~(c) "Rescue-pumper" means an apparatus capable of pumping a minimum of 250 gallons per minute at 150 PSI net pumping pressure, carrying a minimum of 500 gallons of water.~~

~~(3) [(4)] "Approved" means approved by the commission or its authorized designee for a particular purpose.~~

~~(4) [(5)] "Commission" means commission [means] as defined by KRS 95A.210.~~

~~(5) [(6)] "Committee" means the loan committee of the Commission on Fire Protection Personnel Standards and Education.~~

~~(6) [(7)] "Communications equipment" means equipment or system, or both, necessary for the transmission and reception of signals, by voice, required to support the operations of the volunteer fire department.~~

~~(7) [(8)] "Eligible" means a volunteer fire department that has met the training requirements and is in good standing for receipt of state aid pursuant to 815 KAR 45:080 and the loan request requirements of this administrative regulation.~~

~~(8) [(9)] "Emergency" means fire department equipment, apparatus or facilities have been damaged, destroyed or rendered inoperable and established firefighting capacity is reduced to a level affecting public safety.~~

~~(9) [(10)] "Facilities" means any structure or portion of a structure intended for storage or protection of firefighting equipment [and shall not include meeting halls, social rooms or any other facilities not directly related to firefighting, but] including rooms or spaces designed and used for firefighting training.~~

~~[(11)] "Fund" means volunteer fire department low interest loan fund created pursuant to KRS 95A.262(14).]~~

~~(10) [(12)] "Local government" as defined by KRS 95A.210(3).~~

~~(11) [(13)] "NFPA" means the National Fire Protection Association.~~

~~(12) [(14)] "Protective equipment" means clothing or equipment used by firefighters which affords protection from injury to the wearer or user including, but not limited to, fire coats, boots, helmets and turnout pants meeting current NFPA standards.~~

~~(13) [(15)] "UL" means Underwriters Laboratories.~~

~~(14) [(16)] "Volunteer fire department" means a fire department recognized by the Commission on Fire Protection Personnel Standards and Education as having [Department of Housing, Buildings and Construction upon recommendation of the commission, which has] a membership [consisting] of more [less] than fifty (50) percent of its members being full-time volunteer [paid] firefighters.~~

~~(15) [(17)] "Volunteer fire department loan fund" means the fund established pursuant to KRS 95A.262(14).~~

Section 2. Eligibility. (1) A volunteer fire department may apply to the commission to receive low interest loans for the purchase of major equipment and facility construction pursuant to the requirements of this administrative regulation.

(2) Eligibility to participate in the loan fund shall be limited to those volunteer fire departments meeting the training requirements of KRS 95A.262(2) and ~~[which] continue in good standing to receive [the] state aid, and which the commission finds are unable to obtain loans~~

from conventional financial institutions at the rate of three (3) percent.

~~(3) A loan shall be considered from only one (1) fire department when more than one (1) department resides at the same physical location.~~

Section 3. Loan Purposes and Prohibitions. (1) Purposes. The commission shall consider a loan [loans] for the following purposes[; only]:

~~(a) The acquisition of apparatus equipment;~~

~~(b) The acquisition of communication equipment;~~

~~(c) The acquisition of accessory equipment or protective equipment;~~

~~(d) The construction of new facilities;~~

~~(e) The [and] modernization of existing facilities; and~~

~~(f) The [~~

~~(b)] repair or rehabilitation of apparatus equipment where it has been determined that existing apparatus equipment no longer meets the standards of the NFPA and where the repair or rehabilitation, or both, of the equipment will bring it in compliance with NFPA standards.~~

(2) Prohibitions. A loan granted under this administrative regulation shall not be used for the following:

~~(a) [Acquisition of existing facilities;~~

~~(b)] Operating expenses;~~

~~[(c)] To reduce a debt or other obligation incurred before a loan is approved;~~

~~(b) [(d)] For payment of fees for the designing or planning of facilities or preparation of application; or~~

~~(c) [(e)] For investment or reinvestment.~~

Section 4. General Loan Requirements. (1) Loan period. A loan period shall not exceed twelve (12) years. The period of time for repayment of the loan shall depend upon the amount of the loan and shall be set forth in [pursuant to] the loan agreement. Except in the case of approved emergency loans, the minimum amount of a loan shall be \$5,000.

(2) Title of property. Any apparatus equipment or facilities financed by a loan from the fund shall be titled in the name of the volunteer fire department or in the name of the political subdivision with the commission as lien holder for the property. In the event the commission is supplying secondary funding, the commission shall become holder of a secondary encumbrance.

(3) Fire department matching funds. ~~[As] A prerequisite to obtaining a loan [loans] for facilities, vehicles or rehabilitation of vehicles or equipment, the volunteer fire department shall verify the availability of unobligated funds in the amount of twenty-five (25) [twenty (20)] percent of the total cost of the facility, vehicle or rehabilitation or equipment.~~

~~(4) Financial responsibility. A copy of the last twelve (12) bank statements must accompany the loan application.~~

~~(5) Repayment of loans.~~

~~(a) Interest on the principal amount of the loan shall accrue at the rate of three (3) percent per annum and shall be due and payable on the unpaid balance annually.~~

~~(b) The principal of the loan shall be repaid proportionally over the period of the loan. The principal may be reduced at anytime through advanced payment.~~

~~(c) The principal and interest of the loan shall be payable at the office designated on the loan approval form, with the payment being deducted from the state aid allotment for that year with any additional payment due or desired be made by check made payable to the Kentucky State Treasurer.~~

~~(d) A payment [All payments] shall be made before the close of business on the due date or if [they] shall be considered delinquent.~~

~~(e) Delinquent accounts shall not receive further loans or grants for state aid or training facilities until the delinquency is cured. If the delinquency of the account extends beyond three (3) months of distribution of the state aid check, foreclosure or repossession procedures shall begin.~~

~~(f) A [All or any] portion of future state aid grants may be committed by the volunteer fire department to satisfy its loan agreement.~~

(g) Insurance. The volunteer fire department shall provide collateral protection insurance for the apparatus, equipment and facility construction sufficient to secure and protect the loan.

(6) [(5)] Emergency loans. An eligible volunteer fire department [departments] may be granted an approved emergency loan [loans] pursuant to this administrative regulation.

Section 5. Loan Requirements for Fire Department Facility Construction. A request [In addition to the other applicable requirements of the administrative regulation, requests] for a construction loan [loans] for fire department facilities shall meet the requirements of this section and other applicable requirements of this administrative regulation.

(1) A facility loan [Facility loans] shall be granted [only] for establishing or modernizing those facilities that house firefighting equipment.

(2) A facility loan [Facility loans] shall not exceed seventy-five (75) [eighty-(80)] percent of the total cost of the construction of the facility or \$75,000 [50,000], whichever is less.

(3) A facility loan [Facility loans] shall not be used for land acquisition.

(4) [Facility loans shall not be granted or used for the refinancing of debts incurred or contracts entered into prior to the loan.]

(5) Land title. The title to the land upon which facilities are to be constructed or modernized under the loan shall be in the name of the volunteer fire department or the local government which the volunteer fire department serves.

(5) [(6)] Clear title. The volunteer fire department or the political subdivision for which the volunteer fire department provides service shall have clear title to the land upon which the facility is to be constructed or modernized.

(6) [(7)] Real property liens. Concurrent with the receipt of the loan, the volunteer fire department shall provide a copy of the deed and execute a lien document to be filed in the county court clerk's office in which the property is located.

(7) [(8)] Plans approval. Final plans for [any] construction shall be submitted for approval to the Department of Housing, Buildings and Construction or to an authorized local building official with a copy to the commission. The volunteer fire department shall be responsible for complying with the Kentucky Building Code, the Americans with Disabilities Act and other applicable laws. If any change to the plans or specifications is desired or required, the volunteer fire department shall furnish all additional labor and materials necessary to complete the project and the improvements in compliance with the changes to the plans and specifications.

(8) [(9)] A certificate of occupancy shall be submitted to the commission by the volunteer fire department prior to release of loan funds.

Section 6. Apparatus Equipment. (1) Loan limits.

(a) The amount of a loan for the purchase of a [any] single apparatus equipment shall not exceed \$75,000 [50,000] or seventy-five (75) [eighty-(80)] percent of the total cost, whichever is less. The apparatus being purchased with the loan funding shall not be more than twenty (20) years old and a copy of a pump test conducted within the last year must accompany necessary documentation for the loan.

(b) The amount of a loan for the repair or rehabilitation for a single apparatus equipment shall not exceed \$35,000 or seventy-five (75) [eighty-(80)] percent of the cost of repair or rehabilitation, whichever is less, and the apparatus shall not be more than twenty (20) years old.

(2) Apparatus loans. An apparatus loan [Apparatus loans] shall be for the purpose designated in the loan request and approved by the commission for the following purposes:

(a) The purchase of firefighting apparatus equipment;

(b) The rehabilitation of existing apparatus equipment for the purpose of upgrading the apparatus to meet applicable National Fire Protection Association standards; and

(c) Repair of existing apparatus.

(3) Mandatory description or specification of equipment.

(a) New apparatus. The volunteer fire department shall submit one (1) complete set of specifications of the new apparatus.

(b) Repairs and rehabilitation. For the repair or rehabilitation of existing apparatus equipment, the volunteer fire department shall submit one (1) complete set of specifications along with three (3) estimates from qualified manufacturers for the repair or rehabilitation. If less than three (3) estimates are available, a statement shall be submitted explaining the reason why there are less than three (3).

(c) Purchase of used apparatus equipment. For used apparatus

equipment, the volunteer fire department shall submit documentation of the type and quality of the equipment.

(d) Refurbished fire apparatus. For refurbished fire apparatus, the volunteer fire department shall submit the following: [meeting the following criteria will be considered by the loan committee:]

1. Certification of refurbished equipment.

2. Pump test at time of purchase.

3. Any additional information which the loan committee may request. [Loan committee reserves the right to request additional information.]

(e) Loans will only be granted on repairable equipment and apparatus which are not more than twenty (20) [twenty-five-(25)] years old and a pump test shall be submitted upon completion of repairs and must meet NFPA pump test requirements and acceptance.

(4) Compliance with National Fire Codes. The volunteer fire department shall submit to the commission verification that the new equipment is NFPA 1901-91 equipment.

(5) Prerequisite materials. [Concurrent with receipt of the loan,] The volunteer fire department shall record a lien on the affected vehicle title documents in the local county court clerk's office.

Section 7. Protective, Accessory and Communication Equipment.

(1) An equipment loan [Equipment loans] shall be used for the purchase of protective, accessory and communication equipment~~[-only]~~.

(2) Equipment compliance.

(a) A volunteer fire department shall select protective and accessory equipment that shall be labeled as having been tested and listed by an approved nationally recognized testing agency.

(b) A volunteer fire department shall select communications equipment identified as meeting Federal Communications Commission regulations, 5 CFR Part 89.

(3) The amount of a loan for the purchase of equipment shall not exceed \$75,000 or seventy-five (75) percent of the total cost price quote accepted by the borrower and submitted by the borrower as the accepted quote for purchase.

(4) Security interest. The commission shall retain a security interest in the property for the life of the loan.

Section 8. Loan Request Procedure. (1) An applicant seeking [Each request for] a low interest loan shall submit [be made on the commission's Volunteer Fire Department Loan] Form FPPSE-1, April, 1993, to the commission [which is hereby incorporated by reference, and all information and documents required by the form shall be attached thereto by the applicant before filing with the commission. Copies are available at the Commission Office in the Department of Housing, Buildings and Construction, 1047 U.S. 127 south, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday].

(2) The commission administrator shall review the application and status of the volunteer fire department to determine if the minimum criteria for obtaining the loan has been met.

(3) The commission administrator shall notify the volunteer fire department of the disposition of the [its] loan application, forwarding final forms to those eligible volunteer fire departments whose applications are satisfactory.

Section 9. Establishing Priorities. (1) A loan [Loans] shall be reviewed for the applicant's stated purpose in the following order of preference:

(a) A request [Requests] for replacement or repairs of unsafe or unusable fire apparatus, equipment or facilities.

(b) A request [Requests] for replacement of outmoded fire apparatus, equipment or facilities.

(c) A request [Requests] for additional apparatus, equipment or facilities because of unusual demands or present service.

(2) Priority shall first be given to applicants establishing the greatest need, utilizing the following criteria, not excluding other considerations.

(a) Financial need.

(b) Low economic base.

(c) Unusual fire hazards.

(d) County fire death rate.

(e) Population over sixty-five (65).

(f) Population growth.

- (g) Tax exempt properties.
- (h) New construction.
- (i) Natural disaster.
- (j) High mileage/usage.
- (k) Existing equipment.

(3) Approval [Approvals] shall be granted in order of need and availability of funds for each qualifying volunteer fire department.

Section 10. Formal Application and Qualification Procedure. (1) To qualify for a loan, an eligible volunteer fire department shall submit [the commission's Volunteer Fire Department] Form FPPSE-2, April, 1993, to the commission [which is hereby incorporated by reference, together with the required documents attached, to the commission for final qualification. Copies are available at the Commission Office in the Department of Housing, Buildings and Construction, 1047 U.S. 127 south, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday].

(2) The commission shall render its decision at its next regularly scheduled meeting. Approved emergency loans may be granted prior to the regularly scheduled meeting.

(3) An [Any] eligible volunteer fire department aggrieved by a decision of the commission, may petition the commission, in writing, for reconsideration and the commission, upon receiving the request, shall provide the applicant with an opportunity to be heard at its next meeting.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) Form FPPSE-1, April, 1993, Loan Application Request Form.
- (b) Form FPPSE-2, April, 1993, Low Interest Loan Application.

(2) This material may be inspected, copied or obtained at the Commission on Fire Protection Personnel Standards and Education, 1049 U.S. 127 South, Suite 5, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GERALD STEWART, Chairman

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Epidemiology and Health Planning

(As Amended at ARRS, December 8, 1998)

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

RELATES TO: KRS [158.037:] 211.180(1)(a), (c), 214.034(2), 215.520(1), (2), (4), (5), (8), (9), 215.560 [1996 Ky. Acts ch. 33]

STATUTORY AUTHORITY: KRS 194A.050, 211.180(1)(a), (c), 214.034(2), 215.520(1), (2), (4), (5), (8), (9), 215.560 [194.050; 211.090; 215.520; 1998 GA HB 131, 132] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 215.520 authorizes the Cabinet for Health Services to discharge all duties relating to all matters of tuberculosis control, including: (1) clinical services for either recalcitrant or drug resistant persons with active tuberculosis; (2) the facilitation of tuberculosis programs in cooperation with the Department of Education; (3) the appraisal and provision of services for persons with tuberculosis; and (4) provision of direct assistance to local health departments, and other organizations to assist them in education, prevention, and treatment programs of tuberculosis control. KRS 215.520(2) requires the Cabinet for Health Services to promulgate administrative regulations to implement statutes governing tuberculosis. KRS 211.180(1)(a) requires the Cabinet for Health Services to implement a statewide program for the detection, prevention, and control of communicable diseases. KRS 214.034(2) permits a local health department, with the approval of the Department of Public Health, to require tuberculosis testing of a first-time enrollee in a public or private school

within the jurisdiction of the local health department. This administrative regulation establishes: (1) requirements, forms, and procedures for the testing of school children for tuberculosis by a local health department; and (2) testing and treatment of persons diagnosed with tuberculosis. [HB 132 of the 1998 General Assembly [Executive Order 96-862, effective July 2, 1996:] reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.180 mandates the Cabinet for Health Services to implement a statewide program for the detection, prevention, and control of communicable diseases. The 1998 General Assembly amended KRS 214.034 to delete the requirement that the Cabinet for Health Services establish tuberculosis testing schedules for children; to allow a local health department, with the approval of the Department for Public Health, to require tuberculosis testing of all first-time enrollees in a public or private school within the health department's jurisdiction; to provide an exemption from tuberculosis testing if the child's parent or guardian objects on religious grounds and so states in writing, but allow a local health department to test that child in a suspected case of tuberculosis. KRS 158.037 was also amended to delete the requirement that public or private elementary and secondary schools report tuberculin skin test results to the local health department. This administrative regulation is to conform to the provisions of the amended law. [KRS 214.034 requires the establishment of tuberculosis testing schedules for children by the Cabinet for Health Services.] KRS 215.520 requires the cabinet to promulgate administrative regulations to carry out the provisions of KRS Chapter 215 [1996 Ky. Acts ch. 33]. This administrative regulation describes the procedure for drug susceptibility testing of antituberculosis drugs, the procedure by which timely hospitalization for persons with active tuberculosis shall be obtained, and measures to be taken to prevent spread of tuberculosis. [KRS 158.037 requires the establishment of administrative regulations for reporting tuberculin skin test results in children attending all public or private elementary or secondary schools by the Cabinet for Health Services.] This administrative regulation permits, with approval of the Department for Public Health, [mandates] tuberculin testing for all first-time school enrollees in a private or [and] public school in a local health department's jurisdiction [schools in Kentucky and describes the methods for reporting tuberculin skin test results on children to local health departments].]

Section 1. Definitions. (1) "Active tuberculosis" is defined by KRS 215.511(1).

(2) "Child" means an individual under eighteen (18) years of age.

(3) "Exception patient" means an individual with tuberculosis who has been identified by a local health department with jurisdiction as an individual in exceptional or infrequent circumstances.

(4) "Exceptional or infrequent circumstances" means:

(a) Short-term hospitalization is required for:

1. Invasive diagnostic procedures;

2. Respiratory isolation;

3. Management of drug-resistant disease; or

4. Other circumstances that a cabinet physician has determined require hospitalization to detect, prevent, or control tuberculosis; or

(b) Pursuant to KRS 215.560, security measures are required.

(5) "First-time enrollee" means a child who:

(a) Has never attended school in Kentucky; and

(b) Is entering private or public school, entry level through 12th grade, for the first time.

(6) "Isolates" is defined by KRS 215.511(2).

(7) "Tuberculin skin test" means the intradermal injection of five (5) tuberculin units of Purified Protein Derivative (PPD) by the Mantoux technique. ["Child" means an individual under the age of eighteen (18) years.

(2) "Tuberculin skin test" means the intradermal injection of five (5) tuberculin units of Purified Protein Derivative (PPD) by the Mantoux technique.

(3) "First-time enrollee" means a child entering private or public school (primary school, entry level through 12th grades) in the Commonwealth, the child never having attended school in the Commonwealth previously.

(4) The definition of "active tuberculosis" is governed by KRS 215.511.

(5) The definition of "isolates" is governed by KRS 215.511.

(6) "Exception patient" means a patient with tuberculosis identified by the local health department as being in exceptional or infrequent circumstances.

(7) "Exceptional or infrequent circumstances" means:

(a) Short-term hospitalization for invasive diagnostic procedures, respiratory isolation, management of drug-resistant disease, other rare clinical circumstances which, in the judgement of a physician of the Cabinet for Health Services require hospitalization; or

(b) Security measures to counter recalcitrant behavior.]

Section 2. Except as provided by KRS 214.036(2), the provisions of this administrative regulation shall not apply to children exempted by KRS 214.036(2).

Section 3. (1) A reaction to a tuberculin skin test shall be interpreted in accordance with [using the] "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children".

(2) If [When] the skin test of a [any] child indicates that treatment is needed, the child shall be treated in accordance with [using] "Treatment of Tuberculosis Infection in Adults and Children".

Section 4. (1) The department shall authorize a local health department to test first time enrollees in a school within its jurisdiction, if it submits to the department the documentation specified by subsection (2) of this section.

(2) Required documentation.

(a) Documentation of continued transmission of at least two (2) years duration of a multidrug resistance pattern, or more virulent strain, of Mycobacterium tuberculosis; or

(b) Laboratory analysis that documents transmission, whether in consecutive or nonconsecutive years, of a multidrug resistance pattern, or more virulent strain of Mycobacterium tuberculosis; or

(c) A documented outbreak of at least two (2) years duration:

1. With multifamily involvement each year that resulted in at least five (5) cases of tuberculosis per year; and

2. Is two (2) times greater than the national tuberculosis rate per 100,000 population; or

(d) Documentation of a tuberculosis rate per 100,000 that is two (2) times greater than the national tuberculosis rate in each of the last five (5) years.

(3)(a) A local health department that has been authorized by the Department for Public Health to conduct tuberculin testing of first-time school enrollees may continue to test for an additional year.

(b) If a local health department has submitted documentation that the tuberculin reactor rate in the additional year was at least two (2) times greater than the reactor rate in the previous year, the department shall approve an additional year of testing.

(4) If a local health department has been authorized by the Department for Public Health to conduct tuberculin testing of first-time school enrollees:

(a) The local health department shall notify, in writing, the parent or guardian of a first-time enrollee that a tuberculin skin test is required;

(b) Except as provided by paragraph (c) of this subsection, a first-time enrollee shall be tested for tuberculosis by tuberculin skin test within eighteen (18) months prior to entering school by a licensed or certified health professional authorized to administer the test.

(c) A first-time enrollee who had been tested for tuberculosis by a tuberculin skin test within eighteen (18) months prior to his entering school shall not be required to be retested, if a "Tuberculin Skin Test Certificate", dated and signed by the

physician, advanced registered nurse practitioner, or authorized representative of the local health department that administered the test, has been submitted to the local health department with jurisdiction.

(d) If a physician certifies in writing that tuberculin skin testing is medically contraindicated, an enrollee shall receive a chest x-ray, unless documentation is provided of a completed course of prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease in accordance with "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children".

(e)1. If an enrollee has not been tested prior to entering school, he shall be permitted to attend class for a period not to exceed thirty (30) days.

2. Before the expiration of thirty (30) days from entering school, proof of having been tested for tuberculosis pursuant to the provisions of this subsection shall be submitted to the local health department with jurisdiction.

3. If the proof required by this subsection is not submitted within thirty (30) days of entering school, the enrollee shall not be permitted to attend school until proof is submitted to the local health department with jurisdiction.

(f) The "Tuberculin Skin Test Certificate" shall include the following information:

1. Complete name of student;

2. Birthdate of student;

3. Address of student;

4. Date test given to student;

5. Type of test;

6. Millimeters of induration at forty-eight (48) hours to seventy-two (72) hours posttesting;

7. Date read;

8. Name of licensed or certified health professional who read the test; and

9. If the provisions of paragraph (c) of this subsection are applicable, the date an x-ray was taken.

(g) A copy of an enrollee's "Tuberculin Skin Test Certificate" shall be transmitted by the local health department with jurisdiction to the enrollee's school. [3- A local health department may, with the approval of the Department for Public Health, require a first-time enrollee in a public or private school with the health department's jurisdiction to [in the Commonwealth shall] be tested for tuberculosis by tuberculin skin test within eighteen (18) months prior to entering the public or private school. A child who has not been tested prior to entering the public or private schools may be permitted to attend class for a period of time not to exceed thirty (30) days, as approved in writing by the director of the local health department having jurisdiction. Further attendance shall be conditioned upon presentation of proof of having been tested for tuberculosis in accordance with [Section 3 of] this administrative regulation.]

[Section 4. (1) A local health department may, with the approval of the Department for Public Health, require a first-time enrollee in a public or private school to [shall] present a valid certificate approved by the Cabinet for Health Services and signed by the attending physician, advanced registered nurse practitioner, or by the director of the local health department having jurisdiction or his designee, containing the date of the most recent tuberculin skin test and the millimeters of induration at forty-eight (48) to seventy-two (72) hours posttesting. The test shall have been read by a licensed or certified health professional. The certificate shall become a permanent part of the child's school health record.

(2) No child shall be tested for tuberculosis if the child's parent or guardian objects on religious ground to the testing and so states in writing. However, if a case of tuberculosis is suspected, a local health department may require testing of this child.

(3) If tuberculin skin testing is medically contraindicated according to the written statement of a physician, the child shall receive a chest x-ray. The only exception to this requirement is a child who can present documentation of a completed course of the currently recommended American Thoracic Society and the Centers for Disease Control and Prevention prophylaxis or multiple drug treatment for previously diagnosed tuberculosis infection or disease.]

Section 5. Drug Susceptibility Testing. Drug susceptibility testing shall be conducted to determine the efficacy of prescribed drug therapy for a person with active tuberculosis as provided by this section. [A public or private school shall, within sixty (60) days of the beginning of each school year, forward to the local health department having jurisdiction in the area a report containing:

(1) The millimeters of induration for all first-time enrollees who had any induration at forty-eight (48) to seventy-two (72) hours indicated on their tuberculin skin testing certificate and all first-time enrollees who were excepted in accordance with Section 3(2) of this administrative regulation; and

(a) The child's name;

(b) Grade; and

(2) The number of first-time enrollees by school grade; and of those, the number tested.

Section 6. [If the prevalence of significant tuberculin reactors among first-time enrollees at a school exceeds or equals five-tenths (0.5) of one (1) percent, additional testing may be required by the director of the local health department having jurisdiction or the Cabinet for Health Services. [Results of the testing shall be provided the local health department having jurisdiction.] Additional control measures may then be required at the discretion of the director of the local health department having jurisdiction or the Cabinet for Health Services in order to protect the public health.

Section 6. [7.] Drug susceptibility testing to determine the efficacy of prescribed drug therapy for all persons with active tuberculosis shall be performed as follows:]

(1) Drug susceptibility testing of initial isolates from clinical specimens obtained from a [any] patient with active tuberculosis shall be performed by a:

(a) [licensed clinical] Laboratory:

1. Licensed pursuant to KRS 333.030; or

2. Exempted from licensure by KRS 333.040; and

3. Qualified to perform drug susceptibility testing for Mycobacterium tuberculosis; or

(b) The Division of Laboratory Services of the Kentucky Department for Public Health. [state public health laboratory.]

(2)(a) Repeat drug susceptibility testing of a specimen ordered by a physician from a patient who has continued to produce specimens that are culture positive for tuberculosis after three (3) months of treatment shall be made on the latest isolate obtained from the patient.

(b) Testing conducted pursuant to the provisions of this section shall be performed by a laboratory specified by paragraphs (c) and (d) of this section.

(c) A laboratory:

1. Licensed pursuant to KRS 333.030; or

2. Exempted from licensure by KRS 333.040; and

3. Qualified to perform drug susceptibility testing for Mycobacterium tuberculosis.

(d) The Division of Laboratory Services of the Kentucky Department for Public Health. [Repeat drug susceptibility testing of a specimen ordered by a physician from a patient who, after three (3) months of treatment, continues to produce specimens which are culture positive for tuberculosis shall be performed by a licensed clinical laboratory or the state public health laboratory on the latest isolate obtained from the patient by the physician.]

Section 6. (1) Within seventy-two (72) hours of the hospitalization of an exception patient, a local health department shall interview an exception patient to determine if the patient is covered by health insurance, including Medicaid.

(2) If the patient is without health coverage, the local health department shall:

(a) Request the Cabinet for Families and Children to evaluate the patient for Medicaid eligibility; and

(b) Assist the Cabinet for Families and Children in efforts to obtain health coverage.

(3) If an exception patient is not covered by health insurance, and is not eligible for health care insurance, reimbursement for tuberculosis inpatient services for the patient shall be

made to the provider by the Cabinet for Health Services through the local health department at:

(a) The Medicaid per diem rate; or

(b) Other rate, if approved in advance by the Cabinet for Health Services.

(4) Reimbursement for tuberculosis inpatient services, or for voluntary placement in a half-way house, for an exception patient shall be made by time-limited payment through a contract or memorandum of understanding between the local health department and the admitting facility if the admitting assess a charge. [7. [8.]] The exception patient shall be assured of timely hospitalization so that no delay shall occur in diagnosis, treatment, or respiratory isolation, when required. The hospitalization shall be facilitated through a local health department director's designee. Private practitioners may refer an exception patient to the local health department in the county in which the exception patient resides.

Section 8. [9.] (1) An exception patient who is hospitalized shall be interviewed by the local health department director's designee within seventy-two (72) hours to determine existing health care insurance coverage (third-party insurer, Medicaid):

(2) The local health department director's designee shall ensure that a hospitalized exception patient without health coverage is evaluated for Medicaid eligibility by the Cabinet for Families and Children and shall assist the exception patient and the Cabinet for Families and Children in efforts to obtain health coverage:

(3) Reimbursement for tuberculosis inpatient services for an exception patient who is determined to be ineligible for health care insurance coverage shall be made to the provider by the Cabinet for Health Services through the local health department at the Medicaid per diem rate or other rate as approved in advance by the Cabinet for Health Services. Reimbursement for tuberculosis inpatient services for an exception patient shall be contingent on the amount of funds accessible to the Tuberculosis Control Program of the Department for Public Health:

(4) Time-limited payment for the hospitalized exception patient shall be made through a contract or memorandum of understanding between the local health department and the admitting facility:

(a) The local health department shall consult with the Cabinet for Health Services, Tuberculosis Control Program, prior to admission of an exception patient in order to access Cabinet for Health Services funds:

(b) If an emergency or nonbusiness day admission of an exception patient is required, this consultation shall occur within seventy-two (72) hours.]

[Section 9. [10.]] (1) A security measure which prevents continued transmission of tuberculosis by the exception patient shall be applied incrementally, progressing from remaining at home which is the least restrictive measure, to a more restrictive measure which may be admission to a suitable halfway house, hospital-based respiratory isolation, with guard if necessary, or an adequately ventilated correctional unit:

(2) The local health department director's designee shall arrange adequate security measures to prevent continued transmission of tuberculosis in a setting commensurate with the degree of risk posed by the exception patient:

(3) Time-limited payment for security of an exception patient who is hospitalized or who enters a receiving facility, such as a halfway house or correctional unit, shall be made through a contract or memorandum of understanding between the local health department and the receiving facility:

(a) The local health department shall consult with the Cabinet for Health Services prior to acquisition of security services or placement in a receiving facility in order to access Cabinet for Health Services funds:

(b) If an emergency or nonbusiness day admission or placement is required, this consultation shall occur within seventy-two (72) hours.]

Section 7. Incorporation by Reference. (1) [10.] [11.]] The following material is incorporated by reference in this administrative regulation:

(a) "Treatment of Tuberculosis and Tuberculosis Infection in

Adults and Children (1994)", American Lung Association; and
(b) "Tuberculin Skin Test Certificate, 12/98", Form EPID 391A.
 [(1) The Joint Statement of the American Thoracic Society and the Centers for Disease Control and Prevention, "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children, 1994", and published by the American Lung Association.]

(2) Material incorporated by reference may be inspected, copied, [reviewed] or obtained at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621, 8 a.m. through 4:30 p.m., Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, December 8, 1998)

902 KAR 14:080. Class I ground ambulance providers.

RELATES TO: KRS 189.910 to 189.950, 211.950 to 211.956, 216B.010 to 216B.130, 216B.990(1), (2)

STATUTORY AUTHORITY: KRS 194A.030, 211.952, 216B.020(4), 216B.042, 216B.095, 216B.410 [EO-96-862, 1996 Ky. Acts ch. 233]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 216B.042 requires that the Cabinet for Health Services regulate health facilities and health services. KRS 211.952(2)(c) requires the cabinet to promulgate administrative regulations for the licensing, inspection, and regulation of ambulance providers. The function of this administrative regulation is to provide [provides for the] minimum licensing requirements for Class I ground ambulance providers.

Section 1. Definitions. (1) "Advanced life support (ALS)" means a Class I ground ambulance provider which:

(a) Utilizes certified and licensed emergency medical professionals to provide prehospital Medicare care such as:

1. Basic life support services (BLS);
2. Advanced airway management such as endotracheal intubation;
3. Defibrillation;
4. Administration of intravenous fluids and pharmaceuticals under the authority of a physician; and

(b) Meets the requirements established in Sections 1 through 10 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis.

(2) "Back-up ambulance" means an ambulance as defined in KRS 211.950 which complies with the requirements of Section 4(5) through (9) of this administrative regulation, and is licensed by the cabinet to provide emergency care and transportation if:

(a) One (1) of the licensed primary ambulances is not in service; and

(b) All of the primary ambulances are on runs and extreme circumstances dictate its use.

(3) "BLS" means a ground ambulance provider which:

(a) Utilizes at least two (2) certified or licensed emergency medical personnel to provide prehospital medical care such as:

1. First aid;
2. Cardiopulmonary resuscitation;
3. Airway management;
4. Cervical spine control;
5. Breathing assistance;
6. Hemorrhage control; and
7. Basic patient movement procedures; and

(b) Meets the requirements established in Sections 1 through 7

and Section 8, if applicable, of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency basis.

(4) "Continuing education" means the provision of information or training within the scope of an individual's level of certification.

(5) "CPR" means cardiopulmonary resuscitation as conforming to the basic rescuer course of the American Heart Association; the National Safety Council; or the basic life support professional rescuer course of the American Red Cross, which shall include as a minimum one (1) and two (2) person CPR, airway obstruction, and airway adjuncts for adults, children, and infants.

(6) "Dispatch center" means the location where:

(a) Incoming calls are initially received requesting an ambulance; and

(b) Contact is made with the ambulance provider for direction to the patient scene.

(7) "Emergency medical technician (EMT)" means a person certified pursuant to 902 KAR 13:010 through 13:100.

(8) "Emergency medical technician-first responder" means a person certified pursuant to 902 KAR 13:110.

(9) "Employee" means ambulance provider medical personnel who may be paid or volunteer, full time or part time.

(10) "Interfacility care" means BLS or ALS emergency or non-emergency health care provided to a patient during ambulance transportation between two (2) health care facilities.

(11) "Licensing agency" means the Cabinet for Health Services, Department for Public Health.

(12) "Paramedic (EMT-P)" means a person certified pursuant to 201 KAR 9:101 through 9:136.

(13) "Prehospital care" means emergency health care provided to a patient before and during ambulance transportation to a hospital.

(14) "Primary ambulance" means an ambulance as defined in KRS 211.950(1) which is licensed by the cabinet to be a principle vehicle utilized by an ambulance provider for the provision of:

(a) Emergency care and transportation; or

(b) Nonemergency runs.

(15) "Response time" means the time from which a call is received at the dispatch center, until an ambulance arrives at the patient scene.

(16) "Provider" means a Class I ground ambulance provider as defined in KRS 211.950(2), and 211.952(1)(c)2.

(17) "Sharps" means a portion, or the whole unit, of medical supplies used in treatment procedures that may puncture the skin (e.g., needles, glass ampules, etc.).

(18) "Specialized ground ambulance provider" means a Class I ground ambulance provider which meets the requirements of Section 11 of this administrative regulation and is licensed by the cabinet to provide health care and transportation on an emergency or scheduled basis that:

(a) May be unavailable to the general public; and

(b) Has specialized or limited functions such as interfacility transfer of critical patients who may require special consideration of:

1. Equipment requirements;
2. Personnel requirements;
3. Hours of operation.

Section 2. Class I Ground Ambulance Licensing Requirements.

(1) The following licensing requirements shall apply to Class I providers:

(a) A person shall not provide, advertise, or profess to engage in the provision of Class I, or specialized Class I emergency medical care or transportation that originates in Kentucky without having first obtained a certificate of need and a license from the cabinet.

(b) An ambulance provider shall comply with local, state, and federal statutes and regulations.

(c) The license shall be displayed in a prominent place at the service base station. The following information shall be included on the license:

1. Identity and location of the base station;
2. Number and location of substations, if any, to be operated by the licensee;
3. Designation of the specific geographic area to be served by the licensee, allowing for a maximum of thirty (30) minutes initial response time for ninety-five (95) percent of the population within the service

area for all emergency calls. The provider shall not be precluded from responding to calls outside of its geographic service area when providing:

- a. Mutual aid to another ambulance provider;
- b. Disaster assistance;
- c. Nonemergency transfers from damaged or closed health facilities; or
- d. Interfacility care to residents of its service area, who are patients in facilities outside of its service area, for the purpose of returning the patients to their home service area or transporting them to another health facility;

4. Designation of the levels of care which the ambulance provider shall be authorized to provide (i.e., BLS or ALS, or specialized BLS or ALS); and

5. Designation of the number of primary ambulances to be operated by the provider.

(d) No new or replacement back-up ambulances shall be licensed. A provider with currently licensed back-up ambulances shall, upon application for renewal of the license, declare the total number of ambulances to be operated with no distinction made between primary and back-up vehicles. This total shall not exceed the total number of ambulances previously licensed.

(f) Each ambulance licensed shall be staffed, equipped, and available to respond to emergency calls at all times.

(g) Each ambulance provider shall provide the licensing agency with the serial number and license tag number of each ambulance licensed.

(h) The licensee shall:

- 1. Notify the licensing agency of any change in the number, type, or use of the ambulances to be operated; and
- 2. Meet the following requirements:

a. An ambulance shall not be operated until after the licensing agency has been notified and has verified, through a physical inspection, that it meets the requirements of this administrative regulation. If the ambulance represents an expansion of service (e.g., an increase in the number of ambulances), the licensing agency shall verify that a certificate of need has been granted prior to the inspection; and

b. The licensing agency shall be notified, on the next licensing agency business day, following disposition of any prior approved ambulance operated by the ambulance provider (i.e., discontinued from service, change in use by the same ownership, or sale to another identified licensed ambulance provider).

(i) The licensing agency procedures shall not preclude the ambulance provider from utilizing a replacement ambulance on a temporary basis if a previously approved ambulance is out of service for maintenance. The following requirements shall apply:

1. The licensing agency shall be immediately notified (or on the next business day) by phone of the need for an ambulance provider to operate a temporary replacement unit. Within five (5) days, the ambulance provider shall send the licensing agency:

- a. Written notice of the make, model, license number, and vehicle identification number; and
- b. Assurances that the temporary replacement ambulance meets the requirements of this administrative regulation;

2. A temporary replacement ambulance shall not be utilized for more than thirty (30) days unless the licensing agency has verified, through a physical inspection, that it meets the requirements of this administrative regulation.

3. If the ambulance provider plans to utilize the replacement ambulance for more than thirty (30) days, the provider shall notify the licensing agency of the anticipated length of time the replacement will be in use; and

4. The licensing agency shall be notified if the replaced unit is back in service.

(j) The licensing agency shall maintain identifying records on all ambulances according to established procedures.

(2) A licensed Class I provider shall have on file proof of professional and vehicular liability insurance.

(3) The following situations shall be exempt from the provisions of this administrative regulation:

(a) First aid or transportation provided in accordance with KRS 216B.020(2)(f);

(b) A vehicle serving as an ambulance during a major catastro-

phe;

(c) An ambulance operated by the United States government;

(d) An ambulance from an out-of-state licensed ambulance provider making a nonemergency run originating from a Kentucky facility for the purpose of returning a patient who is not a Kentucky resident to his state of residence;

(e) A person proceeding to alleviate emergency circumstances pursuant to 900 KAR 6:050, Section 12 [6:040, Section 9]; and

(f) An ambulance service owned and operated by a city government which provides services in coterminous cities outside the ambulance service's designated service area pursuant to KRS 216B.020(4).

(g) An ambulance service licensed in an adjoining state that responds to a mutual aid request for emergency assistance in an unusual circumstance from a Kentucky licensed Class I ground ambulance service if:

1. The Kentucky service has insufficient resources to meet the emergency needs; and

2. Another ambulance service in Kentucky:

a. Is unavailable;

b. Has already responded; or

c. Is physically unable to reach the incident.

Section 3. Class I Management Requirements. A Class I ambulance provider shall:

(1) Establish lines of authority (i.e., an organizational chart) to include the designation of an:

(a) Administrator responsible for assuring compliance with this administrative regulation during the daily operation of the service; and

(b) A designee who shall serve if necessary in the absence of the administrator.

(2) Maintain adequate records and reports at the ambulance service base station to be made available for review as deemed necessary by the cabinet, including:

(a) An original, microfilm, electronic equivalent [as authorized under KRS 216B.410(1)], or similar copy procedure of a [EMS] run form as authorized in KRS 216B.410 [-EHS-8A "Kentucky Emergency Medical Service-Ambulance Run Report";] for all runs originating in Kentucky pursuant to the following requirements of subparagraphs 1, 2, 3, and 4 of this paragraph;

1. Prior to April 1, 1999, a Class I provider shall utilize:

a. The EMS run form, EHS-8A "Kentucky Emergency Medical Service Ambulance Run Report" (2/91); or

b. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), filling in all nonshaded portions of the run report form as appropriate for each patient and each run.

2. Effective April 1, 1999, a Class I provider shall utilize:

a. The EMS-8A and EMS-8B "Kentucky Emergency Medical Ambulance Run Report" (9/98), filling in all nonshaded portions of the run report form as appropriate for each patient and each run;

b. A run form developed by the Class I provider that shall:

(i) Contain all of the required run data of the EMS-8A and EMS-8B (9/98); and

(ii) Be submitted to the cabinet for review and approval prior to being utilized to ensure consistency with the reporting requirements of KRS 216B.410(1); or

c. An electronic ambulance run reporting system which shall:

(i) Contain all of the required run data of the EMS-8A and EMS-8B (9/98); and

(ii) Provide required run form data to the cabinet in a format compatible with the electronic information system requirements of the cabinet. To ensure consistency with the reporting requirements of the cabinet the cabinet shall, upon request by the provider, supply a copy of file layout requirements to the provider.

3. A copy [1-Copies] of completed run report forms shall be kept as required by KRS 216B.410(1) and guidelines established by the licensing agency in a manner of confidentiality and safekeeping for a minimum of five (5) years from the date on which the service was rendered, or in the case of a minor, until five (5) years after the minor reaches eighteen (18) years of age; and

4. [2:] The third copy of the run form, or an electronic equivalent in a format consistent with the electronic information system requirements of the cabinet, shall be forwarded to the cabinet or to a data contractor designated by the cabinet within thirty (30) days following

the end of the month in which the run occurred.

(b) Personnel files on each ambulance driver and attendant that shall be maintained for:

1. A minimum of five (5) years, or longer if specified in local government archives approved schedules, following termination or retirement from employment; or

2. Five (5) years following the demise of the employee.

(c) Individual ambulance driver and attendant personnel files that shall, as a minimum, contain evidence of:

1. Training;

2. Experience;

3. Current credentials including proof of CPR certification, or EMT or paramedic certification with corresponding numbers and expiration dates, or nursing or physician license;

4. Current and valid driver's license;

5. A preemployment criminal and Department of Transportation driver's records check for each individual added to the service;

6. Health records to include:

a. Written evidence of a preemployment health assessment having been conducted by a physician or a licensed advanced registered nurse practitioner (ARNP) stating the employee is capable of performing assigned job duties; and

b. Health records which meet the requirements of KRS 216B.410(3).

(3) Maintain and follow written administrative, personnel, medical, and other operational policies and procedures that are reviewed on an annual basis by the ambulance provider in order to assess their effectiveness. The policies and procedures shall be developed to include the following areas:

(a) Organizational structure, staffing, and allocation of responsibility and accountability;

(b) Ambulance service mutual aid agreements and agreements with other ambulance providers;

(c) Personnel performance guidelines; and

(d) A plan to assure that a continuing education program shall be provided for its staff. The program shall include:

1. Evidence of continuing education for staff regarding acquired immune deficiency syndrome (AIDS) and infection control, including the handling of infectious waste in accordance with Centers for Disease Control guidelines.

2. A plan for response to, and the protection and decontamination of, the patient, ambulance, equipment, and staff if called upon to transport a patient exposed to hazardous chemicals;

3. A plan for assessing all other staff continuing education needs, with a coordinated development of methods to meet those needs; and

4. The maintenance of training rosters or other written records to support continuing education conducted by, or at the request of, the licensee.

(e) A plan for the quality assessment of patient care including a periodic review of ambulance run report forms, and evaluation of staff performance related to patient care.

(f) Policies and procedures concerning:

1. Vehicle maintenance;

2. Standard operating procedures (SOPS);

3. Patient protocols;

4. Ambulance response;

5. Transport limitations; and

6. Patient destination.

Section 4. Class I Operating Requirements. (1) A Class I ambulance provider shall provide emergency care and transportation on a twenty-four (24) hour, seven (7) days a week, basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ambulance provider. The following priorities shall be followed for establishing a mutual aid agreement:

(a) A Class I provider which is licensed to serve the same service area;

(b) A Class I ground ambulance provider which serves part of the same service area or a contiguous service area.

(2) A Class I ground ambulance provider may also enter into additional mutual aid agreements with other Kentucky licensed Class I ground ambulance providers on an occasional basis to meet the

needs of its service area for providing scheduled nonemergency transportation.

(3) If a Class I ground ambulance provider is unable to respond to an emergency call, the provider shall activate their mutual aid agreement with the closest available Class I ground ambulance provider or ambulance service licensed in another state as described in Section 2(3)(g) of this administrative regulation.

(4) If a Class I ground ambulance provider receives and declines a request for an emergency interfacility transfer, the licensee shall activate its mutual aid agreement. If none of the mutual aid partners are willing or able to accept the emergency interfacility transfer, any Kentucky licensed Class I ground ambulance provider may accept the transfer.

(5) A provider who accepts a transfer outside of its service area shall require documentation from the facility or the provider licensed for the service area indicating that a good faith effort was made to utilize the provider licensed for the area.

(6) If a Class I ambulance provider also makes nonemergency runs, at least one (1) ambulance shall be held in reserve by the licensee to respond to emergency calls within the geographic service area of the licensee.

(7) In areas where fire departments, rescue squads, or other organizations provide first response to medical emergencies, in order to provide for the coordinated delivery of emergency medical services and the orderly transfer of patients to the ambulance service upon their arrival, the Class I ambulance provider shall enter into a mutual aid agreement with the first response organization. These agreements shall be in writing and shall address the following:

(a) The type of mutual aid assistance to be provided (e.g., ALS or BLS medical care, ALS or BLS medical first response, extrication);

(b) Response personnel including levels of training and provisions for joint in-service training where appropriate;

(c) Response vehicles including unit identifiers and the station or location from which the vehicles will be operated;

(d) How and what manner the mutual aid agreement shall be activated including dispatch and notification procedures;

(e) Radio and other communications procedures between the ambulance provider and the other response agency;

(f) On-scene coordination and scene control including medical direction when several agencies respond to same incident;

(g) Exchange of patient information, records, and reports;

(h) Terms of the agreement including effective date and provision for amendment or termination.

(8) Ambulances used in the provision of Class I ambulance services shall:

(a) Be maintained in good operating condition and in full repair;

(b) Be designed to provide for the medical care and transportation of patients;

(c) Comply fully with ambulance design criteria contained in "Federal Specifications for Ambulances", KKK-A-1822 D (11/94) (GSA federal specifications) in effect at the time the ambulance is manufactured, except for color and provider identification.

(d) Comply with KRS 189.910 through 189.950 regarding the use of lights and siren.

(9)(a) The Class I ambulance provider shall require that a certification decal or sticker be supplied by the manufacturer of newly purchased ambulances, indicating that the ambulance met GSA federal specifications on the date it was manufactured. The certification decal shall be located on a permanent surface, such as in the ambulance oxygen tank compartment, or as later identified in a GSA federal specification revision.

(b) A Class I ambulance provider shall require, for units that are later modified, the conversion company to supply a letter to verify the modification meets or exceeds the GSA federal specification requirements, except for color or provider identification, as incorporated in the GSA federal specifications on the ambulance original date of manufacture.

(10) In addition to the GSA federal specifications, the following state licensing requirements shall be maintained:

(a) The heating system shall maintain a temperature of not less than sixty-five (65) degrees Fahrenheit in the driver and patient compartments in winter weather conditions;

(b) The air conditioning system shall maintain a temperature of not

more than eighty-five (85) degrees Fahrenheit in the driver and patient compartments in summer weather conditions; and

(c) The name of the ambulance provider shall appear on the exterior surface of the ambulance.

(11)(a) A preventive maintenance program for each ambulance and its equipment shall be developed and implemented to keep them in optimum working order to protect the health and safety of the patient and ambulance personnel.

(b) Documentation shall be maintained by the ambulance provider to support evidence of periodic inspections or calibrations required for maintenance and operation of the ambulance and its equipment.

(12) The interior of the ambulance and its equipment shall be checked after each use to ensure that they are kept and maintained in a clean and sanitary condition, unless precluded by emergency conditions.

(13) Nothing in this administrative regulation shall be construed to prevent a licensed Class I provider from providing medical first response emergency prehospital care at or below the level for which they are licensed through the utilization of the following:

- (a) Designated, provider owned response vehicles;
- (b) Provider or personally owned supervisor vehicles;
- (c) Employee personally owned vehicles.

(14) The licensed Class I provider shall determine the minimum equipment required for tiered response vehicles operating under their license.

(15) Class I medical first response vehicles shall be operated in accordance with the provisions of KRS 189.910 to 189.950.

(16) Vehicles used to provide medical first response services shall be insured by the employee or through the insurance policies of the Class I provider.

(17) A communications system shall be developed, coordinated, and maintained by each ambulance provider. The communication system shall meet the following requirements:

(a) If a local or regional dispatch center or 911 arrangement exists for all or part of the service area of a provider, the ambulance provider shall have a signed affiliation agreement with the dispatch center for coordination of emergency calls. If an ambulance provider is unable to secure a written affiliation agreement with the dispatch center, the ambulance provider shall have on file proof of a good faith attempt to obtain an affiliation agreement;

(b) A Class I ambulance shall be equipped with two (2) way radio communication equipment capable, under normal conditions, of contacting the ambulance dispatch center and the receiving hospital;

(c) A minimum of one (1) portable communication device per ambulance, on the ambulance radio frequency, shall be provided for personnel if away from the ambulance;

(d) A Class I provider shall have an acceptable plan to assure that all calls are promptly answered, and runs are dispatched in an expedient manner in accordance with subsection (1) of this section; and

(e) An ambulance provider shall provide orientation to all drivers and attendants related to communication protocols that have been established by the service.

(18)(a) In accordance with policies and procedures of the Class I provider concerning patient destination and ambulance response and transport limitations, a patient shall be transported to:

- 1. The hospital emergency room of the patient's choice; or
- 2. The hospital emergency room chosen by the patient's physician.

(b) Nothing in this subsection shall preclude Class I provider personnel from transporting a patient to:

1. A hospital emergency room other than the one (1) chosen by the patient or his doctor, or an appropriate emergency medical facility chosen by the attendant, if the attendant determines that it shall be necessary in order to save the patient's life or limb.

2. A hospital emergency room or emergency medical facility other than the one (1) chosen by the patient or his physician if the Class I provider is operating under an approved local or regional diversion plan or medical triage protocols developed in conjunction with a consortium of physicians, hospitals, and ambulance providers, and which has been approved by the Kentucky Emergency Medical Services Council under KRS 211.952(5).

(c) The Kentucky emergency medical service ambulance run report form [(EHS-8A)] shall require ambulance service personnel to

state:

1. The name and city of the hospital to which the patient was transported; and

2. If the destination was chosen by the:

- a. Patient;
- b. Patient's physician; or
- c. Medical service personnel. If the destination was chosen by the medical service personnel, the attendant shall document the medical necessity on the form's case narrative section.

Section 5. Basic Life Support Personnel. (1) A BLS Class I provider shall be staffed to provide, at least two (2) attendants for each run. One (1) attendant shall remain with the patient at all times during transport;

(2) There shall be no more patients, personnel, and other persons than can be safely secured by means of seat safety belts or similar devices in the ambulance during transportation; and

(3) All personnel shall be capable of performing their job duties, and shall not cause the patient or other personnel any undue jeopardy.

(4) The driver on each BLS or ALS ambulance run shall:

(a) Be at least eighteen (18) years of age, with current motor vehicle operator's license;

(b) Have at least two (2) years of licensed driver/operator experience;

(c) Complete a defensive driving training program that is developed by the ambulance provider or in conjunction with another agency or organization. The defensive driving training program shall be repeated for each driver at least every four (4) years.

1. The training program shall consist of four (4) hours review of driving a vehicle under emergency conditions;

2. Documentation shall be available to support training in at least the following areas:

a. Review of KRS 189.910 through 189.950 regarding emergency vehicles.

b. Forward and back-up driving maneuvers in a controlled situation, such as in an obstacle course designed specifically for this purpose.

c. Review of defensive driving techniques and procedures by hands-on experience or exposure by visual aids, such as video tapes, slides, or planned demonstrations.

(5) One (1) ambulance attendant on each prehospital emergency or nonemergency BLS ground ambulance run shall be certified or licensed for one (1) of the following levels:

(a) Emergency medical technician (EMT);

(b) Paramedic;

(c) Registered nurse (RN) licensed by the Kentucky Board of Nursing (KBN); or

(d) Physician licensed by the Kentucky Board of Medical Licensure (KBML).

(6) The second ambulance attendant, who may also be the driver, shall have certification or licensing for one (1) of the following levels:

(a) EMT-first responder;

(b) EMT;

(c) Paramedic;

(d) RN licensed by the KBN; or

(e) Physician licensed by the KBML.

(7) Personnel who on occasion may serve as an attendant or a driver shall meet the qualifications for both roles. Documentation shall be required in personnel files for personnel who:

(a) Serve as drivers only in a three (3) person crew; and

(b) Do not render any type of first aid or medical treatment; or

(c) Serve as attendants only.

[(8) Ambulance personnel required to meet patient needs for interfacility or facility-to-home patient transports may be determined by the attending physician and the initiating facility, in conjunction with the ambulance service staff.

(9) A Class I ground ambulance service may provide nonemergency transportation to individuals for whom no medical care is required or indicated during transport and for whom no emergency medical treatment is provided at the final destination. If a Class I provider chooses to make such runs, the ambulance run report form must be completed for each run to show that no medical care was required

or indicated. For such runs, the ambulance shall be staffed by a minimum of one (1) person, who may also be the driver, licensed or certified for one (1) of the following levels:

- (a) EMT-first responder;
- (b) EMT;
- (c) Paramedic; or
- (d) Licensure as a registered nurse by the KBN or as a physician by the KBML;

Section 6. Equipment and Supplies. A Class I ground ambulance used in the provision of emergency care and ambulance transportation shall carry and maintain, in full operational order, the following minimum equipment and supplies:

- (1) Suction, ventilation, and blood pressure equipment.
 - (a) Fixed and portable suction apparatus including:
 - 1. Rigid tonsillar catheters; and
 - 2. Flexible catheters in the sizes six French (6F), 8F, 10F and 14F;
 - (b) Disposable bag-valve-mask ventilation units in 250 ml, and 1000 ml with oxygen reservoir with adult and infant size masks (capable of use with oxygen);
 - (c) Nasopharyngeal and oropharyngeal airways in newborn, infant, child, and adult sizes; and
 - (d) Adult, obese adult, infant, and child sphygmomanometer cuffs with stethoscope. A permanently mounted sphygmomanometer shall not satisfy this requirement.
- (2) Oxygen equipment.
 - (a) Fixed and portable oxygen tanks with a filled, minimum size D, secured spare portable cylinder;
 - (b) Pressure gauge and flow rate regulator (range of zero to fifteen (15) liters per minute);
 - (c) Oxygen humidifier and attachment for use on the fixed oxygen tank;
 - (d) Adaptor and tubing;
 - (e) Transparent simple oxygen masks for adults, children, and infants;
 - (f) Transparent nonrebreather oxygen masks for adults and children; and
 - (g) Nasal cannulas for adults, children, and infants.
- (3) Bandages and tape.
 - (a) Two (2) sterile universal dressings at least ten (10) inches by thirty (30) inches, compactly folded and packaged;
 - (b) Twenty-five (25) sterile gauze pads, four (4) inches by four (4) inches;
 - (c) Ten (10) soft roller self-adhering bandages, various sizes;
 - (d) Four (4) rolls of adhesive tape, minimum of two (2) sizes;
 - (e) Ten (10) triangular bandages with large safety pins; and
 - (f) Two (2) sterile burn sheets.
- (4) Miscellaneous supplies.
 - (a) Eye protector pads and shields;
 - (b) One (1) roll of aluminum foil, or an occlusive substitute approved by the licensing agency;
 - (c) Shears for bandages;
 - (d) Hand held flashlight capable of providing adequate lighting to assess a scene or a patient away from the ambulance;
 - (e) Two (2) penlights;
 - (f) Two (2) sterile obstetrical kits;
 - (g) One (1) bottle of syrup of ipecac (with current expiration date) or one (1) bottle of activated charcoal (if in suspension, shall have current expiration date);
 - (h) Sterile irrigation fluids with current expiration date, if stocked on the ambulance, shall be obtained and maintained according to local, state, and federal statutes and regulations;
 - (i) Thermometer.
- (5) Splints and immobilization devices.
 - (a) Lower extremity traction splint, or equivalent as approved by the cabinet, for use in EMT training;
 - (b) Splints for arm, leg, and foot (e.g., inflatable air splints, padded boards, ladder splints, or acceptable substitute approved by the cabinet);
 - (c) Immobilization devices.
 - 1. Short spine board or other acceptable extrication device, as determined by the cabinet; and

- 2. Long spine board with cervical immobilization accessories;
- 3. An orthopedic "scoop" stretcher or other full-body immobilization device as determined by the cabinet.
- (d) Rigid, stiff cervical collars in large, medium, small adult, no-neck, and pediatric sizes;
- (e) A short spine board or an acceptable substitute, as determined by the cabinet, shall be provided for administering CPR.
- (6) Safety supplies and equipment.
 - (a) Two (2) five (5) pound size, ABC multipurpose fire extinguishers, approved by Underwriters Laboratory, Coast Guard, or Factory Mutual. One (1) shall be located in the driver compartment and the other located in the patient compartment;
 - (b) Multiposition stretcher with wheels and a mechanism to secure the stretcher while in transit;
 - (c) One (1) pocket mask with an isolation valve per patient attendant;
 - (d) One (1) clean scrub gown (or substitute, such as disposable coveralls), disposable mask, and gloves per patient attendant;
 - (e) One (1) particulate filter face mask per attendant meeting federal standards set by the Occupational Safety and Health Administration (OSHA) and one (1) face mask per patient meeting OSHA standards for use during transport of patients known to be infected with tuberculosis;
 - (f) A means of cleansing the hands shall be provided, such as the provision of a solution or disposable towellelettes;
 - (g) Hospital type disinfectants;
 - (h) Plastic bags for disposal of waste materials;
 - (i) Puncture resistant containers for disposal of sharp objects, if sharps are carried;
 - (j) Two (2) clean blankets, sheets, and pillowcases;
 - (k) Tissues or similar substitute; and
 - (l) An emesis container or similar substitute.
- (7) Additional medical supplies and equipment desired for storage in the ambulance for authorized persons responding to the scene who are licensed or certified to provide medical skills that require training beyond the authorized EMT level may be considered for approval by the cabinet. For eligibility, the ambulance provider shall include documentation to assure a system of accountability for the storage and handling of the additional medical supplies and equipment. The cabinet shall have the authority to deny approval of the arrangement if it is determined that the arrangement shall not be in the best interest of quality patient medical care or safety of the patient and personnel.

Section 7. Extrication and Other Rescue Equipment. (1) A Class I provider shall provide and maintain in full operational order the following minimum light access and extrication equipment on the ambulance:

- (a) Two (2) pairs of eye protection goggles;
 - (b) Two (2) pairs of heavy work gloves;
 - (c) Two (2) hard hats;
 - (d) One (1) spring loaded window punch or acceptable substitute; and
 - (e) Six (6) reflective triangles, at least ten (10) inches in height, flares, or equivalent warning devices.
- (2)(a) For response to trauma scenes, a ground ambulance provider shall provide one (1) vehicle, which need not be an ambulance, equipped with the following fully operational, more extensive access and extrication equipment:
- 1. Two (2) fifty (50) foot long seven-sixteenths (7/16) or one-half (1/2) inch static or dynamic nylon ropes;
 - 2. One (1) pair of pliers, vise grip;
 - 3. One (1) wrench, with adjustable, stable open end;
 - 4. One (1) set of screw drivers, four (4) sizes, regular blade;
 - 5. One (1) set of screw drivers, four (4) sizes, Phillips type;
 - 6. One (1) double action tin snip;
 - 7. One (1) crow bar with pinch point;
 - 8. One (1) hacksaw with twelve (12) blades; and
 - 9. One (1) hammer, three (3) pound size;
 - 10. One (1) fire axe;
 - 11. One (1) wrecking bar;
 - 12. One (1) bolt cutter, with one and one-fourth (1 1/4) inch jaw opening;
 - 13. One (1) four (4) ton porta-power jack and spreader tool;

14. One (1) shovel, short handle, with pointed blade;
15. One (1) shovel, long handle, with pointed blade;
16. One (1) come-along tool; and
17. Two (2) fire proof blankets.

(b) A Class I provider which has a written agreement for this provision with a rescue squad, fire department, or an emergency service agency that meets the requirement established by the cabinet, shall not be required to provide the more extensive access and extrication equipment on the ambulance.

Section 8. Medical Directors. (1) An ALS Class I provider shall have a written agreement with a physician medical director.

(2) An ALS Class I provider shall provide evidence that the medical director shall:

- (a) Be a physician licensed by the KBML;
- (b) Meet the qualifications specified in 201 KAR 9:171, Section 2(6). Evidence shall be on file to verify that the qualifications of the medical director have been reviewed by the KBML to assure compliance with 201 KAR 9:171, Section 2(6);
- (c) Have completed a residency program in emergency medicine approved by the Accreditation Committee for Graduate Education or be a physician who holds, or is in the process of completing, certification in advanced cardiac life support, and certification in advanced trauma life support or basic trauma life support, or have on file written approval from the KBML;
- (d) Assume responsibilities in accordance with 201 KAR 9:171, Sections 2(1) through (5); and
- (e) Assume other responsibilities as agreed upon between the medical director and the director of the ambulance service.

Section 9. Class I ALS Providers. (1) A Class I ALS provider shall meet the requirements of Sections 1 through 8 of this administrative regulation. It shall also meet the following additional requirements:

- (a) Evidence shall be on file to verify that the ALS written medical protocols have been reviewed by the KBML.
- (b) ALS services shall be provided on a twenty-four (24) hour, seven (7) days a week basis. This provision may be met through a call system or by a written mutual aid agreement with another Kentucky licensed Class I ALS provider.
- (c) In order to foster development of full-time ALS coverage in counties where ALS services have not been previously available, the licensing agency may grant a waiver of the twenty-four (24) hour, seven (7) day a week requirement to a new ALS provider.
- (d) A waiver of this requirement shall not exceed a period of twelve (12) months. If requested by the ALS provider, and approved by the licensing agency, additional waivers may be granted for just cause, such as inability to obtain certified paramedics.

(2) In addition to the BLS equipment required in Section 6 of this administrative regulation, at the point of patient contact and transportation, a Class I ALS provider shall carry on each vehicle, and maintain in full operational order, the supplies and equipment as provided for in protocols established in subsection 1(a) of this section and shall include the following:

- (a) An endotracheal intubation set consisting of:
 1. Laryngoscope handle in adult and pediatric sizes;
 2. Straight laryngoscope blades in sizes 0, 1, and 2;
 3. Curved laryngoscope blades in sizes 3 and 4;
 4. Extra batteries and bulbs for blades and handles; and
 5. Endotracheal tubes for oral and nasal placement in adult and pediatric sizes (uncuffed tube sizes 3.0, 3.5, 4.0, 4.5, 5.0, and 5.5; and cuffed tube sizes 5.5, 6.0, 6.5, 7.0, 7.5, and 8.0);
- (b) Stylettes in adult and pediatric sizes;
- (c) Magill forceps in adult and pediatric sizes;
- (d) One-half (1/2) inch wide twill tape or equivalent for securing endotracheal tubes;
- (e) Water soluble lubricant for lubrication of endotracheal and nasotracheal tubes;
- (f) Bite block;
- (g) A portable monitor defibrillator that:
 1. Is capable of displaying a visual display of cardiac electrical activity;
 2. Is capable of providing a hard copy of cardiac electrical activity measure;

3. Is capable of delivering direct current energy over a variable range which is suitable for pediatric and adult usage;

4. Has adult and pediatric external paddle electrodes capable of utilization for immediate monitoring of heart activity and delivery of countershock in both the adult and pediatric patient;

5. Is capable of being operated from internal rechargeable batteries;

6. Has synchronized countershock capability for cardioversion. This requirement applies only to equipment purchased after the effective date of this administration regulation;

7. Has a patient monitoring cable which has the following accessories:

- a. Electrode paste or gel or equivalent;
 - b. Electrode pads or equivalent for use with the patient monitoring cable; and
 - c. One (1) additional roll of paper for hard copy printout.
 - (h) Needles, sterile, disposable: minimum of three (3) sizes shall be maintained in eighteen (18) to twenty-five (25) gauge;
 - (i) Syringes, disposable: minimum three (3) sizes shall be maintained in 1cc to 30cc sizes;
 - (j) Appropriate containers for the collection of blood samples;
 - (k) Tourniquet appropriate for use with venipuncture procedure;
 - (l) Dextrostix (r) or equivalent for the measure of blood glucose levels;
 - (m) Disposable, individually packaged antiseptic wipes;
 - (n) Intravenous fluids, macrodrip and microdrip fluid sets, extension sets and accessory items;
 - (o) Intravenous catheter over needle devices in twelve (12) to (24) gauge;
 - (p) Butterfly needles in nineteen (19) and twenty-three (23) gauge;
 - (q) Intraosseous needles;
 - (r) Pediatric drug dosage tape or equivalent which shall provide easy reference for pediatric and infant treatment and drug dosages;
 - (s) Nasogastric tubes in size 5F, 8F pediatric sizes, sizes 10 to 18 French adult, and sizes 50 or 60 cc catheter tipped syringes or equivalent;
 - (t) Water soluble lubricant; and
 - (u) Infant or neonate suction apparatus.
- (3) A Class I ALS provider shall stock and maintain drugs and medications as required by:
- (a) Protocols established in accordance with Section 8 of this administrative regulation; and
 - (b) Local, state, and federal statutes and regulations;
 - (4) Controlled drugs shall be stored in a locked compartment or equivalent approved by the cabinet. An ambulance provider which stores and utilizes controlled substances shall have protocols approved by the cabinet's drug control branch.
 - (5) With the exception of the supplies or equipment listed in subsection (2)(p), (q), (r), and (u) of this section, and supplies and equipment listed in subsection (2), (3), and (4) of this section which require specific sizes to accommodate adult, pediatric, and infant patients, nothing in this administrative regulation shall be construed to require a Class I ALS provider to maintain the equipment required in subsections (2), (3) and (4) of this section if the equipment is not required by the medical protocols of the ALS Class I ground ambulance provider.

Section 10. Advanced Life Support Personnel. (1) Each licensed Class I ALS ambulance shall be staffed according to the requirements of 201 KAR 9:171, Section 5.

(2) If medical first response emergency medical service vehicles are utilized by the Class I ALS provider, the vehicles shall:

- (a) Be staffed by a minimum of one (1) person who has minimum training and current certification as a paramedic.
- (b) Have available the minimum equipment and supplies required by Sections 6, 7, and 9 of this administrative regulation. This may be accomplished through the coordinated response of an ambulance from a separate ambulance provider under the provisions of a written mutual aid agreement on file with both providers.

Section 11. Class I Specialized Providers. (1) A Class I provider which does not provide prehospital emergency care to the general public, such as industrial based providers, neonatal transfers, and interfacility transfers requiring BLS or ALS shall be licensed as a Class

I specialized provider.

(2) A BLS Class I specialized provider which complies with Sections 1 through 7, and 8 if applicable, of this administrative regulation, if applicable, and an ALS Class I specialized provider which complies with Sections 8 and 9 of this administrative regulation, may, with prior approval by the licensing agency, be allowed certain variances.

(3) A specialized license shall specify the limitations of the provider which have been approved by the cabinet;

(4) In reference to Section 4(1) of this administrative regulation, a Class I specialized provider shall not be required to provide emergency care and ambulance transportation on a twenty-four (24) hour, seven (7) days a week basis.

(5) In reference to Section 4(16)(a) of this administrative regulation, a Class I specialized provider shall not be required to have an affiliation agreement with a local or regional dispatch center or 911 service.

(6) A BLS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6 and 7 of this administrative regulation, with certain variations as approved by the cabinet.

(7) An ALS Class I specialized ground ambulance provider shall be required to meet the equipment, supplies, and personnel requirements as listed in Sections 6, 7, and 9 of this administrative regulation, with certain variations as approved by the cabinet.

(8) A Class I specialized provider desiring variations in equipment, supplies, or personnel shall submit the requests in writing for consideration and approval by the cabinet.

Section 12. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: ~~(and may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. to 4:30 p.m., Monday through Friday.)~~

(a) ~~[(1)]~~ Form EHS-8A, "Kentucky Emergency Medical Service Ambulance Run Report," (2/91).

(b) Form EMS-8A, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98).

(c) Form EMS-8B, "Kentucky Emergency Medical Services Ambulance Run Report", (9/98).

(d) ~~[(2)]~~ "Federal Specifications for Ambulances", KKK-A-1822 D (11/94), General Services Administration, Federal Supply Service, Washington, D.C. 20406.

(2) This material may be inspected, obtained, or copied at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 14, 1998

FILED WITH LRC: October 15, 1998 at noon

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, December 8, 1998)

902 KAR 55:010. Licensing of manufacturers and wholesalers.

RELATES TO: KRS 218A.150(1), 218A.160, 218A.170, 218A.200, [345:036;] 21 CFR 210.1 to 210.3, 211.1 to 211.208, 1301.01 to 1301.93, 1304.01 to 1304.33 [Chapter 218A]

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [Chapter 13B, 194:050], 211.090, 218A.150(1), 218A.250[; 1998 GA HB 132] [HB 799 of the 1990 GA, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.150, 218A.160 and 218A.170 authorize [authorizes] the Cabinet for Health Services to license manufacturers and wholesalers of controlled substances. ~~[It is the purpose of]~~ This administrative regulation establishes [to establish] uniform requirements for the licensing of manu-

facturers and wholesalers. [such licenses. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Public Health and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Health care entity" means any organization, or business that provides diagnostic, medical, surgical, dental treatment, or rehabilitative care.

(2) "Manufacturer" means a person engaged in the commercial manufacture of a controlled substance. [production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or both, and includes any packaging or repackaging of a controlled substance or the labeling or relabeling of its container.]

(3) "Wholesale distribution" means distribution of a controlled substance to a person other than a consumer or a patient, and shall not include:

(a) An intracompany sale; or

(b) A distribution by:

1. A charitable organization that meets the criteria established in 26 USC 501(c)(3) to a nonprofit affiliate of the organization to the extent permitted by law;

2. A hospital or health care entity which is a member of a group-purchasing organization to other hospitals or health care entities that are members of the organization; or

3. A pharmacy that is exempt pursuant to 902 KAR 55:060. [Distribution of a controlled substance to a person other than a consumer or a patient; and

(b) is not a distribution by:

1. A charitable organization as described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1954 distributing to a nonprofit affiliate of the organization to the extent permitted by law;

2. A hospital or health care entity distributing to another hospital or health care entity under common control;

3. A pharmacy that is exempt pursuant to 902 KAR 55:060;

4. An intracompany sale;]

(4) "Wholesaler" means a person who is engaged in the wholesale distribution of a controlled substance, including:

(a) Own-label distributor;

(b) Private-label distributor;

(c) Jobber;

(d) Broker;

(e) Warehouse, including a manufacturers' or distributors' warehouse, chain drug warehouse, or wholesale drug warehouse;

(f) Independent wholesale drug trader; and

(g) Pharmacy that conducts wholesale distributions.

Section 2. License Required and Exceptions. (1) A separate license shall be required for each location from which a manufacturer or wholesaler **makes a wholesale distribution of [distributes]** a controlled substance into the Commonwealth.

(2) If a location has more than one (1) registration with the Drug Enforcement Administration, each registrant that distributes in the Commonwealth shall obtain a separate license.

(3) A license to distribute controlled substances shall not be transferred or assigned.

(4) A license shall not be required for an agent or employee of a licensee if the agent or employee is acting in the usual course of business or employment.

Section 3. Application for License or Renewal. (1) An application for a manufacturer's or wholesaler's license shall **be submitted to the Cabinet for Health Services on "Application for New License as Manufacturer or Wholesaler of Controlled Substances", DCB-10 form, and include the following information:**

(a) The name, business address and telephone number of the prospective licensee;

(b) All trade or business names used by the licensee;

(c) Name, address, and telephone number of each contact person for controlled substance handling, storage, and recordkeeping;

(2) An application for a manufacturer's or wholesaler's license shall include the following information about the ownership of the

business:

- (a) The type of ownership of operation;
- (b) If an individual or sole proprietorship, the full name of the individual or proprietor and the name of the business entity;
- (c) If a partnership, the name and address of each partner and the name of the partnership;
- (d) If a limited liability company, the name and address of each manager and member; and
- (e) If a corporation, the name and title of each corporate officer and director, the corporate names, and the names of the state of incorporation.
- (3) A description of the business, the physical facilities, and the type security provided.
- (4) A change in the information required by subsection (1), (2), or (3) shall be submitted to the cabinet:
- (a) Within thirty (30) days from the date of the change, or at the time of license renewal, whichever occurs first; and
- (b) On a "License Update **Manufacturer or Wholesaler of Controlled Substances**" [Form], DCB-11 or an "Application for **Renewal License as Manufacturer or Wholesaler of Controlled Substances**" [the License Renewal Form], DCB-12.

Section 4. Qualifications for License or Renewal. (1) The cabinet shall consider the following factors in reviewing the qualifications of an applicant to engage in the manufacture or wholesale distribution of controlled substances:

- (a) A conviction of the applicant or its managing officers under any federal, state, or local law relating to controlled substances;
- (b) A felony conviction of the applicant or its managing officers;
- (c) An applicant's history with state or federal regulatory agencies as related to [past experience in] the manufacture or distribution of controlled substances;
- (d) The furnishing of false or fraudulent information in connection with an application for a license from a federal, state or local government agency;
- (e) Suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant for the manufacture or distribution of controlled substances;
- (f) Compliance with licensing requirements under previously granted licenses, if any;
- (g) Compliance with requirements to maintain or make available to the cabinet or to federal, state, or local law enforcement officials those records required by KRS 218A.200;
- (h) The criteria listed in KRS 218A.160; and
- (i) Violations of applicable federal law, rule or regulation or state law, [rule] or administrative regulation governing a controlled substance that relates to Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs in 21 CFR 210.1 to 210.3 or Current Good Manufacturing Practice for Finished Pharmaceuticals in 21 CFR 211.1 to 211.208, adopted by the U.S. Food and Drug Administration.

(2) A license shall be renewed if the cabinet finds that the applicant:

- (a) Qualifies for a license pursuant to subsection (1) of this section;
- (b) Complies with Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances 21 CFR 1301.01 through 1301.93, adopted by the Drug Enforcement Administration;
- (c) Complies with Records and Reports of Registrants 21 CFR 1304.01 through 1304.33, adopted by the U.S. Drug Enforcement Administration;
- (d) Complies with KRS 315.036 and 201 KAR 2:105; and
- (e) Complies with KRS 218A.200.

(3) A manufacturer or wholesaler not located within the Commonwealth of Kentucky may obtain a license or license renewal on the basis of reciprocity if:

- (a) The out-of-state manufacturer or wholesaler possesses a valid license granted by another state and the legal standards for licensure in the other state are no less stringent than the standards established by this administrative regulation;
- (b) The out-of-state manufacturer or wholesaler is currently registered with the U.S. Drug Enforcement Administration; and
- (c) The state in which it is licensed extends reciprocity to manu-

facturers and distributors licensed by Kentucky.

(4) [A license issued pursuant to this administrative regulation may be suspended or revoked for cause:

—(5)] All administrative hearings shall be conducted in accordance with 902 KAR 1:400. [State License Required of Manufacturers and Wholesalers. No person shall manufacture, wholesale, distribute, or repack any controlled substance in this state without having first obtained a license to do so from the Cabinet for Health Services.

Section 2. Out-of-state Exemptions. Manufacturers, wholesalers, distributors, and repackers not located within the Commonwealth of Kentucky, but who are registered with the appropriate federal agency pursuant to the provisions of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (PL 91-513: 84 Stat. 1236) and the regulations promulgated thereunder, are hereby exempted from the licensure requirements of this administrative regulation and are authorized to operate as such in this state by virtue of their federal registration.

Section 3. Joint Venture Exemptions. Two (2) or more pharmacies, who engage in a joint venture for the purpose of purchasing drugs in order to effectuate a savings in the purchase price thereof and in which no profit is realized in the transaction by any of the participating pharmacies, are exempt from the licensure requirements of this administrative regulation provided proper records of the transaction are maintained.

Section 4. Qualifications for Licensing. (1) No license shall be issued pursuant to this administrative regulation unless and until the applicant has furnished proof satisfactory to the Cabinet for Health Services:

- (a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to controlled substances and is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character; and
- (b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application;
- (2) No license shall be granted to any person who has been convicted of a misdemeanor involving any controlled substance or who has been convicted of any felony;
- (3) A license issued pursuant to this administrative regulation may be suspended or revoked for cause;
- (4) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.]

Section 5. License Fees; Renewals. (1) An application [All applications] for a license under the provisions of this administrative regulation shall be submitted to the Cabinet for Health Services on an "Application for New License as Manufacturer or Wholesaler of Controlled Substances" [a] DCB-10 form [forms furnished by the department] and shall be accompanied by a license fee of \$240.

(2) An application to renew a license shall be submitted to the Cabinet for Health Services on an "Application for Renewal License as Manufacturer or Wholesaler of Controlled Substances", DCB-12 form, and shall be accompanied by a renewal fee of \$175. [All licenses shall expire on June 30th following date of issuance and be renewable annually thereafter upon payment of a renewal fee of \$175 accompanied by a DCB-12 form;] [and shall be nontransferable.]

Section 6. Recordkeeping. (1) Records shall be maintained in accordance with KRS 218A.200 and with 21 CFR 1304.01 to 1304.33, adopted by the U.S. Drug Enforcement Administration.

(2) Records or copies of records that relate to distributions within the Commonwealth shall be made available to the cabinet upon request.

Section 7. License Termination, Lapse, Suspension or Revocation. (1) A license issued pursuant to this administrative regulation shall be suspended or revoked for cause.

(2) A license shall terminate if the licensee dies or ceases legal existence.

(3) A license shall lapse if the renewal application and renewal fee have not been filed with the cabinet prior to June 30 of each

year.

(4) A lapsed license shall be [is] void and an application for a new license shall be required.

(5) All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for New License as Manufacturer or Wholesaler of Controlled Substances (8/98)", DCB-10[-8-98-edition];

(b) "License Update Manufacturer or Wholesaler of Controlled Substances (8/98)", DCB-11[-8-98-edition];

(c) "Application for Renewal License as Manufacturer or Wholesaler of Controlled Substances (8/98)", DCB-12[-8-98-edition].

(2) This material may be inspected, copied, or obtained at the Cabinet for Health Services, Department for Public Health, Drug Control and Professional Practices, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. - 4:30 p.m. [~~Cocaine Registry. All wholesalers and manufacturers (including distributors and repackers) shall keep a separate cocaine registry showing the following: date, registration number of recipient, name of recipient, address, name of preparation, and quantity.~~]

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Adult and Child Health
(As Amended at ARRS, December 5, 1998)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.100 to 218A.110, 21 CFR 1308.14

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194.050(+); 211.090, 218A.020, 218A.100, 218A.250[-1998-GA-HB 132]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.100 authorizes the Cabinet for Health Services [Human Resources] to place a substance in Schedule IV if it finds that: (1) the substance has a low potential for abuse relative to substances in Schedule III; (2) the substance has currently accepted medical use in treatment in the United States; and (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. KRS 218A.020(3) provides that if any substance is designated, rescheduled, or deleted as a controlled substance under a federal law and notice of the designation, rescheduling or deletion is given to the cabinet, the cabinet may similarly control the substance by administrative regulation. The Cabinet for Health Services [Human Resources], after considering the criteria, designates the substances set forth in this administrative regulation as Schedule IV controlled substances.

Section 1. Stimulants. The Cabinet for Health Services [Human Resources] designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including their salts, isomers whether optical position or geometric, and salts of the isomers, if the existence of the salts, isomers, and salts of isomers is possible:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;

(8) Modafinil;

(9) Pemoline, including organometallic complexes and chelates;

(10) [(9)] Phentermine;

(11) [(+)] Pipradrol; [and]

(12) Sibutramine; and

(13) [(+)] SPA ((-)-1-dimethylamino-1,2-diphenyl ethane).

Section 2. Depressants. The Cabinet for Health Services [Human Resources] designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation which contains a quantity of the following substances, including its salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Bromazepam;
- (3) Camazepam;
- (4) Carisoprodol;
- (5) Chlordiazepoxide;
- (6) Clobazam;
- (7) Clonazepam;
- (8) Clorazepate;
- (9) Clotiazepam;
- (10) Cloxazolam;
- (11) Delorazepam;
- (12) Diazepam;
- (13) Estazolam;
- (14) Ethyl loflazepate;
- (15) Fludiazepam;
- (16) Flunitrazepam;
- (17) Flurazepam;
- (18) Halazepam;
- (19) Haloxazolam;
- (20) Ketazolam;
- (21) Loprazolam;
- (22) Lorazepam;
- (23) Lormetazepam;
- (24) Mebutamate;
- (25) Medazepam;
- (26) Methohexital;
- (27) Midazolam;
- (28) Nimetazepam;
- (29) Nitrazepam;
- (30) Nordiazepam;
- (31) Oxazepam;
- (32) Oxazolam;
- (33) Pinazepam;
- (34) Prazepam;
- (35) Quazepam;
- (36) Temazepam;
- (37) Tetrazepam;
- (38) Triazolam; and
- (39) Zolpidem.

Section 3. Narcotics. The Cabinet for Health Services [Human Resources] designates as "Schedule IV" controlled substances, in addition to those specified by KRS 218A.110, a material, compound, mixture, or preparation containing a quantity of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Butorphanol;
- (2) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionyxybutane);
- (3) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit; and
- (4) Nalbuphine.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: August 13, 1998

FILED WITH LRC: August 14, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division for Adult and Child Health
(As Amended at ARRS, December 8, 1998)

902 KAR 55:045. Exempt prescription products.

RELATES TO: KRS 218A.020 to 218A.130, 21 CFR 1308.31-1308.32

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194.050,] 211.090, 218A.020, 218A.250[~~1998 GA HB 132~~] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services.] KRS 218A.020(3) provides that if any controlled substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services, the Cabinet for Health Services may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain stimulant or depressant products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

Section 1. Exempt Prescription Products. The Cabinet for Health Services exempts the following prescription products from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

- (1) Acetaminophen 325mg/Butalbital 50 mg, tablet, NDC 00456-0674: butalbital 50 mg;
- (2) Acetaminophen 500mg/Butalbital 50 mg, tablet, NDC 00456-0671: butalbital 50 mg;
- (3) ALAGESIC Tablets, tablet, NDC 55726-0300: butalbital 50 mg;
- (4) Alkaloids of Belladonna and Phenobarbital, tablet, NDC 00377-0527: phenobarbital 16.20 mg;
- (5) Amaphen Capsules (reformulated), capsule, NDC 11311-0954: butalbital 50 mg;
- (6) Aminophylline and Phenobarbital, enteric coated tablet, NDC 00115-2156: phenobarbital 15 mg;
- (7) Aminophylline and Phenobarbital Tablets, tablet, NDC 00115-2154: phenobarbital 15 mg;
- (8) Anaspaz PB, tablet, NDC 00225-0300: phenobarbital 15 mg;
- (9) Anolor 300 Capsules, capsule, NDC 51674-0009: butalbital 50 mg;
- (10) Anoquan Modified Formula, capsule, NDC 00166-0881: butalbital 50 mg;
- (11) Anti-Spas Elixir, elixir, NDC 00719-4090: phenobarbital 3.24 mg/ml;
- (12) Anti-Spas Tablets, tablet, NDC 00719-1091: phenobarbital 16.20 mg;
- (13) Antispas, tablet, NDC 00377-0622: phenobarbital 16.20 mg;
- (14) Antispasmodic, tablet, NDC 00364-0020: phenobarbital 16 mg;
- (15) Antispasmodic, tablet, NDC 00367-4118: phenobarbital 16.20 mg;
- (16) Antispasmodic, tablet, NDC 03547-0777: phenobarbital 16.20 mg;
- (17) Antispasmodic Elixir, elixir, NDC 00182-0686: phenobarbital 3.24 mg/ml;
- (18) Antispasmodic Elixir, elixir, NDC 00364-7002: phenobarbital 3.20 mg/ml;
- (19) Antispasmodic Elixir, elixir, NDC 00832-8009: phenobarbital 3.24 mg/ml;
- (20) Antispasmodic Tablets, tablet, NDC 00182-0129: phenobarbital 16.20 mg;
- (21) Antispasmodic Tablets, tablet, NDC 47679-0158: phenobarbital 16.2 mg;
- (22) Antispasmodic Tablets, tablet, NDC 00839-5055: phenobarbital 16 mg;
- (23) Antrocol, capsule, NDC 00095-0041: phenobarbital 16 mg;
- (24) Antrocol Elixir, elixir, NDC 00095-0042: phenobarbital 3

- mg/ml;
- (25) Antrocol Tablets, tablet, NDC 00095-0040: phenobarbital 16 mg;
- (26) Arco-Lase Plus, tablet, NDC code 00275-0045: phenobarbital 8 mg;
- (27) Atropine Sulfate with Phenobarbital, tablet, NDC 00463-6035: phenobarbital 15 mg;
- (28) Axotal, tablet, NDC 00013-1301: butalbital 50 mg;
- (29) Azpan, tablet, NDC 00172-3747: phenobarbital 8 mg;
- (30) B-A-C Tablets, tablet, NDC 00259-1256: butalbital 50 mg;
- (31) Bancap, capsule, NDC 00456-0546: butalbital 50 mg;
- (32) Barbeloid (Revised) Green, tablet, NDC 00377-0365: phenobarbital 16.20 mg;
- (33) Barbeloid Yellow, tablet, NDC 00377-0498: phenobarbital 16.20 mg;
- (34) Barbidonna Elixir, elixir, NDC 00037-0305: phenobarbital 3.20 mg/ml;
- (35) Barbidonna No 2, tablet, NDC 00037-0311: phenobarbital 32 mg;
- (36) Barbidonna Tablets, tablet, NDC 00037-0301: phenobarbital 16 mg;
- (37) Barophen, elixir, NDC 00472-0981: phenobarbital 3.24 mg/ml;
- (38) Bel-phen-ergot s Tablets, tablet, NDC 00182-1847: phenobarbital 40 mg;
- (39) Bel-Phen-Ergot-S Tablets, tablet, NDC 00719-1686: phenobarbital 40 mg;
- (40) Bel-Tabs, tablet, NDC 00677-1171: phenobarbital 40 mg;
- (41) Belladenal, tablet, NDC 00078-0028: phenobarbital 50 mg;
- (42) Belladenal-S, sustained release tablet, NDC 00078-0027: phenobarbital 50 mg;
- (43) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00179-0045: phenobarbital 3.24 mg/ml;
- (44) Belladonna Alkaloids with Phenobarbital, elixir, NDC 00737-1283: phenobarbital 3 mg/ml;
- (45) Belladonna Alkaloids with Phenobarbital, tablet, NDC 51079-0168: phenobarbital 16.20 mg;
- (46) Belladonna Alkaloids and Phenobarbital, tablet, NDC 00143-1140: phenobarbital 16.20 mg;
- (47) Bellalphen, tablet, NDC 00223-0425: phenobarbital 16.20 mg;
- (48) Bellamine Tablets, tablet, NDC 00904-2548: phenobarbital 40 mg;
- (49) Bellamor Tablets, tablet, NDC 00839-7370: phenobarbital 40 mg;
- (50) Bellergal-S, sustained release tablet, NDC 00078-0031: phenobarbital 40 mg;
- (51) Bellophen, tablet, NDC 00115-2400: phenobarbital 16.20 mg;
- (52) Bilezyme Plus, tablet, NDC 00249-1112: phenobarbital 8 mg;
- (53) Bladder Mixture Plus Phenobarbital, liquid, NDC 11326-1624: phenobarbital 2.92 mg/ml;
- (54) Blue Cross Butalbital, APAP and Caffeine Tablets, tablet, NDC 00879-0567: butalbital 50 mg;
- (55) Broncholate, capsule, NDC 00563-0277: phenobarbital 8 mg;
- (56) Broncomar, elixir, NDC 12939-0128: butabarbital 1 mg/ml;
- (57) Bucet Capsules, capsule, NDC 00785-2307: butalbital 50 mg;
- (58) Bucet Tablets, tablet, NDC 00785-2307: butalbital 50 mg;
- (59) Butace, capsule, NDC code 00539-0906: butabarbital 50 mg;
- (60) Butacet Capsules, capsule, NDC 53121-0133: butalbital 50 mg;
- (61) Butalbital, Acetaminophen and Caffeine Capsules, capsule, NDC 46672-0228: butalbital 50 mg;
- (62) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52555-0079: butalbital 50 mg;
- (63) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 54696-0513: butalbital 50 mg;
- (64) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 00302-0490: butalbital 50 mg;
- (65) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0053: butalbital 50 mg;
- (66) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 46672-0059: butalbital 50 mg;
- (67) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC

- 00832-1102: butalbital 50 mg;
 (68) Butalbital, Acetaminophen and Caffeine Tablets, tablet, NDC 52446-0544: butalbital 50 mg;
 (69) Butalbital and Acetaminophen Tablets, tablet, NDC 00879-0543: butalbital 50 mg;
 (70) Butalbital and Acetaminophen Tablets 50/325, tablet, NDC 46672-0099: butalbital 50 mg;
 (71) Butalbital and Acetaminophen Tablets 50/650, tablet, NDC 46672-0098: butalbital 50 mg;
 (72) Butalbital, APAP and Caffeine, tablet, NDC 00302-0490: butalbital 50 mg;
 (73) Butalbital, APAP and Caffeine Tablets, tablet, NDC 00182-1274: butalbital 50 mg;
 (74) Butalbital Compound Capsules, capsule, NDC 53506-0103: butalbital 50 mg;
 (75) Butalbital with Acetaminophen and Caffeine Tablets, tablet, NDC 00143-1787: butalbital 50 mg;
 (76) Butibel Elixir, elixir, NDC 00037-0044: butabarbital sodium 3 mg/ml;
 (77) Butibel Tablets, tablet, NDC 00037-0046: butabarbital sodium 15 mg;
 (78) Cafatine-PB Tablets, tablet, NDC 00904-1750: pentobarbital sodium 30 mg;
 (79) Cafergot P-B Suppository, suppository, NDC 00078-0035: pentobarbital 60 mg;
 (80) Cafergot P-B Tablets, tablet, NDC 00078-0036: pentobarbital sodium 30 mg;
 (81) C.D.P. Plus Capsules, capsule, NDC 00182-1856: chlordiazepoxide HCl 5 mg;
 (82) Cephadyn, tablet, NDC 95702-0650: butalbital 50 mg.;
 (83) Charspast, tablet, NDC 00377-0500: phenobarbital 16.20 mg;
 (84) Chlordiazeopoxide HCl and Clidinium Br., capsule, NDC 57247-1003: chlordiazeopoxide 5 mg;
 (85) Chlordiazeopoxide HCl 5 mg and Clidinium BR 2.5 mg, capsule, NDC 52446-0096: chlordiazeopoxide HCL 5 mg;
 (86) Chlordiazeopoxide Hydrochloride + Clidinium Bromide, capsule, NDC 47679-0268: chlordiazeopoxide HCl 5 mg;
 (87) Chlordiazeopoxide with Clidinium Bromide, capsule, NDC 46193-0948: chlordiazeopoxide HCl 5 mg;
 (88) Chlordinium, capsule, NDC 00719-1208: chlordiazeopoxide HCl 5 mg;
 (89) Chlordinium Sealets, capsule, NDC 00580-0084: chlordiazeopoxide HCl 5 mg;
 (90) Clindex, capsule, NDC 00536-3490: chlordiazeopoxide HCL 5 mg;
 (91) Clinibrax Capsules, capsule, NDC 00832-1054: chlordiazeopoxide HCl 5 mg;
 (92) Clinoxide, capsule, NDC 00879-0501: chlordiazeopoxide HCl 5 mg;
 (93) CON-TEN, capsule, NDC 11584-1029: butalbital 50 mg;
 (94) Digestokraft, tablet, NDC 00796-0237: butabarbital sodium 8 mg;
 (95) Digestokraft, tablet, NDC 00377-0460: butabarbital sodium 8 mg;
 (96) Dilantin with Phenobarbital 1/2, capsule, NDC 00071-0531: phenobarbital 32 mg;
 (97) Dilantin with Phenobarbital 1/4, capsule, NDC 00071-0375: phenobarbital 16 mg;
 (98) Dolmar, capsule, NDC 12939-0812: butalbital 50 mg;
 (99) Donalixir, elixir, NDC 00471-0095: phenobarbital 3.24 mg/ml;
 (100) Donna-Sed, elixir, NDC 00298-5054: phenobarbital 3.24 mg/ml;
 (101) Donnatal Capsules, capsule, NDC 00031-4207: phenobarbital 16.20 mg;
 (102) Donnatal Elixir, elixir, NDC 00031-4221: phenobarbital 3.24 mg/ml;
 (103) Donnatal Extentabs, sustained release tablet, NDC 00031-4235: phenobarbital 48.60 mg;
 (104) Donnatal No 2, tablet, NDC 00031-4264: phenobarbital 32.40 mg;
 (105) Donnatal Tablets, tablet, NDC 00031-4250: phenobarbital 16.20 mg;
 (106) Donnazyme, enteric coated tablet, NDC 00031-4649: phenobarbital 8.10 mg;
 (107) Donphen, tablet, NDC 00093-0205: phenobarbital 15 mg;
 (108) E-Caff PB Tablets, tablet, NDC 00185-0982: pentobarbital 30 mg;
 (109) Endolar, capsule, NDC 00588-7777: butalbital 50 mg;
 (110) Ephedrine and Sodium Phenobarbital, tablet, NDC 00377-0109: phenobarbital sodium 16.20 mg;
 (111) Ephedrine with Phenobarbital, tablet, NDC 00463-6086: phenobarbital 15 mg;
 (112) EQUI-CET Tablets, tablet, NDC 57779-0111: butalbital 50 mg;
 (113) Ergocaff-PB Tablets, tablet, NDC 00536-3801: pentobarbital sodium 30 mg;
 (114) Esgic Capsules, capsule, NDC 00456-0631: butalbital 50 mg;
 (115) ESGIC-PLUS, NDC 00456-0676, tablet, contains butalbital 50 mg;
 (116) Esgic Tablets, tablet, NDC 0456-0630: butalbital 50 mg;
 (117) Espasmotex, tablet, NDC code 11475-0835: phenobarbital 20 mg;
 (118) Ezol, capsule, NDC 45985-0578: butalbital 50 mg;
 (119) Fabophen Tablets, tablet, NDC 00904-3280: butalbital 50 mg;
 (120) Febridyne Plain Capsules, capsule, NDC 05383-0001: butalbital 50 mg;
 (121) FEMCET Capsules, capsule, NDC 50474-0703: butalbital 50 mg;
 (122) Fioricet, capsule, NDC 00078-0084: butalbital 50 mg;
 (123) G-1 Capsules, capsule, NDC 43797-0244: butalbital 50 mg;
 (124) G.B.S., tablet, NDC 00456-0281: phenobarbital 8 mg;
 (125) Gustase Plus, tablet, NDC 00249-1121: phenobarbital 8 mg;
 (126) Hybephen, tablet, NDC 00029-2360: phenobarbital 15 mg;
 (127) Hyosital White, tablet, NDC 00361-2131: phenobarbital 16.20 mg;
 (128) Hyosophen Capsules, capsule, NDC 00536-3926: phenobarbital 16 mg;
 (129) Hyosophen Tablets, tablet, NDC 00536-3920: phenobarbital 16.20 mg;
 (130) Hypnaldyne, tablet, NDC 00298-1778: phenobarbital 16.20 mg;
 (131) Hytrophen, tablet, NDC 00917-0244: phenobarbital 16.20 mg;
 (132) IDE-Cet Tablets, tablet, NDC 00814-3820: butalbital 50 mg;
 (133) ISOCET Tablets, tablet, NDC 00536-3951: butalbital 50 mg;
 (134) Isolate Compound, elixir, NDC 00472-0929: phenobarbital 0.40 mg/ml;
 (135) Isolate Compound Elixir, elixir, NDC 00364-7029: phenobarbital 0.40 mg/ml;
 (136) Isopap Capsules, capsule, NDC 11735-0400: butalbital 50 mg;
 (137) Isophed, liquid, NDC 00298-5680: phenobarbital 0.40 mg/ml;
 (138) Isuprel, elixir, NDC 00024-0874: phenobarbital 0.40 mg/ml;
 (139) Isuprel Compound, elixir, NDC 00057-0874: phenobarbital 0.40 mg/ml;
 (140) Kinesed, tablet, NDC 00038-0220: phenobarbital 16 mg;
 (141) Levsin with Phenobarbital Elixir, elixir, NDC 00091-4530: phenobarbital 3 mg/ml;
 (142) Levsin with Phenobarbital Tablets, tablet, NDC 00091-3534: phenobarbital 15 mg;
 (143) Levsin-PB, drops, NDC 00091-4536: phenobarbital 15 mg/ml;
 (144) Levsinex with Phenobarbital, sustained release capsule, NDC 00091-3539: phenobarbital 45 mg;
 (145) Librax, capsule, NDC 00140-0007: chlordiazeopoxide HCl 5 mg;
 (146) Lufyllin-EPG Elixir, elixir, NDC 00037_0565: phenobarbital 1.60 mg/ml;
 (147) Lufyllin-EPG Tablets, tablet, NDC 00037-0561: phenobarbital 16 mg;
 (148) Malatal, tablet, NDC 00166-0748: phenobarbital 16.20 mg;
 (149) Margesic Capsules, capsule, NDC 00682-0804: butalbital

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- 50 mg;
 (150) Medigesic Tablets, tablet, NDC 52747-0311: butalbital 50 mg;
 (151) Menrium 5-2, tablet, NDC 00140-0023: chlordiazepoxide 5 mg;
 (152) Menrium 5-4, tablet, NDC 00140-0024: chlordiazepoxide 5 mg;
 (153) Menrium 10-4, tablet, NDC 00140-0025: chlordiazepoxide 10 mg;
 (154) Micomp-PB Tablets, tablet, NDC 55053-0525: pentobarbital sodium 30 mg;
 (155) Milprem-200, tablet, NDC 00037-5501: meprobamate 200 mg;
 (156) Milprem-400, tablet, NDC 00037-5401: meprobamate 400 mg;
 (157) Mudrane, tablet, NDC 00095-0050: phenobarbital 8 mg;
 (158) Mudrane GG Elixir, elixir, NDC 00095-0053: phenobarbital 0.50 mg/ml;
 (159) Mudrane GG Tablets, tablet, NDC 00095-0051: phenobarbital 8 mg;
 (160) Pacaps Capsules, capsule, NDC 10892-0116: butalbital 50 mg;
 (161) Pacaps Modified Formula, capsule, NDC 48534-0884: butalbital 50 mg;
 (162) Panzyme, tablet, NDC 00377-0491: phenobarbital 8.10 mg;
 (163) Panzyme, tablet, NDC 00314-0310: phenobarbital 8.10 mg;
 (164) PB Phe-Bell, tablet, NDC 12908-7006: phenobarbital 16.20 mg;
 (165) Phedral C.T., tablet, NDC 00298-1173: phenobarbital 8.10 mg;
 (166) Phenerbel-S Tablets, tablet, NDC 00536-4234: phenobarbital 40 mg;
 (167) Phenobarbital, Ergotamine and Belladonna Tablets, tablet, NDC 00781-1701: phenobarbital 40 mg;
 (168) Phenobarbital and Hyoscyamine Sulfate, tablet, NDC 00764-2057: phenobarbital 16.20 mg;
 (169) Phrenilin, tablet, NDC 00086-0050: butalbital 50 mg;
 (170) Phrenilin Forte, capsule, NDC 00086-0056: butalbital 50 mg;
 (171) PMB-200, tablet, NDC 00046-0880: meprobamate 200 mg;
 (172) PMB-400, tablet, NDC 00046-0881: meprobamate 400 mg;
 (173) Private Formula No 3095, tablet, NDC 00252-3095: phenobarbital sodium 15 mg;
 (174) Pulsaphen, tablet, NDC 00377-0652: phenobarbital 15 mg;
 (175) Pulsaphen Gray, tablet, NDC 00917-0113: phenobarbital 15 mg;
 (176) Quadrinal Suspension, suspension, NDC 00044-4580: phenobarbital 2.40 mg/ml;
 (177) Quadrinal Tablets, tablet, NDC 00044-4520: phenobarbital 24 mg;
 (178) Quibron Plus Capsules, capsule, NDC 00087-0518: butabarbital 20 mg;
 (179) Quibron Plus Elixir, elixir, NDC 00087-0511: butabarbital 1.33 mg/ml;
 (180) Repan Capsules, capsule, NDC 00642-0163: butalbital 50 mg;
 (181) Repan Tablets, tablet, NDC 00642-0162: butalbital 50 mg;
 (182) Rexatal Tablets, tablet, NDC 00478-5477: phenobarbital 16.52 mg;
 (183) Rogesic Capsules, capsule, NDC 31190-0008: butalbital 50 mg;
 (184) Sangesic, tablet, NDC 00511-1627: butalbital 30 mg;
 (185) Sedapap-10 Tablets, tablet, NDC 00259-1278: butalbital 50 mg;
 (186) Sedapar Elixir, elixir, NDC 00349-4100: phenobarbital 3.24 mg/ml;
 (187) Sedapar Tablets, tablet, NDC 00349-2355: phenobarbital 16.20 mg;
 (188) Sedarex No 3, tablet, NDC 00144-1575: phenobarbital 16.20 mg;
 (189) Seds, tablet, NDC 00418-4072: phenobarbital 16.20 mg;
 (190) Soniphen, enteric coated tablet, NDC 0456-0429: phenobarbital 16 mg;
 (191) Spaslin, tablet, NDC 00165-0029: phenobarbital 16.20 mg;
 (192) Spasmalones, tablet, NDC 00653-0002: phenobarbital 16 mg;
 (193) Spasmolin, tablet, NDC 00115-4652: phenobarbital 15 mg;
 (194) Spastemms Elixir, elixir, NDC 00463-9023: phenobarbital 3.24 mg/ml;
 (195) Spastemms Tablets, tablet, NDC 0463-6181: phenobarbital 15 mg;
 (196) Spastolate, tablet, NDC 00814-7088: phenobarbital 16.20 mg;
 (197) Spastrin Tablets, tablet, NDC 54580-0124: phenobarbital 40 mg;
 (198) Susano, elixir, NDC 00879-0059: phenobarbital 3.24 mg/ml;
 (199) Susano, tablet, NDC 00879-0058: phenobarbital 16.20 mg;
 (200) Tedral SA, sustained release tablet, NDC 00071-0231: phenobarbital 25 mg;
 (201) Tencet, tablet, NDC 47649-0370: butalbital 50 mg;
 (202) Tencet Capsules, capsule, NDC 47649-0560: butalbital 50 mg;
 (203) T-E-P, tablet, NDC 00364-0266: phenobarbital 8.10 mg;
 (204) T.E.P., tablet, NDC 00157-0980: phenobarbital 8 mg;
 (205) Theodrine Tablets, tablet, NDC 00536-4648: phenobarbital 8 mg;
 (206) Theophen, tablet, NDC code 12634-0101: phenobarbital 8 mg;
 (207) Theophenyllin, tablet, NDC 00839-5111: phenobarbital 8 mg;
 (208) Theophylline Ephedrine and Phenobarbital, tablet, NDC 00143-1695: phenobarbital 8 mg;
 (209) Triad, tablet, NDC 00785-2306: butalbital 50 mg;
 (210) Triad Capsules, capsule, NDC 00785-2305: butalbital 50 mg;
 (211) Triaprin, capsule, NDC 00217-2811: butalbital 50 mg;
 (212) Truxaphen, tablet, NDC 00377-0541: phenobarbital 16.20 mg;
 (213) Two-Dyne Revised, tablet, NDC 00314-2229: butalbital 50 mg;
 (214) Wescophen-S, tablet, NDC 00917-0135: phenobarbital 30 mg;
 (215) Wescophen S-II, tablet, NDC 00377-0628: phenobarbital 30 mg;
 (216) Wesmatic Forte, tablet, NDC 00917-0845: phenobarbital 8 mg; and
 (217) Wesmatic Forte, tablet, NDC 00377-0426: phenobarbital 8.10 mg.

RICE C. LEACH, M.D., Commissioner
 JOHN H. MORSE, Secretary
 JOHN H. WALKER, Attorney
 APPROVED BY AGENCY: August 13, 1998
 FILED WITH LRC: August 14, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (As Amended at ARRS, December 8, 1998)

904 KAR 2:001. Definitions.

RELATES TO: KRS 194B.050, 205.710-205.800, 403.210-403.240, 405.440, 405.520, 407.5101-407.5902, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 42 USC 651 et seq., EO 98-731 [205.710-205.800, 403.210-403.240, 405.520, 407.010-407.480, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 406.021, 406.025, 15 USC 1673(b), 31 USC 7502, 42 USC 651 et seq., 1998 Ky. Acts ch. 426] [EO 96-862, PL 104-193]

STATUTORY AUTHORITY: KRS 194B.050, 205.710-205.800, 405.440, 405.520, 42 USC 651 et seq., EO 98-731 [194.050; 205.710-205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., 1998 Ky. Acts ch. 101, 255, 417, 426, EO 98-731]

[EO-96-862, PL-104-193]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 [194.050] provides that the Cabinet for Families and Children administer the Child Support Program (CSP). [~~is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.~~] This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support Enforcement Program.

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program are as follows:

(1) "Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by a noncustodial parent, or obligor.

(2) "Assignment of rights" means the written transfer of rights to any child support, any medical support, or spousal support [maintenance] obligation to the state.

(3) "Assigned support obligation" means any child support, spousal support, or medical support obligation assigned to the state.

(4) "Authority to collect" means the nonpublic assistance custodial parent's authorization for the Cabinet for Families and Children to collect child support, medical support, or spousal support [maintenance] owed on behalf of the family for whom the cabinet is providing child support services.

(5) "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming interstate request; and

(b) Responding to an inquiry received from another state regarding an interstate case.

(6) "Cold check" means insufficient funds for the check tendered, stop payment order on the check tendered or closed account.

(7) "CSP" means the Child Support Program. [~~"CSEP" means the Child Support Enforcement Program.~~]

(8) "Custodial parent" means either a mother or father of a dependent child who is living in the home with the child.

(9) "Default" means the noncustodial parent's, or obligor's, failure to return a financial statement or to keep an appointment, and the noncustodial parent's, or obligor's, income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.

(10) "Dispute hearing" means the process whereby a parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(11) "Distribution" means either a disbursement of a collection to the family or an allotment of various portions of the collection to the state and federal government for the reimbursement of the share of the K-TAP assistance payment to the family, or money expended for a child in the custody of the state, [~~foster care.~~]

(12) "Escrow" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.

(13) "Excess collections" means the amount of the collection which exceeds the monthly obligation amount.

(14) "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support as described in KRS 205.710(10), (11), (15) and 403.212(2). [1998 Ky. Acts ch. 255, sec. 4 and 20.]

(15) "Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence or a state in which a proceeding is filed for forwarding to a responding state.

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

(a) Death, continued voluntary or involuntary absence, physical or

mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

(17) "Location" means the determination of a parent's location, income, assets, property or debt as provided by KRS 205.730(5). [1998 Ky. Acts ch. 255, sec. 8.]

(18) "Long-arm statutory authority" means a state statute which provides for state jurisdiction over a nonresident.

[~~(16) "Maintenance" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.~~]

(19) "Noncustodial parent, or obligor" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.

(20) "Notice of monthly support obligation" means an administrative order issued by the cabinet as specified in KRS 405.440 notifying the noncustodial parent, or obligor, of the child support and medical support obligation and of the noncustodial parent's, or obligor's right to request a hearing.

(21) "Nonparental custodian" means:

(a) An adult who has been court appointed as the custodian of a minor child and is living in the home with the child; or

(b) Any other person or entity that may have standing to request services on behalf of a child.

(22) "Obligor" means that individual who is ordered to pay child support, spousal support, medical support, or health care coverage.

(23) "Offset" means to set aside federal or state, or both, income tax refunds or nonexempt federal payments due a noncustodial parent, or obligor, as a means of collecting past-due child support.

(24) "Order and notice to withhold income for child support [earnings]" means an administrative order issued by the cabinet, or a judicial order to an obligor's employer to withhold an amount equal to the current obligation plus an amount to be applied toward liquidation of any arrearage, and when applicable, the employee-paid share of the cost of health insurance coverage for a dependent child.

(25) "Preoffset notice" means a letter notifying a noncustodial parent, or obligor, [an absent parent] who owes an arrearage that the arrearage has been certified for state and federal tax refund intercept, [~~or~~] state tax refund intercept only, passport denial or revocation, administrative offset of nonexempt federal payments, offset of lottery winnings, and to certified consumer credit reporting agencies.

(26) "Postreview challenge period" means the thirty (30) days following the date of the notice of adjustment or the notice of no change following the review for modification of the child support order.

(27) "Public assistance" means the receipt of K-TAP, including child care or work subsidies and vouchers; Medicaid; or foster care benefits.

(28) "Responding state" means the state that is managing the child support case received from an initiating state or a state to which a proceeding is forwarded for filing.

(29) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children of that individual, even if child support is not part of the order.

(30) "Unassigned arrearage" means any arrearage that accrues that is not assigned to the Cabinet for Families and Children.

[~~(31) "Voluntary acknowledgement of paternity forms" are the forms [is the form] by which a mother and putative father voluntarily agree to the parentage of a child as specified by 1998 Ky. Acts ch. 255, KRS 213.046, 405.430, 406.021 and 406.025.~~]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

904 KAR 2:018. Transportation services for Kentucky Works.

RELATES TO: KRS 205.200(2), 205.211, 42 USC 601 et seq.
 STATUTORY AUTHORITY: KRS 194B.050 [~~194.050(+)~~], 205.200(2), 42 USC 601 et seq., 96A.095, 281.600, 49 USC Ch. 53, [~~1998 Ky. Acts ch. 100, ch. 426;~~] EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive K-TAP money grants be prescribed by administrative regulations in conformity with 42 USC 602 et seq. and federal regulations. This administrative regulation sets forth the requirements for receiving Kentucky Works transportation services.

Section 1. Definitions. (1) "Approved Kentucky Works activities" means participation in an allowable activity pursuant to 904 KAR 2:370, Section 2(2)(c).

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

(3) "Component" means services and activities pursuant to 904 KAR 2:370, Section 2(2)(c).

(4) "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 904 KAR 2:370, and referrals for removal of concerns takes place.

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

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

(7) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(8) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(9) "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the K-TAP case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and

(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The Kentucky Works participant elects to continue the approved component activity in which he is engaged at the time of discontinuance.

Section 2. Transportation Services in Kentucky Works Components. Transportation services shall be provided in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation while the K-TAP case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 3. Transportation Authorization. (1) If free transportation is unavailable which meets the needs of the recipient, transportation shall be provided for individuals participating in approved Kentucky Works activities:

(a) Pursuant to 904 KAR 2:017; or

(b) Initially in limited areas until statewide implementation is completed pursuant to Section 2 of this administrative regulation and 603 KAR 7:080.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation services shall

be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 4. Restrictions on Authorization of Transportation Services. Transportation services shall not be provided if the participant is penalized or sanctioned for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 5. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Attorney

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 27, 1998

FILED WITH LRC: September 3, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

904 KAR 2:020. Child Support [Enforcement] Program: confidentiality, program administration contracts, and [cooperative] agreements.

RELATES TO: KRS 194B.050, 205.175, 205.710-205.800, 205.990(1), (2), (4), (5), 405.520, 406.035, 45 CFR 302.34, 303.21, 303.105, 303.107, 31 USC 7502, 42 USC 651 et seq., EO 98-731 [~~205.712, 205.800, 45 CFR 303.21, 303.105, 303.107, 302.34~~]

STATUTORY AUTHORITY: KRS 194B.050, 205.175, 205.710-205.800, 405.520, 406.035, 42 USC 651 et seq., EO 98-731 [~~194.050, 205.710 to 205.800, 205.990, 405.520, 406.035, 42 USC 651 et seq., 1998 Ky. Acts ch. 255, 426, EO 98-731~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.710 to 205.800 provide that the Cabinet for Families and Children [Human Resources shall] administer the Child Support [Enforcement] Program (CSP). [GSEP] in accordance with KRS 205.710 to 205.800. The cabinet shall make efforts to establish paternity and secure support from parents of children receiving public assistance as a result of desertion, abandonment, birth out of wedlock, and for other children on application. KRS 205.795 and 405.520 empower the secretary to adopt administrative regulations pertaining to the administration of the GSEP.] This administrative regulation specifies the procedures for safeguarding information and entering into cooperative agreements.

Section 1. Safeguarding Information. (1) If [When] the cabinet determines there is reasonable cause to believe evidence of domestic violence or child abuse, records shall not be open or published.

(2) The use or disclosure of information concerning an applicant or recipient of CSP services [GSEP] shall be limited to:

(a) [(+)] The administration of the CSP [GSEP] or other federal or federally assisted program which provides assistance or services directly to individuals on the basis of need; or

(b) [(2)] An investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of a program specified in subsection (1) of this section.

Section 2. Program Administration Contracts. [Cooperative Agreements:] (1) As permitted by KRS 205.712(4) to [and] 205.800, a program administration contract [contracts] [cooperative agreements] initiated by the cabinet with local officials shall:

(a) Contain a clear description of specific duties, functions and responsibilities of each party in administration of the CSP [GSEP];

(b) Specify clear and definite standards which meet federal requirements;

- (c) Specify financial reimbursement arrangements including:
1. Budget estimate;
 2. Covered expenditures;
 3. Methods of determining costs; and
 4. Billing procedures for the child support agency;
- (d) Specify record maintenance and format requirements;
- (e) Contain appropriate reporting requirements;
- (f) Contain the requirements for compliance with 31 USC 7502;
- (g) Provide the beginning and end dates of the program administration contract, cooperative agreement, review or renewal provisions, and termination circumstances; and
- (h) Provide audit criteria.
- (2) If an official contracts [When officials contract] [enter into an agreement] with the cabinet, reimbursement for child support activities shall be provided when billing is submitted in accordance with procedures:
- (a) Established by the cabinet; and
 - (b) Specified in the contract [cooperative agreement].
- (3) The official [officials] shall provide the cabinet in timely fashion statistical information concerning CSP [GSEP] activities as prescribed by the cabinet and specified in the contract [cooperative agreement].
- (4) If no contract [agreement] is executed, a referral [referrals] for child support activities may be made to local law enforcement officials in accordance with the officials' [officials'] statutory obligations, but the officials shall not be eligible for reimbursement as specified in subsection (2) of this section.

Section 3. An Agreement With a Financial Institution. [Agreements with Financial Institutions.] The cabinet shall enter into agreements with financial institutions pursuant to KRS 205.712(14), 205.772 and 205.774. [1998 Ky. Acts ch. 255, sec. 6.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

904 KAR 2:380. Child Support [Enforcement] Program application process.

RELATES TO: KRS 194B.050, 205.705, 205.710-205.800, 205.992, [407.010 to 407.480], 213.046(4), 405.430(5), 405.520, 406.021, 406.025, 407.5101-407.5902, 45 CFR 302.31, 302.33-302.36, 302.50, 302.65, 302.80, 303.2, 303.3-303.15, 303.30-303.31, 303.70, 42 USC 651 et seq., EO 98-731

STATUTORY AUTHORITY: KRS 194B.050, 205.705, 205.710-205.800, 405.520, 42 USC 651 et seq., EO 98-731 [Chapter 13B, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., 1998 Ky. Acts ch. 101, 255, 426, EO 98-731] [EO 96-862, PL 104-193]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. [for Families and Children shall administer the Child Support Enforcement Program in accordance with KRS 205.710 to 205.800.] KRS 205.795 and 405.520 provide that the secretary shall develop administrative regulations to operate the CSP [GSEP] in accordance with federal law and regulations. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation specifies the process by which an individual may apply for child support services and the scope of services available.

Section 1. Kentucky Transitional Assistance Program (K-TAP)

Process for Child Support Services. (1) As a condition of eligibility for assistance, each applicant for, or recipient of K-TAP shall make an assignment of rights to the state for support that the applicant or recipient may have from any other person in accordance with KRS 205.720(1). [1998 Ky. Acts ch. 255, sec. 6.]

(a) The assignment shall include all members of the case for whom support rights apply.

(b) The assignment shall be completed at the time of application for K-TAP benefits.

(2) A client shall cooperate in all phases of child support activity if his needs are included in a K-TAP case, as specified in 904 KAR 2:006, Section 16.

(3) If the client states that "good cause" for noncooperation exists, he shall have the opportunity to establish his claim according to criteria contained in 904 KAR 2:006, Section 16.

(4) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence in accordance with KRS 205.730(1). [1998 Ky. Acts ch. 255, sec. 8.]

(5) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a referral from the public assistance agency.

(6) [(5)] Services provided to a K-TAP recipient through the Child Support [Enforcement] Program shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity based upon the receipt of either:

1. A court order; or

2. An affidavit [notice] from the Office of Vital Statistics that a signed, notarized voluntary acknowledgement of paternity has been registered;

(c) Establishment of child support and medical support obligations;

(d) Review and modification of child support and medical support orders when appropriate;

(e) Enforcement of child support, medical support, and spousal support [maintenance] obligations; and

(f) Collection and distribution of:

1. Child support amounts; and

2. Medical support amounts; and

3. Spousal support [Maintenance] if the client is the spouse or ex-spouse.

Section 2. Foster Care Process for Child Support Services. (1) The child support agency shall collect and disburse [distribute] child support on behalf of children for whom:

(a) The state is making foster care maintenance payments as required by 42 USC 657; and

(b) An assignment of rights has been made.

(2) The [Department for Social Services] worker with responsibility for the foster care child shall:

(a) Cooperate with the child support agency;

(b) Complete and forward the foster care child support referral;

(c) Complete and forward the foster care child support change of status form when changes occur which relate to the child support process; and

(d) Forward copies of court documents pertaining to the child support process.

(3) Good cause for nonenforcement of child support for a foster care child [recipient] exists if [when] criteria contained in 904 KAR 2:006, Section 16 are met.

(4) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(5) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence in accordance with KRS 205.730(1). [1998 Ky. Acts ch. 255, sec. 6.]

(6) The child support agency shall open a case and determine needed action within twenty (20) calendar days of receipt of a foster care referral [from the Department for Social Services].

(7) [(6)] Services available to a foster care recipient shall include:

(a) Location of the noncustodial parent, or obligor;

(b) Establishment of paternity;

(c) Establishment of child support and [or] medical support obligations;

- (d) Enforcement of child support and medical support obligations;
- (e) Review and modification of child support and [or] medical support orders when appropriate; and
- (f) Collection and disbursement to the social services agency for distribution of child support payments.

Section 3. Medicaid Only Process for Child Support Services. (1) If [When] a public assistance referral is received, the child support agency shall obtain the following information:

- (a) The Medicaid case number;
- (b) The name of the noncustodial parent, or obligor;
- (c) The Social Security number of the noncustodial parent, or obligor;
- (d) The name and Social Security number of the child;
- (e) The home address of the noncustodial parent, or obligor; and
- (f) The name and address of the noncustodial parent's, or obligor's, place of employment.

(2) An application for Medicaid shall include an assignment of rights for medical support, as specified in 907 KAR 1:011, Section 9 [8].

(3) Except for a custodial parent who is pregnant or in her post partum period as specified in 907 KAR 1:011, Section 10 [9], a custodial parent shall cooperate in all phases of medical support activity if his needs are included in a Medicaid case.

(4) If the Medicaid client states that "good cause" for noncooperation exists, he shall have the opportunity to establish the claim according to criteria contained in 904 KAR 2:006, Section 16.

(5) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(6) The child support agency shall not attempt location, establishment, modification or enforcement if it has reason to believe allegations of child abuse or domestic violence in accordance with KRS 205.730(1). [1998 Ky. Acts ch. 255, sec. 8.]

(7) The child support agency shall open a case and determine needed action within twenty (20) calendar days of the receipt of a referral from a public assistance agency.

(8) [(7)] Services available to Medicaid only clients shall include:

- (a) Location of the noncustodial parent, or obligor [absent parent];
- (b) Establishment of paternity;
- (c) Establishment of medical support obligations;
- (d) Enforcement of medical support obligations;
- (e) Review and modification of medical support aspects of support obligations when appropriate;
- (f) Application for health insurance coverage through an employer for the child if court or administratively ordered but not acquired by either parent;
- (g) Collection and disbursement of medical support payments if ordered.

Section 4. Services to an Individual not Receiving K-TAP. (1) Child support services shall be made available to any individual who:

- (a) Assigns rights for medical support only; or
- (b) Files a nonpublic assistance application for services with the child support agency; or
- (c) Is a Medicaid only client who requests and gives consent for child support services in addition to medical support; or
- (d) Has been receiving child support services as a public assistance recipient and is no longer eligible for public assistance; or
- (e) Is receiving Medicaid only nonfoster care services.

(2) Notification shall be made within five (5) working days to the family no longer eligible for public assistance that services shall continue unless the child support agency is notified to the contrary by the family.

Section 5. Application Process for a Nonpublic Assistance Individual. (1) Upon the request of a nonpublic assistance applicant, an application packet shall be given to the applicant.

- (a) If the request is made in person, the packet shall be provided the same day.
- (b) If the request is made by telephone or mail, the packet shall be sent to the applicant within five (5) working days of the request.
- (2) The application packet shall include:
 - (a) Nonpublic assistance application form;

(b) Nonpublic assistance services fact sheet;

(c) Civil rights information pamphlet.

(3) The applicant shall be required to complete and return a notarized authorization and acknowledgment of no representation form.

(4) Medical support services shall be provided with the consent of a nonpublic assistance client. If [When] a nonpublic assistance child support application is provided to an individual requesting child support services, the child support agency shall:

(a) Inform the client that medical support establishment and enforcement are [is] available; and

(b) Obtain the following information:

- 1. The name of the noncustodial parent, or obligor;
- 2. The name and Social Security number of the noncustodial parent, or obligor;
- 3. The Social Security number of the child;
- 4. The home address of the noncustodial parent, or obligor; and
- 5. The name and address of the noncustodial parent's, or obligor's, place of employment.

(5) If enforcement becomes necessary and a lien is to be filed in order to collect past due support, the child support agency shall take an assignment of support rights and authority to collect from an individual receiving nonpublic assistance child support services as prescribed by KRS 205.720(1).

(6) The child support agency shall open a case within twenty (20) calendar days of receipt of a nonpublic assistance application.

(7) The nonpublic assistance application fee shall be a flat one (1) dollar fee. The CSP shall absorb the cost of the fee. [may not exceed twenty-five (25) dollars and shall be determined by an income fee scale.

(a) The income fee scale shall be based on the previous year's net income.

(b) If the previous year's net income is unknown, the fee shall be based on an estimate of the previous year's net income.

(c) The following fees shall be charged for services other than location only:

Yearly Net Income	Fee
\$0 to 2,000	\$5.00
2,001 to 3,000	8.00
3,001 to 4,000	10.00
4,001 to 5,000	13.00
5,001 to 6,000	15.00
6,001 to 7,000	18.00
7,001 to 8,000	20.00
8,001 to 9,000	23.00
9,001 and above	25.00

Section 6. Parent Locator Service and Associated Fee for Service.

(1) For all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, the child support agency shall attempt to locate a noncustodial parent, or obligor, or a noncustodial parent's, or obligor's sources of income, [and] assets, property and debt If [when] location is necessary to take the next appropriate action. Location shall be attempted for all public assistance cases referred to the child support agency or nonpublic assistance cases for which child support services are being provided, unless the cabinet has reason to believe allegations of child abuse or domestic violence as defined in 904 KAR 2:006 and in accordance with KRS 205.730(1). [1998 Ky. Acts ch. 255, sec. 8.]

(2) Location services may be provided upon application by a noncustodial parent as described in KRS 205.730(2), (4).

(3) Upon the request of a putative father, location services shall not be provided unless requested for the purpose of establishing paternity pursuant to KRS 205.730(2), (4). [upon the request of a putative father only for the purpose of establishing paternity pursuant to 1998 Ky. Acts ch. 255, sec. 8.]

(4) Location services shall be provided in a parental kidnapping case [cases] to enforce state and federal law [laws] and to make or enforce a child custody or visitation order as required by KRS 205.730(4). [1998 Ky. Acts ch. 255, sec. 8.]

(5) For a nonpublic assistance case in which location is the only service requested, a one (1) dollar application [ten (10) dollar nonre-

fundable] fee shall be charged. For a parental kidnapping request [requests], a one (1) dollar application [twenty (20) dollar nonrefundable] fee shall be charged. The CSP shall absorb the cost of these application fees.

Section 7. Interstate Process for Child Support Services. (1) The child support agency shall extend to an interstate child support case [cases] the same services available to an intrastate case [cases]. These services shall include:

- (a) Location of the noncustodial parent, or obligor;
- (b) Location of the custodial parent for establishment of paternity;
- (c) Establishment of paternity;
- (d) Establishment of a child support obligation for:
 - 1. A K-TAP or foster case;
 - 2. A Medicaid only case with the consent of the recipient; and
 - 3. A nonpublic assistance case.
- (e) Establishment of medical support obligation for:
 - 1. An public assistance case; or
 - 2. A nonpublic assistance case with the consent of the applicant.
- (f) Enforcement of support orders;
- (g) Review and modification of child support or medical support orders, or both, if appropriate; and
- (h) Collection and distribution of current and past due support payments.

(2) To enforce child support laws between states the child support agency shall:

- (a) Receive, distribute, and monitor all incoming interstate cases and apprise other states of changes in interstate cases; and
- (b) Establish an interstate central registry responsible for:
 - 1. Receiving, processing and distributing incoming interstate requests; and
 - 2. Responding to inquiries received from other states on interstate cases.

(c) Issue an administrative subpoena, pursuant to KRS 205.712(2)(k) and 405 KAR 430(10), to any individual or entity to secure information needed to establish, modify or enforce a support obligation. [Issuing administrative subpoenas to any individual or entity to secure information needed to establish, modify or enforce a support obligation pursuant to 1998 Ky. Acts ch. 255, sec. 5 and 22.]

(3) Within ten (10) working days of receipt of an interstate case, the central registry shall:

- (a) Ensure review of submitted documentation for completeness;
- (b) Forward the case to the appropriate functional unit for case processing;
- (c) Acknowledge receipt of the case and request missing documentation from the initiating state, if needed; AND
- (d) Inform the initiating state of where the case has been forwarded for action.

(4) If case documentation is inadequate, the case shall be forwarded for any necessary action pending additional information from the initiating state.

(5) The central registry shall respond to other state inquiries within five (5) working days of receipt of request.

(6) The initiating agency state shall:

(a) Use long-arm statutory authority to establish paternity and child support if statutory authority exists;

(b) Within twenty (20) calendar days of determining that the non-custodial parent, or obligor, is in another state, forward any necessary information and the case to the responding state's central registry for action.

(c) Provide the agency in the responding state sufficient and accurate information and documentation and the Interstate Child Support Enforcement Transmittal Form.

(d) Provide the child support agency or central registry in the responding state with any additional requested information or notify the responding state when the information will be provided within thirty (30) calendar days of receipt of the request.

(e) Notify the agency in the responding state within ten (10) working days of receipt of new information by submitting updated forms or additional information.

(f) Send a request for a review of a child support order to another state within twenty (20) calendar days of determining that a request for review of the order is needed.

(7) The responding state agency shall establish and use caseload procedures which ensure provision of necessary services including maintenance of case records. The agency shall periodically review program performance on interstate cases to evaluate the effectiveness of responding state procedures.

(8) The state shall ensure that the organizational structure and agency staff are adequate to provide administration and supervision to provide the following functions:

- (a) Intake;
- (b) Establishment of paternity;
- (c) Establishment of a child support obligation or [and] medical support obligation, or both;
- (d) Location;
- (e) Collection of current and past due child support, medical support, and spousal support [maintenance] payments;
- (f) Certification for [federal or] state tax refund intercept, when requested by the initiating state [or both];
- (g) Monitoring;
- (h) Enforcement of child support obligations, medical support obligations, and spousal support obligations [maintenance]; and
- (i) Review and modification of child support and medical support obligations.

(9) Within seventy-five (75) calendar days of receipt of interstate forms and documentation, a responding state shall:

(a) Provide location services if requested or if the documentation does not include adequate location information [and documentation is adequate]; or

(b) If documentation is inadequate:

- 1. Notify the initiating state of necessary additions or corrections; and
- 2. Process the interstate case to the extent possible pending initiating state action;

(c) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different jurisdiction within the state, the agency shall forward appropriate forms and documentation to that jurisdiction and notify the initiating state and the central registry of its action.

(d) Within ten (10) working days of locating a noncustodial parent, or obligor, in a different state, the agency shall return the forms [work] and documentation to the initiating state's central registry, or, at the direction of the initiating state, forward forms and documentation to the central registry of the state where the noncustodial parent, or obligor, [absent parent] has been located. The initial responding state's central registry shall be notified where the case has been sent.

(e) The responding state shall provide any necessary services as it would in an intrastate case by:

- 1. Establishing paternity and obtaining judgment for prenatal costs, birthing expenses, and genetic tests upon establishment;
- 2. Establishing a child support obligation or medical support obligation, or both;

3. Reviewing cases for possible modification;

4. Processing and enforcing orders referred by another state;

5. Collecting and monitoring any support payment from a non-custodial parent, or obligor and forwarding collections to a location specified by the initiating state not later than fifteen (15) calendar days from the initial date of receipt;

6. Providing sufficient identifying information to identify the case and date of collection or identify that the payment was made through state income tax refund offset and include the responding state's identifying code;

7. Providing timely notice to the initiating state in advance of formal hearings to establish or adjust a child support order;

8. Notifying the initiating state within ten (10) working days of receipt of new information; and

9. Notifying the interstate central registry in the responding [initiating] state when a case is closed.

(10) The child support agency in the responding state shall pay the costs it incurred in processing state agency interstate cases. However, the child support agency of the initiating state shall pay the costs of genetic testing to establish paternity.

(a) If the responding state is successful in establishing paternity, that state's child support agency shall attempt to obtain a judgment for the cost of genetic tests from the party who denied paternity.

(b) [Recompement of these costs may also be shared by each party]

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as long as the total amount recouped does not exceed the actual costs of the genetic tests.

(e) If costs are recovered, the responding state shall reimburse the initiating state.

(c) [(d)] The responding state shall identify fees and costs deducted from support payments when forwarding payments to the initiating state.

Section 8. Public Awareness. The child support agency shall publicize the availability of its services and encourage their use pursuant to KRS 205.712(2)(g) [1998 Ky. Acts ch. 255, sec. 5]. These efforts may include public service announcements, posters, press releases, videos, annual reports, newsletters, mail inserts, pamphlets and letters.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) KIM-100 Supplement PP, (12/96 edition), Cabinet for Families and Children; [KA-125, (11/96 Edition), Cabinet for Families and Children;]

(b) [KA-125 Supplement A, (11/96 Edition), Cabinet for Families and Children;

(c) KA-125 Supplement B, (11/96 Edition), Cabinet for Families and Children;

(d) KA-125 Supplement C, (11/96 Edition), Cabinet for Families and Children;

(e) PA-121, (8/97 Edition), Cabinet for Families and Children;

(c) [(f)] CS-11 "Authorization and Acknowledgment of No Legal Representation", (10/98 Edition), Cabinet for Families and Children;

(d) [(g)] CS-33 "Non-K-TAP Application", (2/97 Edition), Cabinet for Families and Children;

(e) [(h)] CS-37 "Non-K-TAP IV-D Services Fact Sheet", (10/98 Edition), Cabinet for Families and Children;

(f) [(i)] DSS-1260 "Title IV-E and Child Support Referral", (11/96 Edition), Cabinet for Families and Children;

(g) [(j)] DSS-1263 "Title IV-E and Child Support Change of Status", (11/96 Edition), Cabinet for Families and Children;

(h) [(k)] CS-65 "Statement of Income and Resources", (10/98 Edition), Cabinet for Families and Children;

(i) [(l)] CS-98 "General Testimony", (5/98 Edition), Cabinet for Families and Children;

(j) [(m)] CS-100 "Uniform Support Petition", (5/98 Edition), Cabinet for Families and Children;

(k) [(n)] CS-103 "Child Support Enforcement Transmittal #1 - Initial Request", (5/98 Edition), Cabinet for Families and Children;

(l) [(o)] CS-109 "Custodial Parent Termination Affidavit", 2/97 Edition, Cabinet for Families and Children;

(p) CS-136 "Health Insurance Information Request", (2/97 Edition), Cabinet for Families and Children; and

(m) [(q)] CS-140 "Assignment of Rights and Authorization to Collect Support", (10/96 Edition), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Forms necessary to establish a child support or medical support case through the Division of Child Support Enforcement are incorporated effective March 15, 1995. These forms include:

(a) KA-125, revised 11/96;

(b) KA-125 Supplement A, revised 11/96;

(c) KA-125 Supplement B, revised 11/96;

(d) KA-125 Supplement C, revised 11/96;

(e) PA-121, revised 12/96;

(f) CS-11, revised 12/96;

(g) CS-33, revised 2/97;

(h) CS-37, revised 2/97;

(i) DSS-1260, revised 11/96;

(j) DSS-1263, revised 11/96;

(k) CS-65-65.1, revised 2/97;

(l) CS-98, revised 2/97;

(m) CS-100, revised 2/97;

(n) CS-103, revised 2/97;

(o) CS-109, revised 2/97;

(p) DS-136, revised 10/96;

(q) CS-140, revised 10/96.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN Department for Community Based Services Division of Policy Development (As Amended at ARRS, December 8, 1998)

904 KAR 2:390. Child Support [Enforcement] Program paternity establishment.

RELATES TO: KRS 186.570(2), 194B.050, 205.710-205.800, 213.046(4), (5), (9), (10), 237.110(4), 405.430, 405.520, 406.011, 406.021, 406.025, 406.180, [406.011 to 406.180], 45 CFR 302.31, 302.33, 303.5, 42 USC 651 et seq., EO 98-731

STATUTORY AUTHORITY: KRS 186.570(2), 194B.050, 205.710-205.800, 213.046(4), (5), (9), (10), 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., EO 98-731 [194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 42 USC 651 et seq., 1998 Ky. Acts ch. 101, 255, 417, 426, EO 98-731] [EO 96-862, PL 104-193]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support [Enforcement] Program in accordance with KRS 205.710 to 205.800. [The agency shall establish paternity when necessary to secure support for a child. KRS 205.795 provides that the secretary shall develop administrative regulations to operate the CSEP in accordance with federal regulations. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation specifies the requirements of the agency in the establishment of paternity.

Section 1. Requirement for Paternity Establishment. The cabinet [child support agency] shall bring action, as specified in KRS 406.21(1) and (3) if:

(1) The child is born out of wedlock; and

(2) An assignment of rights to the cabinet [child support agency] is in effect or an individual not receiving public assistance applies for child support services including paternity establishment.

Section 2. Cabinet [Agency] Action. (1) A case requiring paternity action shall be opened upon receipt of:

(a) A public assistance case referral; or

(b) A nonpublic assistance application, in accordance with KRS 205.721.

(2) The cabinet [agency] shall open a case pending determination of good cause.

(a) If "good cause" for failure to cooperate is determined, the child support case shall be closed;

(b) Good cause may be found to exist if criteria contained in 904 KAR 2:006, Section 16(4) are met.

(c) Evidence for determination of good cause shall be as specified in 904 KAR 2:006, Section 16(5).

(3) For all cases referred to the cabinet [child support agency] in which paternity has not yet been established, the cabinet shall [agency], within ninety (90) days of locating the alleged father or custodial parent or successful service of process, whichever occurs later [shall]:

(a) Obtain a voluntary acknowledgment of paternity as specified by KRS 213.036(5) and 213.046(3), (9); [1998 Ky. Acts ch. 255, sec. 13-15;]

(b) File for establishment of paternity [child support, and, if neces-

sary; paternity];

(c) [(b)] Complete service of process to establish paternity; or

(d) [(e)] Document unsuccessful attempts to serve process, whichever occurs later.

(4) Paternity shall be established or the putative father excluded as a result of genetic tests or legal process within one (1) year of:

(a) Successful service of process; or

(b) The child reaching the age of six (6) months[; or

(c) The signature date of the Voluntary Acknowledgement of Paternity Form as specified by KRS 213.046, 406.021 and 406.025].

(5) The voluntary acknowledgment of paternity may be rescinded in accordance with 901 KAR 5:070, Form VS-8, Form VS-8B, and Form VS-8C. [provisions of 1998 Ky. Acts ch. 255, sec. 26.]

(6) [Bills for testing, pregnancy, and childbirth shall be considered as evidence without requiring third-party testimony pursuant to 1998 Ky. Acts ch. 255, sec. 26;

(7)] [Upon order by a court of competent jurisdiction,] The cabinet [child support agency] shall recover from an alleged [a] noncustodial parent, or obligor, a reasonable fee for performing genetic tests pursuant to KRS 205.712(2)(h). [1998 Ky. Acts ch. 255, sec. 5.]

(7) [(8)] The cabinet shall request denial, suspension or revocation of a license or certification [licenses or certifications] for failure to comply with a subpoena or warrant relating to paternity pursuant to KRS 186.570(2) and 237.110(4). [1998 Ky. Acts ch. 255, sec. 5, and ch. 417, sec. 1.]

Section 3. Incorporation by Reference. [Identification of Laboratories which perform Genetic Tests. (1) The child support agency shall identify laboratories which perform legally and medically acceptable genetic tests which tend to include or exclude an alleged father in paternity proceedings.

(2) The child support agency shall provide a list of laboratories identified in subsection (1) of this section upon request to:

(a) Courts;

(b) Law enforcement officials; and

(c) The general public.

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

(a) Form CS-99.1-99.2-99.3 "Paternity Affidavit", (5/98 Edition), Cabinet for Families and Children; and

(b) Form CS-77 "Administrative Order for Genetic Testing", (10/98 Edition), Cabinet for Families and Children. [The form necessary for interstate paternity establishment services provided through the Division of Child Support [Enforcement] is incorporated. This form is the CS-99.1, -99.2, -99.3, (5/98 Edition) [revised February 1997].]

(2) This material [form] may be inspected, [and] copied or obtained at the Department for Community Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 13B.170, 194B.050, 205.710-205.800, 205.7685, 205.990, 213.046(4), (9), 403.210-403.240, 405.430, 405.440, 405.450, 405.520, 406.021, 406.025, 454.220, 45 CFR 302.50, 302.56, 303.4, 303.8, 303.31, 42 USC 651 et seq., EO 98-731 [205.710 to 205.800, 403.210 to 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31]

STATUTORY AUTHORITY: KRS 13B.170, 194B.050 [194.050], 205.710 - 205.800, 205.7685, [213.046,] 405.430, 405.520, 406.021, [406.025,] 42 USC 651 et seq., [1998 Ky. Acts ch. 255, 417, 426,] EO 98-731 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support [Enforcement] Program in accordance with the provisions of KRS 205.710 to 205.800. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] This administrative regulation specifies the requirements for the establishment, review, and modification of child support and medical support orders.

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established by:

(a) A court of competent jurisdiction ~~[as determined by 1998 Ky. Acts ch. 417];~~ or

(b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)[(a)] of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212, as computed on Form CS-71, [Commonwealth of Kentucky] Worksheet for Monthly Child Support Obligation, for a child support obligation administratively established by the cabinet [child support agency staff].

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For a public assistance case and a nonpublic assistance case [all public assistance cases and [referred to the child support agency, or] for those nonpublic assistance cases] for which child support services are being provided, the cabinet [agency] shall use state statute and legal process in establishing a child support and medical support obligation, including KRS 405.430 and 454.220.

(5) In addition to the deductions as specified in KRS 403.212(2), an administratively or judicially imputed child support obligation shall be determined by:

(a) 100 percent of the income of the parent with whom the child resides, if [when]:

1. There is no support order; or

2. There is a support order but there is no support obligation worksheet; or

3. A worksheet cannot be obtained; or

(b) That parent's portion of the total support obligation as indicated on the worksheet, if [when]:

1. There is a support order; and

2. A copy of the child support obligation worksheet can be obtained.

(6) Within ninety (90) calendar days of locating a noncustodial parent, or obligor, the cabinet [child support agency] shall:

(a) Complete service of process; or

(b) Document unsuccessful attempts to serve process.

(7) If [When] service of process has been completed, the cabinet [child support agency] shall, if necessary:

(a) Establish a child support obligation; [or]

(b) Establish paternity; or

(c) Send a copy of any legal proceedings to the parties within fourteen (14) days of issuance.

(8) If a court or administrative authority dismisses a petition for support without prejudice, the cabinet [agency] shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support obligation or [and] medical support obligation, or both if [when]:

(a) Paternity is not in question;

(b) There is no existing order of support for the child;

(c) The noncustodial parent, or obligor, [parent] resides or is employed in Kentucky; and

(d) The noncustodial parent's, or obligor's, address is known.

(2) The cabinet shall determine the monthly support obligation in

accordance with the Kentucky child support guideline as contained in KRS 403.212, or subsection (4) of this section.

(3) To gather necessary information for administrative establishment, the cabinet shall:

- (a) Send to the custodial parent:
 1. A financial questionnaire;
 2. A child care expense questionnaire; and
 3. A medical support verification request.
- (b) Send to the nonparental custodian:
 1. A nonparental custodian information request; and
 2. A medical support verification request, if appropriate.
- (c) Send to the noncustodial parent, or obligor:
 1. An appointment letter;
 2. A financial questionnaire;
 3. A child care expense questionnaire; and
 4. A medical support verification request.

(d) Send to the employer of the custodial parent, the nonparental custodian, or the noncustodial parent, or obligor, or both if both [all if all] are employed, a wage information request.

(e) Issue an administrative subpoena to utility and cable companies; financial institutions; the custodial parent; the nonparental custodian; the noncustodial parent, or obligor; or the employer, pursuant to KRS 205.712(2)(k), (l), (n). [1998 Ky. Acts ch. 255, sec. 5.]

(f) If [When] appropriate, request information from a certified consumer reporting agency as prescribed in KRS 205.7685. An obligor may contest a mistake of fact up to ten (10) days after receiving advance notice of the cabinet's request for a full credit report. [1998 Ky. Acts ch. 255, sec. 11.]

(4) In a default case, the cabinet shall set the obligation based on the K-TAP standard of need for the child or children as specified in 904 KAR 2:016, Section 8(2).

(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guideline.

(6) After the monthly support obligation has been determined, the cabinet shall:

(a) Serve the notice of monthly support obligation upon the non-custodial parent, or obligor, in accordance with KRS 405.440; and

(b) Provide the other concerned parties with a copy of the notice within fourteen (14) days of the noncustodial parent's, or obligor's, refusal or acceptance of the notice [pursuant to 1998 Ky. Acts ch. 255, sec. 5].

(7) In accordance with KRS 405.430(3), the cabinet may modify the monthly support obligation established by the cabinet.

(8) The cabinet shall not administratively modify any obligation which was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The cabinet [child support agency] shall have a written and publicly available review and adjustment plan for child support orders.

(2) The cabinet may review and adjust a child support obligation:

(a) Upon the request of the cabinet in public assistance cases;

or

(b) Upon the request of either parent, [child support agency shall review all public assistance cases which are thirty-six (36) months old or older. Subsequent reviews shall occur at thirty-six (36) month intervals based on the date:

- (a) The order was adjudicated;
- (b) It was determined the order should not be adjusted; or
- (c) Upon which the post review challenge period ended.]

(3) A public assistance and nonpublic assistance case [All public assistance and nonpublic assistance cases] shall be reviewed at the request of either parent, nonparental custodian, or another [any other] person or entity that may have standing to request a modification subject to the child support order.

(4) Every thirty-six (36) months, the cabinet [child support agency] shall notify each parent subject to an order of the right to request a review [every thirty-six (36) months].

(5) Within fifteen (15) calendar days of receipt of a review request, the cabinet [child support agency] shall [must] determine if a review

should [shall] be conducted.

(6) The cabinet [child support agency] shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.

(7) Within 180 days of determining that a review should be conducted, or of locating the nonrequesting parent, the cabinet [child support agency] shall:

- (a) Send a notice to each parent that a review will be conducted;
- (b) Conduct the review;
- (c) Send a notice of the result; and
- (d) Modify the order or determine that there will be no change and

notify the noncustodial parent, or obligor;

(e) Provide the other concerned parties with a copy of the modified notice within fourteen (14) days of the noncustodial parent's, or obligor's, refusal or acceptance of the modified notice [pursuant to 1998 Ky. Acts ch. 255, sec. 5].

Section 4. Appeal Procedures. (1) A parent, or another [any other] person or entity that has standing or his authorized representative may request and be granted relief by a dispute hearing in accordance with KRS Chapter 13B.

(2) A request shall be made to the cabinet [child support agency]:

- (a) In writing;
- (b) In person; or
- (c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for a dispute hearing shall be considered timely if:

(a) Made within twenty (20) days of receipt of an initial notice of monthly support obligation;

(b) Made within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or

(c) Made within twenty (20) days of receipt of a notice of lien;

(d) Made within thirty (30) days of receipt of a modified notice of monthly support obligation;

(e) [d] Made after thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. A good cause reason [reasons] shall include:

- (a) A parent being away from home during the entire filing period;
- (b) The parent's inability to read the notice of monthly support obligation; or

(c) The parent's incapacity due to a serious illness during the entire filing period.

(5) The parent or another [any other] person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).

(7) If the objection is being filed on a proposed modification of an existing obligation, or a decision that the existing obligation should not be changed, the amount on the prior notice is enforceable and that amount shall be paid while the hearing is pending.

(a) If the parent or another [any other] person or entity having standing to request a modification, or his authorized representative prevails, the cabinet shall promptly return to the obligor any overpayment [overpayments] made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount shall be retroactive to the effective date on the notice of monthly support obligation.

(8) The parent or another [any other] person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the [area] child support office or the Hearing Branch in the Department for Community Based Services, Division of Family Support, Hearing Branch, [Social Insurance, Division of Administrative Review.]

(9) If the parent or another [any other] person or entity having standing to request modification, or his authorized representative fails to appear at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

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(a) The parent or another [any other] person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or another [any other] person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

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

(a) CS-66, "Notice of Monthly Support Obligation", (10/98 Edition), Cabinet for Families and Children; and

(b) CS-71, "Commonwealth of Kentucky, Worksheet for Monthly Child Support Obligation", (7/94 Edition), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference: (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated. These forms are:

(a) CS-66, revised 2/97; and

(b) CS-71, revised 7/94.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC: August 12, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

904 KAR 2:410. Child support collection and distribution.

RELATES TO: KRS 67A.620, 95.620, 95.878, 161.700(1), 186.570(2), 205.595, 205.710-205.800, 403.215, 405.060(2), 405.405, 405.430-405.510, 407.5101-407.5701, 427.120, 427.125, 45 CFR 302.32, 302.38, 302.51-302.54, 302.60, 302.65, 303.6, 303.100-303.105, 15 USC 1673, 42 USC 654, 654A, 666(a)(1)-(4), (6)-(12), (14)-(16), (19), 666(b) [205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)]

STATUTORY AUTHORITY: KRS 194B.050, 205.712(2)(o), 205.7685(3), 205.795, 405.520, 407.5102, 407.5310(2)(d), 42 USC 654, 654A, 666(a)(1)-(4), (6)-(12), (14)-(16), (19), 666(b) [Chapter 13B, 186.570, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 406.027, 42 USC 651 et seq., 1998 Ky. Acts ch. 101, 255, 417, 426, EO 98-731] [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 205.712(2)(i) requires the cabinet to establish and enforce child support obligations. This administrative regulation establishes procedures for collection and distribution of child support payments, including means of enforcement and management of disputes and appeals.

Section 1. Collection of Spousal Support. The cabinet shall collect spousal support if spousal support meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Collection. (1) Income withholding.

(a) Shall be used:

1. As the primary tool for collection of child support; and

2. If necessary to facilitate enrollment of a child in a health insurance plan available through an obligor's employer.

(b) An obligor shall inform the cabinet of his current employer or source of income and his access to health insurance, and of changes to either.

(c) Pursuant to KRS 405.060, if an obligor transfers or assigns income or income-producing property after he has received notice that he has a child support obligation, the cabinet shall take action to obtain:

1. Judicial nullification of the transfer; or

2. A settlement in favor of the creditor.

(d) If current support and an arrearage amount is subject to withholding and a court has not set an amount for an arrearage payment, the arrearage payment shall be determined by multiplying the currently-ordered obligation by twenty-five (25) percent, if the order was issued in Kentucky and Kentucky has exclusive continuing jurisdiction.

(e) If only an arrearage amount is subject to withholding, the arrearage payment and frequency of payment shall be equal to the payment and frequency last designated by judicial or administrative order.

(f) If the address of the obligor is unknown and the cabinet is unable to comply with the notice provisions of KRS 404.467(4), the cabinet shall provide notice of withholding within fifteen (15) calendar days of locating the obligor.

(g) The notice shall inform the obligor that:

1. He has ten (10) days from the date withholding is implemented to contest the withholding; and

2. If he does not contest, withholding and ordered health care coverage shall apply to the current and any subsequent employer.

(h) The cabinet shall notify the employer or other income source, within fifteen (15) days of the request for income withholding, of the following:

1. The employer or other income source shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed;

2. The employer or other income source shall, within seven (7) working days from the date an amount is withheld, forward:

a. A child support payment to the cabinet;

b. A medical insurance premium to the health insurance carrier;

3. The employer or other income source shall include on the transmittal to the cabinet the obligor's name, Social Security number, and cabinet-assigned case number, and the date the money was withheld;

4. The employer or other income source shall withhold and forward withheld amounts at least once monthly;

5. The employer or other income source may combine amounts due the cabinet into one (1) payment, if the amount attributable to each obligor is identified by name, Social Security number, and cabinet-assigned identification number; and

6. If the obligor terminates employment, the employer or other income source shall notify the cabinet promptly, and shall provide the information required by KRS 405.465(5).

(2) Withholding of unemployment compensation.

(a) The cabinet, through an agreement with the state employment security agency, shall collect a child support payment from an obligor receiving unemployment compensation if the state unemployment security agency has commenced withholding on one (1) of the following bases:

1. An obligor with a child support delinquency has voluntarily signed an agreement to withhold child support payments from his unemployment compensation benefits; or

2. An obligor, within fifteen (15) calendar days after he received an agreement from the cabinet, has failed to:

a. Sign an agreement to withhold; or

b. Contest the validity of the child support obligation.

(b) No more than fifty (50) percent of the obligor's unemployment benefit shall be withheld unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the obligor.

(3) Federal tax refund offset and administrative offset.

(a) A public assistance case for past-due child support,

medical support ordered by specific dollar amount, spousal support, K-TAP, or foster care support shall qualify for offset if there is:

1. A court-ordered or administratively-established support obligation;

2. An assignment of support to the cabinet;

3. An arrearage of at least \$150 delinquent for at least three (3) months; and

4. Cabinet verification of the accuracy of the obligor's name and Social Security number.

(b) A nonpublic assistance case involving past-due child support, medical support, or spousal support shall qualify for offset if:

1. The cabinet is enforcing a court-ordered or administratively-established support obligation;

2. The cabinet has verified the accuracy of the obligor's name and Social Security number;

3. The cabinet has verified an arrearage of \$500 or greater, exclusive of fees, court costs, or other nonchild-support debt;

4. The cabinet has a copy of the:

a. Current support order; and

b. Payment record or affidavit signed by the custodial parent attesting to the amount of support paid; and

5. The arrearage is owed on behalf of a child who is a minor as of December 31 of the year in which the case is submitted for offset.

(c) A case submitted for federal tax refund offset shall be subject to federal administrative offset of nonexempt federal payments. Nonexempt federal payments shall be denied to individuals owing child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(4) State income tax refund.

(a) A public assistance case for past-due K-TAP, foster care, or medical support shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The medical support order includes the specific dollar amount;

3. The obligor's name and Social Security number are known;

4. The arrearage has been verified as accurate; and

5. The amount of the arrearage is at least twenty-five (25) dollars.

(b) A nonpublic assistance support arrearage shall qualify for offset if it meets the criteria specified in subsection (3)(b) of this section, and the required arrearage amount is not less than \$150.

Section 3. Kentucky Transitional Assistance Program Accounts Distribution. (1) A child support payment collected on behalf of a K-TAP recipient shall be:

(a) Payable to the state disbursement unit in the child support agency;

(b) Reported to the K-TAP agency within ten (10) working days of the end of the month in which the payment is received.

(2) Upon receipt of a notice of payment, the K-TAP agency shall redetermine eligibility for K-TAP payments and report the result to the child support agency.

(a) If the K-TAP family becomes ineligible, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the family remains eligible, or if a hearing is requested, the child support agency shall distribute the collection as specified in Section 6 of this administrative regulation.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Payable to the state disbursement unit; and

(2) Distributed and disbursed to the foster care agency.

Section 5. Distribution of Tax Refund Intercept Amounts and Appeal Process. (1) A federal tax refund intercepted in a public assistance account.

(a) Amounts collected shall be applied to assigned arrearage.

(b) If no assigned arrearage remains, the amount collected shall be forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt.

(2) A federal tax refund intercepted in a nonpublic assistance account.

(a) Amounts collected shall be applied to assigned arrearage.

(b) If no assigned arrearage remains, the amount collected shall be:

1. Held by the cabinet for six (6) months, if a joint income tax return has been filed, before being distributed; or

2. Forwarded to the family within thirty (30) calendar days of the date of initial receipt.

(3) A state tax refund intercepted in an assistance account shall be distributed according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

(4) An obligor may contest the accuracy of a past-due amount by requesting an administrative hearing in accordance with KRS Chapter 13B. The cabinet shall, within fifteen (15) calendar days of the date of resolution of an obligor's appeal, forward the ordered amount to:

(a) The obligor, if resolution was in his favor; or

(b) The agency or family, if resolution was against the obligor.

Section 6. Treatment of Escrow and Excess Payments. (1) A child support payment shall be applied to the obligation amount for the month in which the support was collected.

(2) In a K-TAP case, if the obligation for current support and the collection for current support exceed the grant paid for the month in which the collection was made, the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and shall be distributed as follows:

(a) The portion that represents the federal share, as determined by the Medicaid match rate, shall be sent to the federal government for reimbursement of public assistance previously paid.

(b) The portion that represents the state share, as determined by the Medicaid match rate, shall be sent to the family.

(c) An amount in excess of the current obligation shall be applied to arrearage.

Section 7. Income Withholding Distribution. (1) The date of collection for a child support or medical support payment made through income or other withholding shall be the date the income is received by the child support agency.

(2) Distribution of income withholding collections shall be made according to provisions of Section 3, 4, 6, or 8 of this administrative regulation, whichever is applicable.

Section 8. Interstate Case Payment Distribution. A child support payment that is collected by a responding state on behalf of an initiating state shall be forwarded to the location specified by the child support agency in the initiating state, within two (2) business days of initial receipt.

Section 9. Administrative Enforcement Actions. (1) If an obligor of a child receiving public assistance owes past-due support, he shall be obliged to participate in work activities pursuant to KRS 405.430(8);

(2) If an obligor owes an arrearage equal to or greater than one (1) month's obligation, the cabinet shall:

(a) File a lien on the obligor's interest in personal or real property within the Commonwealth, pursuant to KRS 205.745; and

(b) Give notice to the obligor that:

1. He may contest the lien pursuant to KRS Chapter 13B

and 904 KAR 2:400; and

2. A transfer of property in order to avoid payment will be considered an act of fraud, in accordance with KRS 405.060(2); and

(c) Provide advance notice to the obligor that:

1. Past-due amounts will be reported to a certified consumer reporting agency; and

2. He may contest the accuracy of the information by filing an appeal pursuant to KRS Chapter 13B; and

(d) Not submit the obligor's information for inclusion on the periodic report made available to certified consumer reporting agencies pursuant to KRS 205.768, if the advance notice is returned as undeliverable and subsequent location efforts are unsuccessful; or

(e) Submit the obligor's name and arrearage amount for inclusion on the periodic report made available to certified consumer reporting agencies, if the obligor does not pay or appeal within thirty (30) calendar days from the date notice was received.

(3) If an obligor owes an arrearage equal to or greater than one (1) year's obligation, and for action against a driver's license the arrearage has accrued since January 1, 1994, the cabinet shall:

(a) Determine if the obligor holds a driver's license, professional license or certificate, occupational license or certificate, recreational license, sporting license, or a license to carry a concealed weapon;

(b) Send to the obligor, by certified mail:

1. A "Notice of Intent to Request Denial or Suspension of License or Certificate";

2. A blank "Obligor's Answer to Notice of Intent" form; and

3. Notification that the only basis for a dispute hearing contesting the action is a mistake in fact, pursuant to KRS 205.712(13);

4. Notification that the "Notice of Intent to Request Denial or Suspension of License or Certificate" will be rescinded if he:

a. Pays the total arrearage accrued; or

b. Posts a bond for the total arrearage; or

c. Enters into an agreement to pay current support plus a monthly payment on arrearage, specified as follows:

(i) If the arrearage is less than \$1,000, fifty (50) percent;

(ii) If the arrearage is greater than or equal to \$1,000 and less than \$2,000, \$500 plus twenty-five (25) percent of the amount over \$1,000;

(iii) If the arrearage is greater than or equal to \$2,000, \$750 plus ten (10) percent of the amount over \$2,000.

(c) Refer the case for parent-locator service, if the notice of intent is returned and the forwarding address unknown;

(d) If the obligor requests a dispute hearing based upon a mistake of fact, and returns the obligor's answer to notice of intent within twenty (20) calendar days of the date notification was received;

1. Schedule and hold an interview with the obligor within ten (10) working days of the response;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved, forward the obligor's written request for a hearing to the cabinet's hearing branch;

(e) If there is no dispute, or a hearing results in a finding that the case qualifies for license or certificate denial, suspension, or revocation, and the obligor does not take an action specified in paragraph (b)4 of this subsection, send within twenty (20) days of the date of decision a "Notice to Request Denial or Suspension of License or Certificate" to the issuing agency or board of licensure or certification; or

(f) Notify the issuing board or agency that the obligor is no longer deemed by the cabinet to be subject to denial, suspension, or revocation, if the obligor:

1. Makes full payment; or

2. Posts a bond for the full arrearage; or

3. Makes a good faith payment equal to three (3) month's current support, and enters into an agreement as specified in paragraph (b)4c of this subsection; or

4. For a person who had failed to respond to a subpoena or warrant, the person has complied with the subpoena or warrant.

(4) If the obligor owes an arrearage of \$5,000 or more:

(a) The cabinet shall send an advance notice of intent to collect past-due support, notifying the obligor that his name is being submitted for passport denial, revocation, or limitation, pursuant to KRS 205.712(8);

(b) The cabinet shall forward the certified name and supporting documents to the Secretary of the U.S. Department of Health and Human Services for passport denial, revocation, or limitation;

(c) The cabinet shall notify the Secretary of the U.S. Department of Health and Human Services that the cabinet rescinds its request for passport denial, revocation, or limitation if:

1. The obligor's timely appeal is resolved with a finding that the arrearage is less than \$5,000; or

2. The obligor is in compliance with payments ordered in an existing arrearage judgment; or

3. A payment reduces the arrearage to less than \$5,000; or

4. If there is no ordered arrearage payment, the obligor:

a. Posts a bond for the total amount due; or

b. Enters into a payment agreement to pay current support plus a monthly payment on the arrearage, specified as follows:

(i) In the first month, a \$750 lump sum plus ten (10) percent of the arrearage balance as of the date of the agreement; and

(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement, or the remaining balance if less than ten (10) percent.

(5) If a person fails to comply with a subpoena or warrant relating to a paternity or child support proceeding:

(a) The agency shall contact the contracting official to determine if the contracting official intends to pursue judicial action;

(b) If the contracting official determines that judicial action will not be taken, the agency shall:

1. Advise the contracting official of the agency's intent to proceed with the notice to revoke or deny a license or certificate; and

2. Proceed in accordance with the provisions of subsection (3) of this section, except that the person shall be notified that he may retain his license or certificate by complying with the subpoena or warrant.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.450 or 405.490(4).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CS-44 "Notice of Intent to Request Denial or Suspension", (10/98 Edition), Cabinet for Families and Children;

(b) CS-63 "Notice to Request Denial or Suspension of License or Certificate", (10/98 Edition), Cabinet for Families and Children;

(c) CS-78 "Payment Agreement", (10/98 Edition), Cabinet for Families and Children;

(d) CS-84 "Administrative Subpoena", (10/98 Edition), Cabinet for Families and Children;

(e) CS-85 "Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(f) CS-89 "Order and Notice to Withhold Income for Child Support", (10/98 Edition), Cabinet for Families and Children;

(g) CS-92 "Intrastate Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(h) CS-93 "Advance Notice of Intent to Request Full Credit Report", (10/98 Edition), Cabinet for Families and Children;

(i) CS-111 "Child Support Received Affidavit", (10/98 Edition), Cabinet for Families and Children;

(j) CS-119 "Obligor's Notice of Lien", (10/98 Edition), Cabinet for Families and Children;

(k) CS-120 "Release of Lien", (10/98 Edition), Cabinet for Families and Children;

(l) CS-122 "Advance Notice of Intent to Collect Past-Due Support", (10/98 Edition), Cabinet for Families and Children;

(m) CS-148 "Custodial Parent Affidavit Letter", (10/98 Edition), Cabinet for Families and Children;

(n) CS-149 "Custodial Parent Affidavit of Support Paid", (10/98 Edition), Cabinet for Families and Children;

(o) CS-164 "Notice of Income Withholding", (10/98 Edition), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [KRS 205.712(2) requires the cabinet to establish and enforce child support obligations and laws. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children.] This administrative regulation sets forth the procedures for collection and distribution of child support payments:

Section 1. Gold Check Fee. The cabinet shall charge a gold check fee pursuant to 1998 Ky. Acts ch. 417, sec. 2.

Section 2. Collection of Spousal Support [Maintenance]. Agency efforts shall include collecting spousal support [maintenance] if it meets the definition of "duty of support" in KRS 205.710(5):

Section 3. [2. Methods of] Collection. (1) Income [Wage] withholding:

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

1. As the primary tool for child support collection; and
2. As necessary to facilitate enrollment of a child through an employer in an available health insurance plan:

(b) For all cases, the cabinet [child support agency] shall provide for income [wage] withholding without necessity of an amendment or court action to the child support order.

(c) The Child Support Program (CSP) shall establish and maintain an automated state directory of new hires pursuant to 1998 Ky. Acts ch. 255, sec. 41. Data in this directory may be used by the cabinet to complete follow-up studies of clients leaving the welfare rolls:

(d) The transfer of property or income by an obligor to avoid payment to the cabinet shall be considered an indication of fraud pursuant to 1998 Ky. Acts ch. 255, sec. 23:

(e) If a noncustodial parent, or obligor, has more than one (1) child support income withholding order [wage assignment] against him, the cabinet [child support agency] shall allocate and distribute child support as specified by KRS 405.467(7) and (8):

(f) [(d)] If current support and an arrearage amount is owed and is to be paid through an income [a wage] withholding order, [and no specified arrearage payment amount is ordered by the court,] the cabinet shall:

1. Determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent when the order was issued in Kentucky and Kentucky has continuing, exclusive jurisdiction:

2. [(e)] If the noncustodial parent, or obligor, no longer owes a current child support payment, the cabinet shall determine:

a. [1.] The arrearage payment to be equal to the last court or administratively ordered obligation amount; and

b. [2.] The frequency of the arrearage payment to be equal to the frequency of the last ordered obligation amount:

3. When Kentucky does not have continuing, exclusive jurisdiction or when the order was not issued in Kentucky, arrearage payments shall be calculated pursuant to 1998 Ky. Acts ch. 101:

(g) [(f)] A noncustodial parent, or obligor, shall not be obligated to pay current support if:

1. Parental rights have been terminated; or
2. All children of a particular order are emancipated:

(h) [(g)] An employee-paid share of the cost of health insurance shall not be deducted if, after child support and spousal support [maintenance] are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or

2. Only a portion of the monthly amount needed to purchase health insurance is available:

(i) [(h)] If amounts are improperly withheld, the cabinet shall promptly refund those amounts:

(j) [(i)] To comply with the advance notice requirements of KRS 405.467(4), if the address of the noncustodial parent, or obligor, is known, the cabinet [agency] shall send written notification to the noncustodial parent, or obligor, at the same time the withholding order is sent to the employer, labor organization or other source of income: [within fifteen (15) calendar days of the:

1. Request for wage withholding; or]

1. If [2. The date] the arrearage of the noncustodial parent, or obligor, is equal to the monthly obligation amount:

2. If the noncustodial parent, or obligor fails to secure ordered health insurance:

(k) [(j)] If the address of the noncustodial parent, or obligor, is unknown, the cabinet shall provide [advance] notice within fifteen (15) calendar days of locating the noncustodial parent, or obligor:

(l) [(k)] The [advance] notice shall inform the noncustodial parent, or obligor:

1. He has ten (10) days from the date withholding is implemented to contest the withholding; and

2. [Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and

3.] Withholding shall apply to the current and any subsequent employer.

3. Ordered health care coverage shall apply to the current employer and any subsequent employer unless the noncustodial parent contests the notice pursuant to KRS Chapter 13B:

(m) [(l)] In addition to the requirements of KRS 405.467(5)-(13) [(11)], the employer or income source shall be notified, within fifteen (15) days of the request for income [wage] withholding, of the following:

1. The employer or income source shall forward collected child support amounts to the cabinet [child support agency] and collected medical insurance premiums to the health insurance carrier within seven (7) [ten (10)] working days of the date the amount is withheld from the noncustodial parent's, or obligor's wages;

2. The employer or income source shall include on the transmittal to the cabinet [child support agency] the name and Social Security number of the noncustodial parent, or obligor, the cabinet [child support agency] assigned case number and the date the money was withheld;

3. The employer or income source may combine amounts due the cabinet [child support agency] into one (1) payment if the employer identifies by the name, Social Security number, and the cabinet [child support agency] assigned case number the amount attributable to each noncustodial parent, or obligor;

4. The employer or income source shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed and forward withheld amounts at least once monthly; and

5. The employer or source of income shall notify the cabinet [child support agency] promptly when the noncustodial parent, or obligor, terminates employment and provide information to the cabinet [agency] as required by KRS 405.465.

(n) [(m)] The noncustodial parent, or obligor, shall keep the cabinet [child support agency] informed of his current employer or source of income and the health insurance policy information, if he has access to health insurance coverage at a reasonable cost, and the health insurance policy information]:

(o) [(n)] The cabinet [child support agency] shall extend the withholding system to include withholding from income [wages] derived in this state although the support order was issued by another state:

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the noncustodial parent, or obligor, is employed to implement interstate withholding:

2. The notice shall contain:

a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support and medical support order.

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3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the employer of the noncustodial parent, or obligor's employer shall:

a. Send notice to the noncustodial parent, or obligor, within fifteen (15) calendar days of locating the noncustodial parent, or obligor, or his employer;

b. Provide the noncustodial parent, or obligor, with the opportunity to contest the withholding; and

c. Send notice to his employer and to the noncustodial parent, or obligor.

5. If the noncustodial parent, or obligor, is no longer employed in the state, the child support agency shall:

a. Notify the state in which the custodial parent resides;

b. Provide the state with the address of the noncustodial parent or obligor, if known; and

c. Provide the name and address of a new employer, if known.

6. If the withholding is not implemented in the state where the support order is filed, it shall be implemented according to the laws and procedures of the state where the noncustodial parent, or obligor, is employed.]

(p) {(o)} The cabinet [child support agency] shall terminate income [wage] withholding if there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation:

(a) The cabinet [child support agency], through an agreement with the state employment security agency, shall provide withholding of a child support obligation from a noncustodial parent, or obligor, receiving unemployment compensation under the following conditions:

1. A noncustodial parent, or obligor, who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the noncustodial parent, or obligor; or

b. A notice of claim of intent to withhold is completed by the cabinet [child support agency] if the noncustodial parent, or obligor, fails to sign an agreement to withhold within fifteen (15) calendar days, and there is no mistake in fact or law as to the validity of the child support obligation.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the noncustodial parent, or obligor.

(3) Federal tax refund offset and administrative offset.

(a) Past due child support, medical support payments (if a specified dollar amount is included in the order) spousal support [maintenance], K-TAP and foster care related support shall qualify for offset if:

1. There is a court-ordered or administratively established support obligation;

2. There has been an assignment of support to the cabinet [child support agency];

3. The arrearage equals at least \$150 and shall have been delinquent at least three (3) months;

4. [The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6.] The cabinet [child support agency] verifies the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(b) Past due child support, medical support or spousal support [maintenance] in a nonpublic assistance case shall qualify for offset if:

1. There is a court-ordered or administratively established support obligation and the cabinet [child support agency] is enforcing the order;

2. The arrearage is no less than \$500 dollars and does not include fees, court costs, or any other non-child support debt owed to the state or to the family;

3. The cabinet [child support agency] has verified the accuracy of

the arrearage and has a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the cabinet [child support agency] shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. The arrearage is owed on behalf of a child who lives with the client and is a minor as of December 31 of the year in which the case is submitted for offset;

5. The cabinet has determined that there is no public assistance or foster care arrearage owed; [child support agency has calculated an assigned arrearage;]

6. The cabinet [child support agency] has verified the accuracy of the noncustodial parent's, or obligor's, name and Social Security number.

(c) A case submitted for federal tax refund offset shall be subjected to federal administrative offset of nonexempt federal payments. Nonexempt federal payments shall be denied to individuals owing child support arrearage as defined in paragraphs (a) and (b) of this subsection.

(4) State income tax refund (offset):

(a) A K-TAP, foster care, or medical support arrearage which is owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The noncustodial parent's, or obligor's, name and Social Security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 3-2(3)(b) of this administrative regulation are met and the arrearage is not less than \$150.

Section 4. State Collection and Disbursement System. (1) The GSP shall establish and operate a centralized State Disbursement Unit (SDU) in accordance with 1998 Ky. Acts ch. 255, sec. 5.

(2) The State Disbursement Unit shall collect, record and disburse payments under support orders for:

(a) All Child Support Program cases; and

(b) All non-Child Support Program cases in which a support order was initially issued in the state on or after January 1, 1994, and in which the income of the noncustodial parent or obligor is subject to income withholding.

(3) Effective September 30, 1999, the collection and disbursement system shall include a state case registry of child support orders in accordance with 1998 Ky. Acts ch. 255, sec. 5.

Section 5. [3.] Kentucky Transitional Assistance Program (K-TAP) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of K-TAP shall:

(a) Be made payable to the State Disbursement Unit in the child support agency; and

(b) Be reported to the K-TAP agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the K-TAP family ineligible for K-TAP shall be reported to the cabinet [child support agency] by the K-TAP agency.

(a) If the family is ineligible for a K-TAP payment, the cabinet [child support agency] shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for a K-TAP payment or if a hearing is requested:

1. The K-TAP agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 8 [6] of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the cabinet [child support agency].

(4) A payment received in the month after ineligibility for K-TAP is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family;

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the ~~cabinet~~ [child support agency] shall:

(a) Reimburse the state for any assistance paid [Determine the collected amount the family would have received]; and

(b) Forward any amount in excess of the assistance paid [payment] to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made:

Section 6. [4.] Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the ~~cabinet~~ [child support agency]; and

(2) [Upon receipt by the child support agency, shall be] Disbursed to the foster care agency for distribution.

Section 7. [5.] Distribution of Tax Refund Intercept Amounts and Appeal Process. (1) Federal tax refunds intercepted in Public assistance accounts:

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages;

(b) If no assigned arrearages remain, the collections shall be forwarded to the K-TAP family or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency;

(c) If a timely appeal is filed by a noncustodial parent, or obligor, and the appeal is resolved, payment shall be made to the family or refunded to the noncustodial parent, or obligor, within fifteen (15) calendar days of the resolution date;

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed;

(2) Federal tax refunds intercepted in nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family:

(a) Within thirty (30) calendar days of the initial receipt date; or

(b) When a joint return has been filed collection shall be held by the cabinet for six (6) months prior to being distributed;

(3) State tax refunds intercepted shall be distributed according to specifications in Section 5, 6, 8 or 10 [3, 4, 6, or 8] of this administrative regulation;

(4) If the noncustodial parent, or obligor, contests the accuracy of a past due amount, he may request an administrative review in accordance with KRS Chapter 13B [specifications in 904 KAR 2:400, Section 4];

Section 8. [6.] Treatment of Escrow and Excess Payments. (1) Child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) In K-TAP cases, if the obligation for current support and the collection of current support exceed the grant paid for the month in which the collection was made:

(a) the difference between the grant and the obligation or the collection, whichever is less, shall be considered escrow and be distributed as follows:

(a) [1.] The portion of the escrow that represents the federal share of the collection (as determined by the Medicaid match rate) shall be sent to the federal government for reimbursement of public assistance previously paid;

(b) [2.] The portion of the escrow payment which represents the state share (as determined by the Medicaid match rate) of the collection shall be sent to the family;

(c) [(3)] After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 9. ~~Income~~ [7. Wage] Withholding Distribution. (1) A child support or medical support payment made through income [wage] or other withholding shall use the date the income is received [withheld] for the date of collection for distribution to meet the support obligation.

(2) Distribution of income [wage] withholding collections shall be

made according to specification in Sections 5, 6, 8, or 10 [3, 4, 6 or 8] of this administrative regulation.

Section 10. ~~[8.] Interstate Case Payment Distribution.~~ (1) Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the ~~location specified by the child support agency in initiating state within two (2) business~~ [fifteen (15) calendar] days of initial receipt by the responding state.

[(1)] The responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state;

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the public [K-TAP] assistance payment.

(3) Collection of child support in the month after the month the family receives its last public [K-TAP] assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 11. [9.] Additional Administrative Enforcement Remedies. (1) If the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of a lien on personal or real property if an arrearage is equal to or greater than one (1) month's obligation;

1. Notify the noncustodial parent, or obligor, that he has twenty (20) days to contest and appeal the lien action pursuant to 904 KAR 2:400, Section 4;

2. The transfer of property by an obligor to avoid payment to the GSP shall be considered an indication of fraud in accordance with 1998 Ky. Acts ch. 255, sec. 23;

(b) Report to certified consumer reporting agencies;

(c) Notify a board of license, board of certification, Department of Transportation or Department of State Police for the denial, revocation, or suspension of driver's license professional license or certification, occupational license or certification, recreational license, sporting license or license to carry a concealed deadly weapon according to 1998 Ky. Acts ch. 417, sec. 1 and ch. 255, sec. 5; [credit bureaus;

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license; and]

(d) Certify a case for passport denial or revocation;

(e) Pursuant to 1998 Ky. Acts ch. 255, sec. 22, issue an order, or seek a judicial order, if appropriate, requiring a delinquent noncustodial parent, or obligor, of children receiving public assistance to participate in work activities;

(2) The Cabinet for Families and Children shall:

(a) Provide information to certified consumer reporting agencies as specified by KRS 205.768; and

(b) Provide advance written notice to the noncustodial parent, or obligor, of the release of the information required by KRS 205.768(2);

(c) The name of the noncustodial parent, or obligor, shall be:

1. Deleted from the list provided to certified consumer reporting agencies if the advance notice is returned as undeliverable, and subsequent location efforts are unsuccessful; or

2. Added to the list provided to the consumer reporting agencies if subsequent location efforts are successful;

(3) Denial or suspension of [driver's] license or certification. The cabinet shall deny or suspend driver's license, professional license or certification, occupational license or certification, recreational license, sporting license or license to carry a concealed deadly weapon when the noncustodial parent, or obligor, owes an arrearage equal to or exceeding one (1) year;

(a) The cabinet shall as provided by KRS 186.570(2):

1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued on or after January 1, 1994; and

2. Identify a person who has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding; and

3. Contact the contracting official to determine if the contracting official intends to pursue judicial action;

4. [3.] If the contracting official determines that judicial action will

not be taken, advise the contracting official of the intent of the agency to proceed with the notice [referral] to revoke or deny a certification or [driver's] license.

5. [4.] Send by first class mail to a noncustodial parent, or obligor, who holds the certification or [a valid Kentucky driver's] license and who has the ability to pay support:

a. A notice of intent to request denial or suspension of a [driver's] license or certification; and

b. A noncustodial parent, or obligor, answer to notice of intent.

6. [5.] Notify the noncustodial parent, or obligor, that the only basis for contesting the notice [resolution of the dispute] shall be:

a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year;

b. The wrong individual has been identified;

7. A delinquent noncustodial parent, or obligor shall take one (1) of the following actions to retain his property, license or certification:

a. Post [c.] a bond [is posted] for the total arrearage which has accrued since January 1, 1994;

b. Enter into a payment agreement [d. A payment agreement is entered into by the noncustodial parent, or obligor,] to pay current support, plus a specified monthly payment amount on the total arrearage which has accrued since January 1, 1994. The monthly payments shall be:

(i) Fifty (50) percent if the arrearage owed is less than \$1,000; or

(ii) \$500 plus twenty-five (25) percent of the amount over \$1,000 if the arrearage is not less than \$1,000 and not greater than \$2,000; or

(iii) \$750 plus ten (10) percent of the amount over \$2,000 if the arrearage is \$2,000 or more; or

c. [e.] The noncustodial parent, or obligor, pays the total arrearage which has accrued since January 1, 1994.

(b) To assure delivery of the notice of intent, the cabinet shall refer the case for parent locator service if the notice is returned and the forwarding address is unknown;

(c) If the noncustodial parent, or obligor, requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the noncustodial parent, or obligor, answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:

1. Within ten (10) working days of the noncustodial parent's, or obligor's, response, schedule and hold an interview with the noncustodial parent, or obligor;

2. Attempt to resolve the dispute at the time of the interview; and

3. If the dispute is not resolved at the time of the interview, forward the noncustodial parent's, or obligor's, written request for a hearing to the agency responsible for conducting the dispute hearing.

(d) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision that the case qualifies for license or certification suspension or revocation, the cabinet (child support agency) shall notify the issuing board, Transportation Cabinet or Department of State Police of the request for the denial or suspension of the [driver's] license or certification, unless:

1. The noncustodial parent, or obligor, makes full payment of the total arrearage that may have accrued since January 1, 1994;

2. The noncustodial parent, or obligor, enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which accrued since January 1, 1994 as determined by paragraph (a)7b [(a)5d] of this subsection; or

3. The noncustodial parent, or obligor, posts a bond for the total arrearage which has accrued since January 1, 1994.

(e) If the case does not qualify for license or certification suspension or revocation, [submittal to the Transportation Cabinet,] a notice to deny or suspend the [driver's] license or certification shall not be sent.

(f) If the noncustodial parent, or obligor, does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the board, Department of State Police or Transportation Cabinet, the Cabinet for Families and Children shall refer the name of the noncustodial parent, or obligor, to the board, Department of State Police or Transportation Cabinet for the denial or suspension of a [the driver's] license, unless:

1. The noncustodial parent, or obligor, makes full payment of the arrearage within twenty (20) calendar days of the interview by the

Cabinet for Families and Children;

2. The noncustodial parent, or obligor, posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or

3. The noncustodial parent, or obligor, enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which has accrued since January 1, 1994 as determined by paragraph (a)7b [(a)5d] of this subsection.

(g) The Cabinet for Families and Children shall notify the Transportation Cabinet, Department of State Police or board of certification to reinstate or reissue a previously suspended or revoked [driver's] license or certification if:

1. The noncustodial parent, or obligor complies with a subpoena or warrant; or

2. The noncustodial parent, or obligor, makes full payment of the arrearage; or

3. [2.] The noncustodial parent, or obligor, posts a bond for the total arrearage amount; or

4. [3.] The noncustodial parent, or obligor:

a. Makes a good faith payment which equals three (3) months' current support; and

b. Enters into a payment agreement to pay the specified amount on the remaining arrearage which has accrued since January 1, 1994 as determined by paragraph (a)7b [(a)5d] of this subsection.

(4) Denial of passport.

(a) The cabinet shall certify for passport denial to the Secretary of the U.S. Department of Health and Human Services any case for which the arrearage exceeds \$5000.

(b) If a timely appeal is filed by a noncustodial parent, or obligor, pursuant to the notice as set forth in the Advance Notice of Intent to Collect Past due Support, Form CS-122, [edition 10/97], the appeal is resolved and the finding is that the arrearage is less than \$5000, the U.S. Secretary of State shall be notified by the cabinet to issue a passport to the noncustodial parent, or obligor.

(c) The noncustodial parent, or obligor, whose arrearage exceeds \$5000, shall be deleted from passport denial if:

1. An arrearage judgment exists and the noncustodial parent, or obligor, is in full compliance with payments ordered in the judgment;

2. The noncustodial parent, or obligor, makes a payment bringing the arrearage to less than \$5000; or

3. In cases with an arrearage and no ordered arrearage payment, the noncustodial parent, or obligor, agrees to make satisfactory payment arrangements. The noncustodial parent, or obligor, shall:

a. Post a bond for the total amount due; or

b. Enter into a payment agreement to pay current support plus a specified monthly payment on the total arrearage. The monthly arrearage payment shall be:

(i) In the first month, a \$750 lump sum payment plus ten (10) percent of the arrearage balance as of the date of the agreement; and

(ii) In successive months, ten (10) percent of the arrearage balance as of the date of the agreement or the remaining balance if the remaining balance is less than ten (10) percent of the arrearage that was due on the date of the agreement.

Section 12. [10.] Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.450 as described in 904 KAR 2:400, Section 4.

Section 13. [11.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CS-44 "Notice of Intent to Request Denial or Suspension of Driver's License", (10/98 [2/97] Edition), Cabinet for Families and Children;

(b) CS-63 "Notice to the Transportation Cabinet", (10/98 [2/97] Edition), Cabinet for Families and Children;

(c) CS-78 "Payment Agreement", (10/98 [2/97] Edition), Cabinet for Families and Children;

(d) CS-84, "Administrative Subpoena", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations;

(e) CS-85, "Notice of Lien", (Edition 10/98), Cabinet for Families and Children, is a new form added due to federal regulations;

(f) CS-92, "Intrastate Notice of Lien", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations;

(g) CS-111, "Child Support Received Affidavit", (10/98 [2/97] Edition), Cabinet for Families and Children;
 (h) CS-119, "Obligor's Notice of Lien", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations;
 (i) CS-120, "Release of Lien", (10/98 Edition), Cabinet for Families and Children, is a new form added due to federal regulations;
 (j) [(e)] CS-122, "Advance Notice of Intent to Collect Past-due Support", (10/98 [10/97] Edition), Cabinet for Families and Children;
 (k) [(f)] CS-123, "State Tax Preoffset Letter", (7/96 Edition), Cabinet for Families and Children;
 (l) [(g)] CS-148, "Custodial Parent Affidavit Letter", (10/98 [2/97] Edition), Cabinet for Families and Children;
 (m) [(h)] CS-149, "Custodial Parent Affidavit of Support Paid", (10/98 [5/97] Edition), Cabinet for Families and Children;
 (2) This material may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

905 KAR 1:320. Fair hearing.

RELATES TO: KRS 13B.005 to 13B.170, 45 CFR 205.10, 29 USC 794, 42 USC 620 et seq., 671 et seq., 12101 et seq., 2000a et seq.

STATUTORY AUTHORITY: KRS 194B.050, 45 CFR 1355.21(b), 1355.30(p) [194.050], 1998 Ky. Acts ch. [426, 57,] 150, 42 USC 5106a, EO 98-731 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [~~Under Titles IV-A, IV-B, IV-C, IV-E and Title XX of the Social Security Act,~~] The single state agency responsible for the program shall be required by federal regulations and statutes, 45 CFR 205.10, 1355.21(b), 1355.30(p), and 42 USC 5106a, [~~Parts 98 and 99, 42 USC 620 et seq., 671 et seq., and 9858 et seq.,~~] to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services. The Department for Community Based [Social] Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 5106a, 12101 et seq., 2000a et seq., and with 45 CFR 205.10. [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children.~~] This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

Section 1. Definitions. (1) "Applicant for services" means a person who has applied for services relating to protection and permanency from the Department for Community Based [Social] Services by means of signing an application.

(2) "Client" means a recipient or a person who has been determined to be eligible to receive protection and permanency services from the Department for Community Based [Social] Services and has been registered in a case to receive ongoing services or a person who has been ordered by a court to receive protection and permanency services from the Department for Community Based [Social] Services.

(3) "Complainant" means the applicant for services, client, foster parent, [or] adoptive parent, or individual identified as a substantiated perpetrator of child abuse or neglect pursuant to 42 USC 5106a, who after submitting their written complaint, is entitled to a fair hearing.

(4) "Hearing officer" means a person who is trained in administrative hearing procedures designated by the Secretary of the Cabinet for Families and Children [Commission for Social Services] or designee to conduct fair hearings.

(5) "Local resolution process guidelines" means the local resolution conference consisting of an informal process that gives the complainant the opportunity to discuss his complaint and clarify issues and attempt to resolve those issues. The complainant shall be afforded the opportunity to decide whether he continues to desire a formal hearing following the local resolution process.

(6) "Timely" means that a notice is mailed at least ten (10) days before the date of the action, except that adequate written notice shall be given no later than the date of the action if staff determines that delaying the action endangers the health or well-being of the children or that the health or well-being of children may be endangered if prior notice is given.

Section 2. Right to a Fair Hearing. (1) The department shall not on the basis of race, color, national origin, sex, age, religion or disability:

(a) Deny an individual aid, care, services or other benefits of the department, either directly or through contractual or other agreements.

(b) Provide aid, care, services, or other benefits to an individual which is different or is provided in a different manner from that provided to others.

(c) Subject an individual to segregation or separate treatment in a matter related to his receipt of aid, care, services or other benefits.

(d) Restrict an individual in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services or other benefits.

(e) Treat an individual differently from others in determining whether he satisfies eligibility or other requirements or conditions which individuals shall meet to receive aid, care, services or other benefits.

(f) Deny an individual an opportunity to participate in the program through the provision of services or afford him an opportunity to do so which is different from that afforded others.

(2) A notice of the individual's [client's] right to a hearing shall be displayed prominently in each Department for Community Based [Social] Services [residential treatment facility], clinical programs, day treatment center, group home, and in each Department for Community Based [Social] Services office in a location easily accessible to clients. The notice of right to a hearing shall state:

(a) If you are dissatisfied with the action taken, you may request a fair hearing within thirty (30) days from the date of the action by filing a written request or a DSS-154, Service Complaint [Request for Fair Hearing] form, incorporated by reference herein, with the Quality Assurance Section, Office of Performance Enhancement [Branch, Department for Social Services].

(b) You may be represented by an attorney or other spokesman.

(3) Staff of the Department for Community Based [Social] Services who provide protection and permanency services, shall have the responsibility of advising applicants, clients, foster parents, [and] subsidized adoptive parents, and individuals identified as substantiated perpetrators under 42 USC 5106a in writing of their right to a fair hearing:

(a) During intake or the initial treatment planning conference, using the DSS-154, Service Complaint [Request for Fair Hearing] form.

(b) During any action affecting services or assistance:

1. Staff shall give the applicant, client or subsidized adoptive parent timely and adequate notice and an opportunity to object, using the DSS-154A, Notice of Intended Action form[, incorporated by reference herein].

2. If a service complaint [request for a hearing] is made within ten (10) days of the notice of an action affecting services, services shall be continued until a decision is rendered after a hearing, unless staff determines that continuation of the services or delay of the action endangers the health or well-being of a child; and

(c) Staff shall give new foster parents, upon approval, a written notice of their right to a fair hearing when:

1. A foster home is closed;

2. A child is removed from one (1) foster home to another foster home; and

3. Training relating to protection and permanency, provided by the department is denied.

(4) Hearing entitlement.

(a) An applicant or client shall be entitled to a hearing on the following actions:

1. A denial, reduction, material modification, suspension, discontinuance, exclusion from or termination of a service;
 2. Dissatisfaction with a service received, inappropriate or inadequate treatment, placement or visitation;
 3. Failure of the department to act upon a request for service relating to protection and permanency with reasonable promptness;
 4. Failure of the department to take into account a client's choice of service or a determination that the individual shall participate in a service program relating to protection and permanency against his wishes except where required by law; or
 5. Discrimination against a client by department staff, who provide protection and permanency services, on account of age, sex, race, national origin, disability or religion.
- (b) A foster parent shall be entitled to a hearing on the following decisions:
1. Removal of [To remove] a foster child from one (1) foster home to another foster home except if the child has been the subject of a substantiated report of abuse or neglect by the foster parents and the foster parents have appealed such findings in accordance with 42 USC 5106a;
 2. Denial of [To deny] foster parents' access to foster parent training provided and scheduled by the department;
 3. Closure of [To close] the foster home;
 4. [Foster parents are not entitled to a fair hearing if:
 - a-] Sexual abuse or sexual exploitation by the foster parents is substantiated;
 5. [b-] Substantiation of physical abuse of a child [or-spouse] warranting the removal of the victim;
 6. [c-] Neglect by the foster parents is substantiated and the foster parents have appealed such findings in accordance with 42 USC 5106a;
 - (c) Foster parents are not entitled to a fair hearing if:
 1. [d-] There is presence of a serious physical or mental illness which impairs or precludes adequate care of the child by the foster parents;
 2. [e-] Foster parents are convicted of a felony offense; or
 3. [f-] Foster parents have not had a placement within five (5) years of the approval date.
 - (d) [(e)] Subsidized adoptive parents shall be entitled to a hearing on the decision to deny or reduce adoptive assistance for a special needs child. Adoptive parents eligible for [a-Title IV-E] adoption assistance [subsidy] for a special needs child pursuant to 42 USC 671 et seq. are entitled to a hearing for:
 1. Failure of the department staff who provide protection and permanency services to advise the adoptive parents of the availability of the adoption assistance for special needs children; and
 2. Failure to provide [the-Title IV-E] eligible adoptive parents known relevant facts regarding the child, biological family and child's background prior to finalization.
 - (5) Individuals who are found to be substantiated perpetrators of child abuse or neglect shall be given certified notification of their right to appeal the findings of the investigation.
 - (6) The following issues shall not be considered through the hearing procedure described herein:
 - (a) Complaints related to legal issues, for example, actions involved in court cases or the interpretation of any statute or regulation;
 - (b) Any complaint related to a court case involving an individual found by the Cabinet for Families and Children to be a substantiated perpetrator of child abuse or neglect, where evidence to support the substantiation of child abuse or neglect has been presented and the court has not made findings that the individual did not commit child abuse or neglect;
 - (c) A complaint that has not been filed in writing with the Quality Assurance Section [Branch];
 - (d) [(e)] A complaint that has been abandoned by failure of the complainant to carry forward with their complaint, to furnish information requested by the hearing officer or to appear at a scheduled hearing;
 - (e) [(f)] A client complaint involving services or discrimination against a contract agency;
 - (f) [(e)] Discrimination practices in relation to departmental personnel policies and procedures regarding protection and permanency services. These grievances shall be handled per instructions in the

personnel manual; and

(g) [(f)] A report or investigation of child abuse or neglect, where the abuse or neglect was found to be unsubstantiated or when the findings are substantiated, but the perpetrator does not request a fair hearing. [and adult abuse or neglect;]

Section 3. Service Complaint. [Request-for-Hearing:] (1) The complainant or legal guardian shall sign the complaint [request] and submit it to the Quality Assurance Section [Branch]. Upon request, departmental staff who provide protection and permanency services shall assist individuals in preparation and submission of a service complaint form. [request-for-hearing:] Staff shall not assume responsibility for mailing the service complaint form. Complaints [request-Requests for hearing] shall be in writing or filed on the DSS-154, Service Complaint [Request for Hearing] form and contain:

- (a) Specific allegations or complaints against the department staff responsible for providing protection and permanency services;
- (b) Name of the staff person, or persons involved if known;
- (c) Circumstances under which the alleged act occurred; and
- (d) Date and place of alleged act.

(2) Complaints [Requests] shall be filed in writing within thirty (30) days after the alleged act or notice of a decision affecting services or notice that a complaint of child abuse or neglect has been substantiated. If the notice is mailed, the date of the notice shall be the date mailed; otherwise it shall be the date of delivery. If the complaint [request] is filed after the thirty (30) day period, a decision as to acceptance or denial of the complaint for action shall be made by the Commissioner of the Department for Community Based [Social] Services, or designee.

(a) Within five (5) working days of the receipt of the complaint, the Quality Assurance Section [Branch] shall notify:

1. The complainant of the receipt of the request and the department's policy of attempts at local resolution before a hearing is scheduled;

2. [1-] The appropriate service region administrator [family services-district manager] or designee [shall also be notified] of the receipt of the complaint [request] and asked to set a meeting with the complainant to attempt to resolve the issues that led to the complaint.

[2- The juvenile services specialist shall arrange a meeting with the complainant to attempt to resolve the issues that led to the complaint if received from youth in residential treatment facilities, Re-ed programs, group homes or day treatment programs.]

(b) The local resolution facilitator contacts the complainant to:

1. Clarify the issues of the complaint;
2. Determine if the complainant wishes to participate in the local resolution process; and
3. Determine if the complainant is a client or a person filing on behalf of a client. If the complainant is not a client, notify the Quality Assurance Section supervisor [Branch-Manager] immediately.

(c) The complainant may refuse to participate in the local resolution efforts and shall sign an acknowledgement to be forwarded to the Quality Assurance Section supervisor [Branch-Manager] and choose:

1. To request that the complaint be withdrawn; or
2. That the complaint be referred for a formal fair hearing.

(d) If the complainant chooses to be involved in the local resolution process, the local resolution facilitator shall solicit information from the involved parties in an attempt to resolve the complaint in a manner that is acceptable to the complainant. The solicitation of information may include:

1. Interviews with the complainant and named Department for Community Based Services [DSS] staff;
2. Interviews with other involved parties; and
3. A review of relevant case materials.

(e) Other issues identified as a result of the local resolution conference shall be brought to the attention of appropriate management and supervisory staff.

(3) [(4)] The service region administrator [family services-district manager] or his designee [or the juvenile services specialist] shall forward to the Quality Assurance Section [Branch], in writing, the results of their efforts to achieve local resolution of the complaint not more than thirty (30) days after the filing of the service complaint [request-for-hearing]. The report shall contain the information necessary to document the complainant's satisfaction with the resolution of his

complaint or, if the complaint is not resolved, information necessary to move the complaint to the next level. [:

- (a) Nature of the complaint;
- (b) Date of resolution conference;
- (c) Persons present at the conference; and
- (d) A specific statement of any issues not resolved.]

(4) [(5)] If the complaint is resolved, the complainant shall sign an acknowledgment to that effect [be attached to the report]. A copy of the local resolution report shall be sent to the complainant and involved staff.

Section 4. Hearing Before the State Agency. (1) If a complaint is not resolved within thirty (30) days after filing, it shall be referred to a hearing officer of the Quality Assurance Section [Branch] to conduct a hearing. The hearing shall be held within sixty (60) [thirty-(30)] days after referral. If the complainant agrees to an extension of time, the time for final administrative action shall be correspondingly extended.

(2) The hearing shall be conducted at a reasonable location selected by the hearing officer.

(3) The complainant and representatives, as appropriate, the Department for Community Based Services [BSS] staff involved in the complaint and their representatives, and Cabinet Office of the General Counsel shall be given twenty (20) days written notice prior to the hearing. The hearing officer's notice shall comply with KRS 13B.050(2)(3). The following additional information shall be contained in the hearing officer's notice to the complainant and his representative and staff named in the complaint:

(a) The complainant shall be asked to notify the hearing officer in writing within five (5) working days of the receipt of the notice if the complaint issues have not been correctly stated. The hearing officer shall then make a determination as to whether to modify the complaint issues;

(b) Individuals to be present at the hearing;

(c) That the department shall not be responsible for any legal fees incurred by the complainant related to the hearing;

(d) The nature and conduct of the hearing, shall be held in an orderly but informal manner, with an opportunity to present witnesses and to cross examine opposing witnesses; and

(e) The complainant's right to examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing and instructions on how to access the material under the open records law as governed by KRS 61.870 to 61.884.

(4) Attendance at the hearing shall be limited to:

- (a) The complainant and representatives;
- (b) Staff involved in the complaint and their representatives;
- (c) The department's attorney;
- (d) A representative of the department;
- (e) A person to operate the recording equipment;
- (f) Witnesses called by either the complainant or staff; and
- (g) The hearing officer.

(5) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090. Facts relevant to the issue shall be received.

(a) The hearing officer shall open the hearing by:

- 1. Describing the purpose of the hearing;
- 2. Explaining the role of the hearing officer; and
- 3. Introducing parties to the hearing.

4. The hearing officer may direct or grant a continuance for good cause shown.

5. The hearing officer shall carefully clarify the complaint issues to be heard with the parties to the hearing. The complaint issues shall be the same as those in the written notification of the hearing.

(b) The hearing officer shall arrange for the separation of witnesses. Only the client and representatives; staff involved in the complaint and their representatives; the department's attorney; a representative of the department; the hearing officer; and a person to operate the recording equipment are entitled to be in the hearing room throughout the entire hearing. The hearing officer may permit others to remain throughout the entire hearing if circumstances dictate.

(c) Burden of proof shall be assigned in accordance with KRS 13B.090(7). [The complainant shall have the burden of proof and shall testify first and may present pertinent evidence, including testimony of witnesses and documents.]

(d) ~~[The ultimate burden of persuasion is met by a preponderance of evidence. Upon completion of the case for the complainant, the respondents may testify and present other evidence including testimony of witnesses and documents.]~~

(e) Upon completion of the case for the respondents, the complainant may present additional evidence in strict rebuttal of the evidence presented by respondents. Additional evidence may be presented by either complainant or respondents at the discretion of the hearing officer.]

(e) [(f)] The hearing officer may, if necessary to secure full information on the issue:

- 1. Postpone the hearing;
- 2. Examine each party who appears, and his witnesses; and
- 3. Take any additional evidence which he deems necessary including excerpts from the case record.

(e) [(f)] [(g)] The hearing officer shall advise the parties that a decision shall be rendered within thirty (30) days from the close of the hearing. ~~[Failure to meet the burden of proof is grounds for a recommended order from the hearing officer.]~~

(f) [(g)] [(h)] Ex parte communications with the hearing officer shall be prohibited. Ex parte communications with the hearing officers shall be shared with the parties to the hearing and become a part of the official record.

Section 5. Hearing Officer's Recommended Order. (1) Within ten (10) days after the close of the hearing, the hearing officer shall file a recommended order with the Quality Assurance Section [Branch]. The order shall comply with KRS 13B.110 and at least contain:

(a) Statement of the complaint;

(b) Persons present at the hearing, including witnesses;

(c) Findings of fact based solely on the evidence introduced at the hearing;

(d) Conclusions of law as to whether or not the findings support the complaint, citing appropriate policy, procedures and practices in a recommended decision on the issues;

(e) Recommendations as to action to be taken on the complaint; [and]

(f) Directions for the filing of exceptions; and

(g) Other issues identified by the hearing officer shall be addressed separately. [Other issues identified by the hearing officer shall be addressed in a separate memorandum.]

(2) Each party to the hearing shall have fifteen (15) days from date of recommended order to file exceptions.

(3) Within twenty (20) days after receipt of the hearing officer's recommended order by the Quality Assurance Section [Branch], the commissioner, or designee, shall render a final order on the complaint. The final order shall be sent to the complainant by certified mail, return receipt requested, and to the staff involved, and shall comply with KRS Chapter 13B.120 and at least contain the following information:

(a) Statement of the complaint;

(b) Findings of fact and conclusion of law with applicable statutes, policies, procedures and practices in regard to the complaint; [and]

(c) Decision and action to be taken based on findings of fact; and

(d) Statement of appeal rights.

Section 6. Corrective Action. After reviewing the findings of fact and conclusions of law and recommendations of the hearing officer, if the commissioner or the commissioner's designee feels that corrective action is warranted, a memorandum shall be forwarded to the [appropriate assistant] Director for the Division of Protection and Permanency [family services or residential services] requesting that corrective action be initiated. Corrective actions deemed necessary shall be initiated within ten (10) days.

Section 7. Record. The record of each administrative hearing shall comply with KRS 13B.130 and shall be available at the Frankfort office of the Quality Assurance Section [Branch] at any reasonable time in accordance with open records. The record of the fair hearing shall be maintained in a locked file separate from the case record of the complainant.

Section 8. Contract Agencies. (1) Contract agencies of the department shall follow procedures outlined in this administrative regula-

tion if a client has a complaint related to civil rights, discrimination or service delivery. If the complainant is dissatisfied with the written decision rendered by the contract agency, the client has ten (10) days from the date of the agency's decision to appeal. The agency, if requested, shall assist the complainant in filing an appeal of the decision. An appeal shall be mailed to the office of the commissioner.

(2) The commissioner shall forward the appeal of the decision to the Quality Assurance Section [Branch] to be reviewed by a hearing officer. After reviewing the decision made by the contract agency, the hearing officer shall file a written report with the commissioner which shall contain:

(a) Conclusions as to whether the contract agency's finding support the complaint, citing appropriate policy and procedure; and

(b) Recommendations as to action to be taken on the complaint.

(3) After receipt of the hearing officer's report, the commissioner or the commissioner's designee shall render a written decision on the complaint. The written decision shall be sent to the complainant by certified mail, return receipt requested, and shall contain the following:

(a) Statement of the appeal; and

(b) Decision and action to be taken.

~~Section 9. [Appeal Process of the Department of Juvenile Justice (DJJ): The Internal Investigations Unit (IU) of the Justice Cabinet has responsibility for conducting investigations of abuse and neglect of residents by staff in the residential treatment facilities and group homes operated by the DJJ. The appeal process of substantiated abuse and neglect findings is as follows:~~

~~(1) Notification:~~

~~(a) When an investigation by the IU has a finding of substantiated, the employee named as perpetrator shall be notified by certified letter. The notification shall include:~~

~~1. The investigation report with the names of the juveniles involved as witnesses removed;~~

~~2. The Substantiated Finding Appeals Request Form to appeal the substantiated finding;~~

~~3. The perpetrator shall be given three (3) working days from the receipt of the notification in writing, not to include the date of receipt, to appeal the finding;~~

~~(2) Hearing process:~~

~~(a) The hearing shall be scheduled within ten (10) working days of the receipt on the appeal, not to include the day the appeal is received;~~

~~(b) The perpetrator shall be notified of the time and place of the hearing;~~

~~(c) The perpetrator may be represented by counsel and may present written documents as evidence, but may not present witnesses;~~

~~(d) The IU staff who conducted the investigation shall be present to present the investigation and answer questions of the hearing officer;~~

~~(e) A determination of whether probable cause exists to alter the finding or sustain it, shall be made within five (5) working days of the appeals hearing;~~

~~(f) The perpetrator shall be notified in writing of the decision and the reason for the decision;~~

~~(g) Timelines in this appeals process may be adjusted by mutual agreement of the perpetrator, IU investigator, and hearing officer.~~

~~Section 10.] [Material] Incorporated by Reference. (1) DCBS-154, "Service Complaint Form", July, 1998, Cabinet for Families and Children, is incorporated by reference.~~

~~(2) [The "Substantiated Finding Appeals Request Form", September 1998, Justice Cabinet, is incorporated by reference.~~

~~(3) This material [The DSS-154, Request for Hearing, revised December, 1992 and the DSS-154A, Notice of Intended Action, revised October, 1993 shall be incorporated by reference.~~

~~(2) Material incorporated by reference] may be inspected, [and] copied, or obtained at the Department for Community Based [Social] Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.~~

DIETRA PARIS, Commissioner
VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 2, 1998

FILED WITH LRC: September 9, 1998 at 3 p.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

905 KAR 1:330. Child protective services.

RELATES TO: KRS 431.600, 600.10, 605.130, 620.010 to 620.050, 620.990, 1998 Ky. Acts chs. 57, 303, 339, 426, sec. 601

STATUTORY AUTHORITY: KRS [194:050;] 605.150, 620.180, 42 USC 5106a, 1998 Ky. Acts ch. 426, sec. 34(1), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 426, sec. 34(1) [KRS 194:050] requires the Secretary for the Cabinet for Families and Children [Human Resources] to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children [Human Resources]. This administrative regulation sets forth the procedures for child protection investigations of abuse, neglect, or dependency by the Department for Community-Based [Social] Services in compliance with KRS 605.150 and 620.180.

Section 1. Definitions. (1) "Child protective services" means preventive and corrective services directed toward:

(a) Safeguarding the rights and welfare of abused, neglected or dependent children [Strengthening family life];

(b) Improving the abilities of parents to carry out parental responsibilities;

(c) Assuring for each child a safe and nurturing home;

(d) Improving the abilities of parents to carry out parental responsibilities;

(e) Strengthening family life [Safeguarding the rights and welfare of abused, neglected or dependent children];

(f) Assisting parents or other persons responsible for the care of a child in recognizing and remedying conditions detrimental to the welfare of a child; and

(g) Identifying and correcting conditions in society which contribute to the neglect, abuse or dependency of a child.

(2) "Failure to locate" means the identifying information about the family is insufficient for locating them or the family has moved and their new location is not known.

(3) "Found and substantiated" means a type of physical abuse, sexual abuse, neglect or dependency not originally reported by the referral source was found and substantiated during the investigation;

(4) "Prior involvement" means:

(a) Either the child or caretaker are currently registered protection and permanency [DSS] clients or have been registered clients within one (1) year of the reported fatality; or

(b) A protective service investigation was completed in regard to the child or caretaker, regardless of the status of the investigation, within one (1) calendar year preceding the reported fatality.

(5) "[Some indication]" means some indicators that abuse, neglect or dependency may exist or some circumstances or conditions are sufficient to arouse suspicion;

(6) "Substantiated" means an admission of abuse, neglect or dependency by the persons responsible or a judicial determination of abuse, neglect or dependency or strong circumstantial or other supportive indicators that abuse, neglect, or dependency by the persons responsible exist;

(7) "Unsubstantiated" means there is insufficient [no] evidence, indicators or justification for suspicion of abuse, neglect or dependency.

Section 2. Receiving a Report. (1) The Department for Community-Based [Social] Services shall accept reports of child abuse, neglect or dependency as governed by KRS 620.030.

(a) The home telephone numbers of family services workers, family services office supervisors, and the child abuse hotline shall be made available to agencies in the community who may encounter

child abuse, neglect or dependency for emergency reports after normal office hours unless a formalized on call system exists.

(b) The intake worker shall attempt to elicit from the person reporting the suspected abuse, neglect or dependency as much information about the child's circumstances, as possible, including:

1. Specific information as to the nature and extent of abuse or neglect;
2. The causes of the abuse;
3. The location of the child and family;
4. Determine if there have been previous incidents;
5. Witnesses to the incident which caused the child's conditions;
6. Whether the reporting person or others have taken any action;
7. Present danger to child or staff; and
8. The reporting persons identity and relationship to the child assuring him that his identity shall not be revealed unless the court orders his name divulged.

(c) Anonymous reports which give sufficient information and report abuse, neglect or dependency by a caretaker shall be investigated.

(2) Acceptance criteria.

(a) The department shall receive and investigate reports of physical abuse if there are reported to be or have been observable marks on a child which were allegedly inflicted nonaccidentally by a caretaker. The department may accept a report of physical abuse or risk of physical injury if no observable marks are seen and if:

1. There are reports of a child being hit in critical areas of the body, which may include ~~(including but not limited to,)~~ the head, face, neck, genitals, abdomen, and kidney areas;
2. There are reports of threats of physical injury; or
3. There are allegations of injuries to a child which are the result of altercations between the child and the custodian. The worker shall explore the precipitating factors, the degree of appropriateness of force used by the caretaker and the need for further services to assist in eliminating the violent behavior in the home.

(b) The department shall receive and investigate reports which allege neglect of a child by a caretaker which may result in harm to the physical health and safety of the child in the following areas:

1. Hygiene neglect exists if:
 - a. A child has physical symptoms that require treatment due to poor care; or
 - b. The child's physical health and safety is negatively affected due to an act or omission by the caretaker;
2. Supervision neglect exists if the caller has reason to believe that the physical health and safety of the child may be negatively affected by lack of necessary and appropriate supervision;
3. Food neglect exists if a child shows symptoms of:
 - a. Malnutrition;
 - b. Dehydration;
 - c. Food poisoning; or
- d. Not having been provided adequate food for a period of time that interferes with the health needs of the child based on age and other conditions;
4. Clothing neglect exists if a child suffers:
 - a. Illness;
 - b. Exposure; or
 - c. Frostbite due to inadequate clothing or the clothing is insufficient to protect the child from the elements.
5. Environmental neglect exists if a serious health and safety hazard is present and the caretaker is not taking appropriate action to eliminate the problem;
6. Educational neglect exists if the school system has exhausted their resources to correct the problem and the caretaker's negligence prevents the child from attending school or receiving appropriate education; and
7. Medical neglect exists if a child is not receiving medical assessment or treatment for an injury or illness or disability which if left untreated may:

- a. Be life-threatening;
- b. Result in permanent impairment;
- c. Interfere with normal functioning and worsen without treatment;
- or
- d. Be a serious threat to the child's health due to the outbreak of a vaccine preventable disease.

(c) The department shall receive and investigate reports which

allege sexual abuse of a child committed or allowed to be committed by a caretaker or the risk that an act of sexual abuse, sexual exploitation, or prostitution shall be committed on a child. Pursuant to 1998 Ky. Acts ch. 426, sec. 601, and ch. 339, sec. 1, each investigation of reported or suspected child sexual abuse shall be conducted by the multidisciplinary team, if available. Reports of sexual abuse shall include contacts and interactions in which a child is used to sexually stimulate or gratify another person. An investigation may be conducted without a specific allegation if a child has a sexually transmitted disease and the child exhibits physical or behavioral indicators of abuse.

(d) The department may receive and investigate reports which allege risk of sexual harm to a child, if there are factors which cause a person to believe that an act of sexual abuse may be committed on a child.

(e) The department shall receive and investigate reports which allege emotional injury or risk of emotional injury of a child by a caretaker as governed by 1998 Ky. Acts ch. 57, sec. 2(20) [KRS 600.020(20)].

(f) The department shall receive and investigate reports which allege a child is dependent as governed by KRS 600.020(16) [(15)].

Section 3. The cabinet shall not investigate reports of abuse or neglect by a noncaretaker but shall comply with KRS 620.030(1).

(1) Staff shall keep a log of these referrals specifying the date received and date referred to the Commonwealth's or county attorney and local law enforcement.

(2) Staff may at the request of local law enforcement provide assistance in interviewing alleged child abuse victims.

(3) Staff may refer to other agencies referrals not requiring mandatory child protection services investigations.

(4) The following criteria shall be used in identifying referrals not requiring investigation:

- (a) The victim of the report is age eighteen (18) or over;
- (b) There is insufficient information to locate the child or explore leads to locate;
- (c) The problem described does not meet the statutory definitions of abuse, neglect or dependency;
- (d) Reporter notifies the department that a child is injured, but the reporter does not allege injuries were the result of abuse or neglect;
- (e) If the report concerns custody changes or custody related issues or lifestyles issues without allegations of abuse, neglect or dependency;
- (f) Corporal punishment appropriate to the age of the child without injuries, marks or bruises or substantiated risk of harm. This type of corporal punishment by foster parents shall be reported;
- (g) Allegations of abuse or neglect of a fetus;
- (h) Allegations of spouse abuse to a married youth, under the age eighteen (18). These reports shall be forwarded to the adult services worker.
- (i) If the report concerns a specific incident previously investigated and no new information or change in the child's circumstances is communicated.

Section 4. Report of Suspected Child Abuse, Neglect, Dependency. Following the receipt of the report, the DSS-115, the [Report of] Suspected [Child] Abuse, Neglect, Dependency, or Exploitation Reporting Form [herein] incorporated by reference, shall be completed and the report investigated. Investigations shall be conducted according to the following time frames as governed by KRS 620.040(1):

- (1) If the report indicates the child is in imminent danger, the investigation shall be initiated within the hour.
- (2) If the report indicates nonimminent danger of physical or sexual contact, effort shall be made to have personal contact with the child and family within twenty-four (24) hours, but contact shall be made within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.
- (3) If the report indicates nonimminent danger, not involving physical or sexual contact, the investigation shall be initiated within twenty-four (24) hours. Efforts shall be made to have personal contact with the child and family within forty-eight (48) hours. Unsuccessful attempts to locate shall be documented in the investigative narrative.
- (4) Reports of dependency if a child is not in imminent danger shall be investigated within forty-eight (48) hours.

Section 5. Reports of Abuse, Neglect, and Dependency in Cabinet-approved Homes or Licensed Facilities. (1) If a report of alleged child abuse, neglect or dependency in an approved foster home or adoptive home is received, the supervisor shall immediately contact the service region administrator or designee [~~family services district manager~~] who shall designate a worker to conduct the investigation. If abuse, [~~or~~] neglect or dependency is substantiated [~~or there is some indication;~~] a review of the home shall be completed. The decision to close or continue using the home shall be made by the service region administrator or designee [~~family services district manager~~] based on pertinent available information.

(2) If a report of alleged child abuse or neglect in a licensed child care facility, private child care or a day care center is received the worker shall notify the Division of Licensing and Regulation. This notification shall be documented in the case and may be done by phone and followed up in writing. If possible, the investigation shall be coordinated and conducted jointly; however, if not possible within the designated time frame, the worker shall proceed with the investigation. In joint investigations the DCBS worker providing protection and permanency services [~~DSS worker~~] shall with the Division of Licensing and Regulation staff:

(a) Conduct an entrance interview with the facility administrator or designee outlining the nature of the report without disclosing the name of the reporter; and

(b) Discuss their findings privately prior to conducting an exit interview.

(3) [~~If a report of alleged child abuse or neglect in a Cabinet for Human Resources operated treatment facility is received the worker shall immediately telephone the Office of Inspector General who shall investigate the report. The phone contact shall be followed by completing a DSS-115 and further action shall not be taken unless specifically requested by the Office of Inspector General.~~]

(4) Reports of abuse or neglect involving school personnel.

(a) If allegations of child abuse or neglect have been made about a school employee, with the incident occurring during school time or other school related activities, the worker shall:

1. Complete the DSS-115, Suspected Abuse, Neglect, Dependency, or Exploitation Reporting Form and forward copies to appropriate law enforcement and county or commonwealth attorney;

2. Interview child and natural parents or legal guardians. Conduct the interview away from school grounds, if possible;

3. Interview the alleged perpetrator away from the school grounds if possible.

(b) If the referral is unsubstantiated, further action shall not be taken. Information regarding the finding of the report may be shared with the alleged perpetrator and the custodial parent. Other information shall be requested through open records procedures.

(c) If the referral is substantiated [~~or shows some indication of abuse or neglect~~]; the worker shall notify the appropriate supervisor of the alleged perpetrator that an investigation has been conducted, [~~and of~~] the results of the investigation, and that the alleged perpetrator has the right to appeal pursuant to 905 KAR 1:320.

(4) [(5)] If a report of alleged child abuse or neglect in a certified family child care home is received the worker shall notify the Department's Division of Child Care [~~Services Branch~~].

Section 6. Prior Reports. (1) Before investigating the referral regarding a child unknown to the local office, the worker shall [~~district data center shall be contacted to~~] determine the existence of:

(a) Prior reports;

(b) [~~or if there exists~~] A closed case; or

(c) A case opened elsewhere in the state.

(2) This information shall be documented in the case record but failure to secure this information shall not delay the investigation within the stated time frames.

Section 7. Initial Investigation. Information necessary for determining the validity of the report, and if valid, the existence of imminent danger and risk to the child shall be obtained during the investigation. Investigations shall entail face-to-face contact with the alleged victim[~~Victims~~], if of appropriate age, [~~and~~] If possible, parents or caretakers, appropriate household and family members, and alleged perpetrators shall be interviewed.

(1) If determining whether to interview the child, [~~or~~] parent or caretaker first, consideration shall be given to the:

(a) Nature of the referral;

(b) Current location of the child;

(c) Indicated risk to the child; and

(d) Known violence on the part of the parent.

(2) A child shall not be interviewed in the presence of the alleged perpetrators or others who may put pressure on the child.

(3) If the worker is unable to contact the parents or caretaker, he shall notify the supervisor and document the case record.

(4) Collateral contacts shall be interviewed if the validity or severity of the report cannot be determined from the interviews. Collateral sources may include:

(a) Officers of the court;

(b) School personnel;

(c) Neighbors;

(d) Medical personnel;

(e) Law enforcement officers; and

(f) Personnel of other agencies.

(5) Medical and psychological examinations may be required if the report alleges that the child has suffered sufficient physical harm of a serious nature, [~~emotional harm~~] or emotional injury. The worker, if possible, shall obtain a copy of the report.

(6) The worker shall cooperate with law enforcement.

(a) Child sexual abuse investigations shall be investigated jointly with law enforcement. The investigation shall be initiated within time frames established in Section 4 of this administrative regulation.

(b) Attempts shall be made to ensure that the worker shall not impede the criminal investigation; however, the worker's primary responsibility shall be the protection of the child.

(7) To prevent a child from experiencing multiple interviews a videotaped interview may be appropriate.

Section 8. Alleged Perpetrators Age Twelve (12) or Older. Reports involving perpetrators in a caretaking role under the age of twelve (12), shall be investigated. However, the child shall not be identified as the alleged perpetrator on the DSS-150, Child Protection Investigation Results, [~~Initial Results of Child Abuse, Neglect, Dependency Investigation, herein~~] incorporated by reference.

Section 9. Interviewing Children in Schools. Worker's shall have the authority to investigate child abuse, neglect or dependency reports at school without parental consent. The worker shall inform appropriate school personnel of the need to interview a child regarding a referral. Details of the allegation and investigation shall only be given to school personnel with a legitimate interest in the case.

Section 10. Notice of Results of Investigation. The worker shall complete the notification section of the DSS-115, and forward it [~~forwarded~~] to law enforcement officials and the county or commonwealth attorney within seventy-two (72) hours of receipt of the report, exclusive of weekends and holidays as governed by KRS 620.040(1).

Section 11. Medical Neglect of Disabled Infants. (1) The department shall be notified of known or suspected instances of the withholding of medically indicated treatment of disabled infants with life threatening conditions in hospitals or health care facilities. Federally funded hospitals and health care facilities shall be given the department's toll-free child abuse hotline number.

(2) If a report is received, hotline staff shall notify a child protective services specialist in central office if received during working hours or a designated person at home if received outside working hours.

(3) Central office staff shall contact one (1) of the department's medical consultants who shall investigate the report.

Section 12. Denied Entry to a Home for a Protective Service Investigation. (1) The worker shall not enter a home during the investigation of a report if an adult is not present in the home.

(2) If there is reason to believe the child is in imminent danger, law enforcement shall be contacted for assistance.

(3) [(2)] If the parents or caretakers of a child refuse the worker entry to the child's home or refuse to allow the child to be interviewed, the worker with approval of the supervisor may request an order from

the court.

(a) If the court issues a search warrant the worker may accompany law enforcement officers if the warrant is served;

(b) With the exception of removal of a committed child, the worker shall not remove a child from the home without a court order to remove;

(c) If the court refuses to issue a search warrant, the family service worker shall document the attempts to secure one in the narrative.

Section 13. Risk Assessment. During an investigation of alleged child abuse and neglect, the worker shall assess the strengths of the family and risk to the child by completing the Child Risk Assessment, the Family Assessment, and the Staff Assessment Forms [DSS-897, Child Protective Services Risk Assessment Guidelines, herein incorporated by reference]. The worker shall not be required to complete these assessments [the DSS-897] if the:

(1) Child is found dependent;

(2) Alleged perpetrator is not the child's primary caretaker;

(3) Investigation determines the referral to be unsubstantiated or unable to locate; or

(4) Investigation of a child fatality determines there are no surviving children in the home; [-or

(5) ~~The supervisor deems the use of the DSS-897 to be unnecessary, based on the training and experience of the worker, or inappropriate; and the reasons are documented in the case record.]~~

Section 14. Child Fatality or Near Fatality Investigations. (1) Reports that a child fatality or near fatality has occurred due to abuse or neglect by a parent, guardian or other person exercising custodial control or supervision of the child shall be investigated by the department.

(2) If the alleged perpetrator was not a parent or in a caretaker role, the reports shall be forwarded pursuant to [as governed by] KRS 620.030.

(3) If it is determined that the department has prior involvement, the commissioner, the Office of Communications and the general counsel of the cabinet shall be notified of the situation immediately through the established channels of communication. The notification shall include:

(a) Name and age of victim;

(b) Known circumstances around the fatality or near fatality [death];

(c) Description of physical injuries or medical condition of the child;

(d) Names, ages and location of other children in the family;

(e) Brief description of the department's history with the family caretaker;

(f) Actions taken by the department to date and future actions to be taken; and

(g) Involvement of other professionals in the case.

(4) It may be advisable that staff who have had prior direct involvement with the case not be assigned to conduct the investigation.

(a) The assigned investigator, if feasible, shall consult with social workers who have direct involvement with the case prior to investigating.

(b) A joint investigation with law enforcement shall be conducted if possible. The designated investigator shall;

1. Be cooperative, but not usurp the roles of law enforcement or the coroner or interfere with their respective investigations; and

2. [-The investigator shall] Contact appropriate law enforcement and coroner to clarify roles and establish a common channel of communication, particularly if the intake information indicates other children are present in the household.

(c) Worker safety in a potentially dangerous setting shall be considered during the course of the investigation. Collateral contacts with medical personnel, the coroner and other appropriate persons may be made to assess potential danger to staff.

(5) The worker shall determine the safety of any surviving children through immediate assessment to assure their safety. The risk assessment guidelines shall be completed if there are surviving children in the home, unless [the family services office supervisor deems] the use of the risk assessment guidelines is inappropriate as specified in Section 13 of this administrative regulation. [And] The reason for omission of the risk assessment shall be [is] documented in the case

record. This assessment shall include [includes]:

(a) Arranging for physical examinations to check for injuries to the surviving children, if indicated;

(b) Determining whether there has been any history of prior abuse, neglect to the children or other family members by the alleged perpetrator;

(c) Interviewing the children to assess present emotional condition and to determine to what extent they may have witnessed family violence;

(d) Interviewing the parent or caretaker to observe interaction with children and to discuss parent or family history of the caretaker;

(e) Making collateral contacts with neighbors, schools and extended family;

(f) Determining whether the surviving children were present during the time the deceased child received injuries and witnessed what occurred; and

(g) Initiating mental health counseling immediately, if appropriate, for the emotional stability of the children.

(6) If parental rights have been terminated and there has been ongoing contact or other special circumstances, the decision to notify biological parents shall be made by the service region administrator [manager] or designee. The Department of Public Advocacy, Protection and Advocacy Division, shall be notified if a child, identified as a protection and advocacy client, dies as a result of abuse or neglect and the perpetrator is in a caretaker role.

(7) In the case of the death of a youthful offender, the sentencing circuit court and the Parole Board shall be notified.

(8) If a fatality occurs in either a foster home, [Cabinet for Human Resources facility,] psychiatric unit or hospital or private child care facility, and parental rights are intact, efforts shall be made to immediately notify the parents. The judge of the committing court and the guardian ad litem for the deceased child shall be informed of the fatality in writing within three (3) working days after receipt of the report.

(9) Public disclosure may occur in a case of child abuse or neglect that has resulted in a child fatality or near fatality as governed by 1998 Ky. Acts ch. 303, sec. 2(6). [The following procedures apply to staff in a Cabinet for Human Resources facility if a death occurs:

(a) ~~Emergency medical services and police shall be contacted immediately. Location and phone number shall be posted by the telephone in each program;~~

(b) ~~The program director, branch manager, and division director through normal chain of command shall be notified immediately. The division director shall notify the Commissioner for Social Services;~~

(c) ~~Staff on duty shall not disturb the body or the immediate area beyond any action necessary to provide emergency resuscitation techniques, or to check for vital signs;~~

(d) ~~Notification shall be given to the local office of the coroner in compliance with KRS 72.020;~~

(e) ~~Notification to the family and community worker shall be delivered, after direction by the program director, who shall select the individual to present the information in a therapeutic manner to the person;~~

(f) ~~Detailed documentation shall be entered in the case record by staff describing the event, including:~~

1. The time the coroner was notified;

2. The time pronouncement of death was given;

3. Names of staff involved; and

4. Notification of parents and guardians. Pertinent notifications and significant facts related to the death shall be fully documented.

(g) ~~A final report shall be prepared by the program director to be submitted to the Commissioner for Social Services through established channels.~~

(h) ~~The record of the juvenile shall be maintained at the facility until a final report of the coroner is entered into the record. A copy of this report shall be sent to the Commissioner for Social Services through established channels.]~~

(10) Funeral arrangements shall remain the responsibility of the natural parents unless parental rights have been terminated.

(a) Staff shall explore with the natural parents their ability to accept financial responsibility for the funeral. Personal and family resources, including trust fund and insurance in the name of the child, shall be exhausted prior to approval of department funds for funeral and burial expenses. Costs shall have prior approval by the appropri-

ate level of supervision.

(b) The selection of a funeral home, mortician, casket, and burial lot shall be based on estimates of cost which are reasonable and on consideration of the choice of the natural parents.

(c) Clothing for burial may be provided by the natural family, foster family, or may be purchased by the department staff.

(d) Flowers may be selected by the department staff and billed to the department.

(e) Arrangements for religious services may be made with a clergyman of the faith of the natural parents. If the faith of the natural parents is unknown, a clergyman of the faith of the foster parents may conduct services.

Section 15. Determining the Validity of the Report. After the initial investigation is completed pursuant to Section 7 of this administrative regulation [interviews and the necessary information is gathered], the social worker shall determine the validity of the report and submit the findings [result] [DSS-150;] within thirty (30) working days of the receipt of the report from the reporting person, unless there are extenuating circumstances which are documented in the narrative. The family services office supervisor or designee shall review and evaluate the findings [results] of the investigation [-sign and date the original DSS-150].

Section 16. Central Registry. The central registry consists of a list of names of perpetrators in substantiated cases of child abuse and neglect in which the right of the appeal has been waived or the initial finding has been upheld. [(1) Reports of alleged abuse, neglect, or dependency are computerized for the purposes of compiling statistical information, aiding in diagnostic treatment, and providing management with a means for program evaluation.

(2) Reports that are found to be unsubstantiated or unable to locate shall include:

- (a) Child demographics;
- (b) The type of report alleged;
- (c) Source of report; and
- (d) Status of case;]

(1) [(3)] Reports that are found to be substantiated, [and some indication] shall include:

- (a) Both child and alleged perpetrator demographics;
- (b) Specific characteristics relating to the report;
- (c) Type of report; and
- (d) Status and relationship of alleged perpetrator to child involved.

(2) [(4)] The only information that shall be released from the child abuse, neglect, or dependency central registry is statistical information. Social agencies demonstrating a legitimate interest may be told if a case exists in the registry, but all requests for details related to that case shall go through open records process.

Section 17. Photographs. Photographs may be taken of a child during a protective service investigation without parental consent. If it appears that photographs of an abused or neglected child is [children are] necessary for proof of abuse or neglect, it is advised that law enforcement take the photographs. If a family services worker takes the photographs, there shall be a witness and documentation made of the subject, date, and witnesses to the photograph.

Section 18. Case Planning. (1) If a case is to be opened, a maximum of fifteen (15) working days shall be allowed to open the case and complete the case plan.

(a) Priority for opening cases shall be given to cases in which the child is at greatest risk for harm.

(b) Within ten (10) working days of the decision to open a case, the family services office supervisor shall assign or transfer the case for treatment.

(2) The case plan shall be based on assessment and goal formation. It shall include a limited number of attainable, specific objectives agreed upon between the social worker and the family. The case plan shall take into account the following:

- (a) The assets and strengths of the family unit and its members;
- (b) The options, priorities and needs of the family unit and its members;
- (c) The clarification and definition in behavior-specific terms of

what needs to change and what new skills need to be learned;

(d) The identification and impact of community forces over which the family may have little or no control;

(e) The opinions of expert consultants regarding medical, mental health, legal and other factors;

(f) The input from referring agencies; and

(g) The resources available within the agency and the community and delineation of roles and functions to bring about the specified changes.

(3) The social worker shall develop a treatment plan designed to provide a safe environment for the child and engage the commitment and cooperation of the family. Family members and children of appropriate age shall be encouraged to participate in the development and updating of case plans.

(4) A copy of the case plan shall be given to the parent or caretaker. The case plan shall be reviewed by the family, worker and supervisor, to include case closure assessment no less frequently than every six (6) months.

(5) A DSS-154, Service Complaint [Request for Hearing], shall be given to the family advising them of the right to a fair hearing in compliance with 905 KAR 1:320.

(6) If adoption [termination of parental rights] becomes the goal, case planning and service delivery shall continue until the termination of parental rights judgment order is received.

Section 19. Service Delivery. Service delivery shall be provided as outlined and stated in the case plan. Service delivery shall encompass identified expectations of the family, staff and the implementation of resources in the community. Service recordings shall be completed within thirty (30) days of the contact and shall reflect progress toward treatment goals. [Recordings shall be signed and dated by the worker.]

Section 20. Case Closure. (1) The decision to close a case which has received services shall be based on evidence that the original factors resulting in the abuse, neglect or dependency have been resolved to the extent that the family can protect the child and can, at least minimally, meet the needs of the child. A child protective services case shall not be closed if withdrawal of services places the child in danger. Consideration for closure of a child protective service case may occur if the following conditions are met:

- (a) The child is no longer in need of protection;
- (b) The goals have been achieved; or
- (c) The client is not making progress toward treatment goals and there are no legal grounds for intervention.

(2) The closing summary of the child protective services case shall be included in the case record. A brief narrative regarding the case and the reasons for closure shall be entered. The summary may include:

- (a) Number of months of child protective services;
- (b) Agencies still involved in the case;
- (c) Assessment of family functioning and of conditions that have changed to make closure possible;
- (d) Reason and date of closure.

(3) [The form shall be signed and dated by the worker.] Notification to client of closure with a DSS-154-A shall be documented in the case pursuant to [as required by] 905 KAR 1:320.

Section 21. [Material] Incorporated by Reference. (1) The following material is incorporated by reference:

(a) [The] DSS-115, "Suspected Abuse, Neglect, Dependency or Exploitation Reporting Form", [revised] "July, 1994", Cabinet for Families and Children; [shall be herein incorporated by reference;]

(b) DSS-150, "Child Protection Investigation Results", "July, 1994", Cabinet for Families and Children.

(2) This material [incorporated by reference] may be inspected, [and] copied, or obtained at the Department for Community-Based [Social] Services, [CHR Building, 6th Floor;] 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.

DEITRA PARIS, Commissioner
VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney
APPROVED BY AGENCY: October 1, 1998
FILED WITH LRC: October 14, 1998 at 11 a.m.

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
Division of Policy Development
(As Amended at ARRS, December 8, 1998)

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

RELATES TO: KRS 17.165, 199.898, 199.8982, 1998 Ky. Acts ch. 57, sec. 2(1), ch. 153, sec. 1, ch. 524, secs. 2(14), 3, 4, ch. 565, sec. 1, 42 USC 602

STATUTORY AUTHORITY: KRS 13B.005 to 13B.170, 1998 Ky. Acts ch. 426, secs. 34(1), 158, ch. 524, sec. 4(2)(f), EO 98-731 [194.050, 199.8982, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 426, sec. 34(1) [KRS 194.050] provides that the Secretary for the Cabinet for Families and Children [Human Resources] shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Child Day Care Program under the Cabinet for Families and Children.] In compliance with 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158, [KRS 199.8982,] the Department for Community-Based [Social] Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children.

Section 1. Definitions. [These definitions shall be used in this administrative regulation:] (1) "Abused or neglected child" is defined pursuant to 1998 Ky. Acts ch. 57, sec. 2(1). ["Adequate supervision" means that qualified staff devote full time and attention to the children being supervised and keep the children within sight and sound.];

(2) "Assistant" means a person:

(a) Sixteen (16) years of age or older;

(b) Under direct supervision of a provider or substitute provider; and

(c) Meets the requirements listed in Section 5(1)(b) through (g) of this administrative regulation. [Has obtained a criminal records check and tuberculosis skin test.];

(3) "Cabinet" means the Kentucky Cabinet for Families and Children.

(4) "Child" means a person under thirteen (13) years of age, or under eighteen (18) years of age if the person has been identified as having special child care needs.

(5) "Corporal physical punishment" as governed by 1998 Ky. Acts ch. 524, sec. 2(14), means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(6) "Commissioner" means the Commissioner for the Department for Community-Based [Social] Services.

(7) "Family child care home" as governed by KRS 199.8982 and does not apply to providers who care for their own children, related children or children in legal custody of the provider and up to three (3) unrelated children.

(8) "Home" means the private primary residence of the provider.

(9) "Human services center or facility" means a facility that provides full or part-time care to children or adults. This term shall include:

(a) Day care center;

(b) Certified family child care home;

(c) Adult day care center;

(d) Adult day health care facilities;

(e) Family care home;

(f) Group homes for the mentally retarded or developmentally disabled;

(g) Acute care, psychiatric, or comprehensive physical rehabilitation hospitals;

(h) Intermediate care facilities;

(i) Nursing facilities;

(j) Nursing homes;

(k) Personal care homes;

(l) Skilled nursing facilities;

(m) Psychiatric residential treatment facilities;

(n) Child caring facilities;

(o) Child placing agencies;

(p) Rural primary-care hospitals;

(q) Alzheimer nursing homes;

(r) Youth camps;

(s) Boarding home;

(t) Supports for community living. [Alternate intermediate services for the mentally retarded or developmentally delayed.];

(10) "Immediate danger" means a situation or condition in which one (1) or more children is being harmed or likely to be harmed before appropriate corrective action can be taken as evidenced by:

(a) A continuing condition;

(b) A recurring condition; or

(c) A condition which has caused death or serious physical injury within the past two (2) weeks.

(11) "Infant" means a child under one (1) year of age.

(12) "Nighttime care" means family home child care in which a child receives regular full, or part-time care during the night, and beginning at 6 p.m.

(13) "Provider" means an owner, operator or person providing care for preschool or school-age children or both inside his own home for less than twenty-four (24) hours a day, and who is not required to be licensed under 905 KAR 2:090. A provider shall meet the requirements of Section 5(1)(a) through (g) of this administrative regulation.

(14) "Provider's own child" or "related child" means the provider's own children, [and] children in legal custody, grandchildren, nieces, nephews and stepchildren and siblings in a separate residence.

(15) "Regular" means the provision of child care services in the caregiver's home on more than one (1) day in one (1) week or more than ten (10) hours per week.

[(15) "Related child" means a certified provider's grandchildren, nieces and nephews.];

(16) "School-age child" shall be considered as one (1) attending kindergarten or above.

(17) "Special needs child" means children who have multiple or severe problems and the Department for Community-Based [Social] Service staff has confirmed the need for ongoing specialized care.

(18) "Substitute provider" means a person who shall meet the requirements of Section 5(1)(a) through (g) of this administrative regulation. [;

(a) Who is eighteen (18) years of age;

(b) Has obtained a criminal records check and a tuberculosis skin test; and

(c) Is available to provide care in a family child care home.];

(19) "Toddler" means a child between the age of twelve (12) months and twenty four (24) months.

Section 2. Certification Process. (1) The department shall be responsible for the certification of family child care homes.

(2) Authorized representatives of the department shall be trained to apply the administrative regulation and have the authority to:

(a) Inspect premises;

(b) Review records required by this administrative regulation; and

(c) Review the program of family child care homes.

(3) Inspections by the department shall be unannounced.

(4) A person who has had a certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in Section 3(1)(a) or (b) of this administrative regulation or revocation action shall not apply for a certificate to operate a family child care home for a period of five (5) years from the date of revocation.

(a) After the expiration of the five (5) year period, the person may apply for certification after establishing that he fully complies [the applicant has the ability to comply] with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of training in developmentally appropriate child care practice since the time of the prior revocation.

(b) If certification is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the family child care home shall be inspected on at least a quarterly basis. Inspections shall be unannounced as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158. [KRS 199.8982.]

(5) A provider making application for certification shall:

(a) Complete the DSS-78, Application for Family Child Care Certification, incorporated by reference [herein];

(b) Complete the DSS-79, Self-Check List, incorporated by reference [herein];

(c) Meet the minimum requirements as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158. [KRS 199.8982.]

(d) Submit a criminal records check conducted within the past year by the Kentucky State Police for:

1. Adult persons living in the home; and

2. Employees of the provider;

(e) Submit proof that the following persons shall be free of tuberculosis, as stated by a qualified physician or health care specialist:

1. Provider;

2. Employees; and

3. All adult persons living in the home;

(f) The following persons shall submit to checks by the cabinet or court for a record of abuse or neglect of an adult or child, or found to have committed any sexual offense:

1. Provider;

2. Employees; and

3. All adult persons living in the home;

(g) [(e)] Comply with provisions set forth in Sections 5 through 11 of this administrative regulation.

(6) Upon receipt of the application and fee, staff of the department shall:

(a) Review the application; and

(b) Conduct an inspection of the home as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158. [KRS 199.8982.]

(7) If the requirements have been met excluding the provisions of Section 5(3)(a) and (b) of this administrative regulation which shall be met within three (3) months of the application date, the home shall be certified and a certificate shall be issued for a two (2) year period.

(a) The certificate shall be displayed where parents can read it and shall contain:

1. The name and address of the provider;

2. Limit of children to be served;

3. Identification number; and

4. Effective and expiration dates.

(b) The certification shall be valid for the certified provider and the address listed. A change of location shall require a change of location application and inspection as specified in subsections (6) and (7) of this section.

(8) If the provider does not comply with the standards set forth in this administrative regulation, within three (3) months of the initial inspection, the application shall be denied.

(9) Certification shall be renewed every two (2) years. The provider shall submit a certification renewal request, a DSS-79, a health status form, proof that he continues to meet the requirements of Section 5(1)(d), (e), and (f) of this administrative regulation, and proof that employees and all adults in the home continue to meet the requirements of subsection (5)(f) of this section, and fee one (1) month prior to the expiration of the certification.

(10) A certified family child-care home shall not have a certification suspended or revoked for failure to comply with standards of this administrative regulation until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met, except for conditions as governed by Section 3(2) of this administrative regulation.

Section 3. Denial, Suspension, or Revocation. (1) The cabinet shall review and may deny, suspend, revoke or refuse certification if the:

(a) Provider, an adult living in the provider's home or person under the supervision of the provider:

1. Has been convicted of a crime related to abuse, neglect or exploitation of a child or an adult; or

2. Refuses to provide a criminal records check;

(b) Provider or [and] an adult living in the provider's home has abused, neglected or exploited a child or an adult;

(c) Provider fails to comply with certification standards set forth in this administrative regulation; or

(d) Provider has had a human services center or facility registration, certification, permit or license denied for reasons set forth in paragraph (a) or (b) of this subsection or revoked or voluntarily forfeits their certification, license, registration or permit after the department initiates denial for reasons set forth in paragraph (a) or (b) of this subsection or revocation action.

(2) If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the department may suspend or revoke the certification immediately.

Section 4. Appeal. (1) If the cabinet denies, suspends, or revokes a certification, the provider shall be afforded a hearing in accordance with 905 KAR 1:320. [KRS Chapter 13B.]

(2) If denial or revocation of certification is upheld, the commissioner's or designee's notification shall specify the date by which the family child care home shall close.

(3) A family child care home continuing to have four (4) to six (6) unrelated children in attendance after the closing date established by the commissioner shall be subject to legal action by the cabinet as provided by law.

Section 5. Standards for the Provider. (1) The provider and substitute provider [staff] shall meet the following qualifications: [Qualifications of provider and staff:]

(a) [The provider shall] Be at least eighteen (18) years of age;

(b) Submit to a criminal records check conducted within the past year by the Kentucky State Police;

(c) Be free of tuberculosis, as stated by a qualified physician or health care specialist;

(d) Not be found by the cabinet or court to have abused or neglected an adult or child;

(e) Not be found by the cabinet or court to have committed any sexual offense;

(f) [The provider shall] Meet minimum requirements as governed by 1998 Ky. Acts ch. 524, sec. 4, and ch. 426, sec. 158 [KRS 199.8982]; and

(g) [(e)] Beginning with the second year of operation, [the provider shall] participate annually in at least six (6) hours of training in child development approved by the Department for Community-Based [Social] Services in compliance with the Guidelines for Obtaining Child Day Care Training revised July 1993 incorporated by reference in 905 KAR 2:001.

(2) Staff-child ratio.

(a) A provider shall not provide care for more unrelated children than the number of children for which the family child care home is certified

(b) If more than four (4) infants, including the certified provider's own or related infants, are in care, the certified provider shall have an assistant present.

(c) A certified provider shall not care for more than six (6) children under the age of six (6) years old, including the certified provider's own or related children.

(d) The maximum number of children in the care of a certified provider, including the providers' own or related children, shall not exceed ten (10).

(3) Within three (3) months of the date of initial application for certification the provider shall:

(a) Demonstrate completion of training as governed by 1998 Ky. Acts ch. 426, sec. 158 [KRS 199.8982]; and

(b) Obtain liability insurance in the amount of \$50,000 per occurrence.

(4) The provider shall be currently certified in:

(a) Infant and child cardiopulmonary resuscitation (CPR) by:

1. The American Red Cross;

2. The American Safety Council; [or]

3. The American Heart Association; or

4. The American Safety and Health Institute. [and]

(b) Infant and child first aid by:

1. The American Red Cross; or]
2. The American Safety Council; or
3. The American Safety and Health Institute.

[(c) This subsection shall be enforced beginning July 1, 1994. This subsection may be revised by administrative regulation to a date prior to July 1, 1994, contingent upon accessibility of training in all areas of the Commonwealth.]

Section 6. The Family Child Care Home Environment. (1) The provider's home and play areas used for child care shall be safe and have adequate heat, light and ventilation.

(2) Each floor level used for child care shall have at least one (1) unblocked exit and at least one (1) smoke detector and fire extinguisher.

(3) The home shall be free of hazards and the following items shall be kept inaccessible to children:

- (a) Medications and drugs;
- (b) Cleaning supplies, poisons and insecticides;
- (c) Guns, knives, scissors and sharp objects;
- (d) Power tools, lawn mowers, hand tools, nails and other equipment;

(e) Matches, cigarettes, lighters and flammable liquids;

(f) Alcoholic beverages;

(g) Plastic bags; and

(h) Litter and rubbish.

(4) Electrical outlets not in use shall be covered.

(5) Electric fans, floor furnaces, or freestanding heaters or fireplaces, shall be out of the reach of children or have a safety guard on them to protect children from injury.

(6) The home shall have at least one (1) telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the:

- (a) Police;
- (b) Fire station;
- (c) Emergency medical care, rescue squad; and
- (d) Poison control center.

(7) Equipment and toys shall be developmentally appropriate for the ages and number of children in care and be kept in good repair.

(8) Stairs and steps used for children in care shall be solid, safe and railed. Indoor stairs with more than two (2) steps shall be blocked if children in care are infants or toddlers.

(9) The provider shall maintain first aid supplies that are easily accessible for use in an emergency, and shall wash superficial wounds with soap and water before bandaging. First aid supplies shall include a fully equipped first aid kit containing the following nonexpired [unexpired] items:

- (a) Liquid soap;
- (b) Adhesive bandages;
- (c) Sterile gauze;
- (d) Medical tape;
- (e) Scissors;
- (f) Tweezers;
- (g) Thermometers;
- (h) Flashlight;
- (i) Cold pack;
- (j) First-aid book; and
- (k) Latex gloves.

(10) Indoor areas, including furnishings, used for child care shall contain a minimum of thirty-five (35) square feet per child for play and for activities which meet the development needs of the children in care.

(11) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall make provisions to assure that the children are under direct supervision in outdoor play areas.

(12) Outdoor stationary play equipment shall be securely anchored.

(13) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.

(14) Practice fire and tornado drills shall be conducted with the children at least monthly and documented.

(15) [(14)] Health and sanitation for the child care environment shall require that the provider:

(a) And other persons in the home:

1. Be free of the influence of alcohol or drugs while the children are in care, except those drugs prescribed by a physician;

2. Prohibit smoking in the presence of children in care;

(b) In his absence, assure that a substitute provider shall be physically present at the family child care home during hours of operation;

(c) Not be employed outside of the home during regular hours of operation;

(d) Have a home that is kept clean, uncluttered and free of insects and rodents;

(e) [(b)] Have a water supply properly located, protected, adequate, and of a source approved by the local health department;

(f) [(c)] Have bathrooms, including toilets, sinks, and potty chairs that are sanitary and in good working condition;

(g) Wash hands with soap and water or use nonwater hand sanitizer before and after diapering a child;

(h) Use sanitary procedures when preparing and serving food;

(i) Assure that children shall not share:

1. Cups;

2. Eating utensils;

3. Wash cloths; or

4. Towels;

(j) [(d)] Assure that a covered, leak-proof container which is emptied and cleaned daily is available for soiled diapers;

(k) [(e)] Refrigerate perishable food and beverages. The refrigerator shall be in working order and maintain a temperature of forty-five (45) degrees Fahrenheit or below and frozen food shall be kept at temperatures to remain frozen, except if being thawed for preparation or use, as verified by a thermometer in both the refrigerator and freezer;

(l) Require that an infant's formula shall be prepared and provided by the parent, unless formula is provided as a fringe benefit to the parent;

(m) [(f)] Label bottles for each individual child, except if there is only one (1) bottle-fed child in care;

(n) Hold infants in care during feeding and never prop bottles;

(o) [(g)] Serve only pasteurized milk or milk products;

(p) Serve meals which include:

1. A food from each of the four (4) basic food groups; and

2. Snacks appropriate in amount and type of foods served for the ages of the children in care;

(q) [(h)] Screen windows and doors used for ventilation;

(r) [(i)] Have household pets vaccinated for rabies;

(s) [(j)] Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;

(t) [(k)] Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be:

1. Provided for each child; and

2. [shall be] Changed at least weekly or if they become soiled or wet;

(u) If overnight care is provided, shall:

1. Remain awake until every child in care is asleep;

2. Sleep on the same level as infants and toddlers; and

3. Provide comfortable, clean and safe bedding for each child.

(16) [(15)] Program for children. A plan for daily activities and routines including opportunities for outdoor play and fresh air, shall be established.

(17) Visually supervise children who are awake and be able to respond to the children immediately; and

(18) Children are not permitted off of the premises without the caregiver except for school-aged children, as long as:

(a) Their whereabouts are known; and

(b) The parents have given written permission.

(19) Use of corporal physical discipline, pursuant to 1998 Ky. Acts ch. 524, sec. 2(14), is prohibited.

(20) [(16)] Children shall be released from the family child care home to:

(a) The child's custodial parent;

(b) The person designated in writing by the parent to receive the child; and

(c) A person in an emergency designated over the telephone by the parent.

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Section 7. To assure a healthy environment, the provider shall:

- (1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;
- (2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:
 - (a) The child's name, address, and date of birth;
 - (b) The names of individuals to whom the child may be released;
 - (c) The general status of the child's health;
 - (d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
 - (e) The names and phone numbers of persons to be contacted in an emergency situation;
 - (f) The name and phone number of the child's physician and preferred hospital; and
 - (g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.
- (3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;
- (4) Prohibit prescription or over-the-counter medications [or aspirin] to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian;
- (5) Administer nonprescription medication to a child only with written daily request of parent or guardian; [and]
- (6) Be able to recognize symptoms of childhood illnesses;
- (7) Be able to provide basic first aid; and
- (8) [The provider shall] Maintain a child care program which assures affirmative steps are taken to protect children from abuse or neglect as governed by 1998 Ky. Acts ch. 57, sec. 2(1) [KRS Chapter 620].

Section 8. Transportation. To assure the safety of children if transportation is provided or arranged by the provider, the provider shall:

- (1) Have written permission from a parent or guardian to transport his child;
- (2) Have a car or van equipped with seat belts which allow each child to be individually secured;
- (3) Require that each child shall have a seat, be individually seat-belted and remain seated while the vehicle is in motion. A child under forty (40) inches in height shall be transported in the back seat, restrained in a federally-approved motor vehicle safety seat in good repair;
- (4) Have a valid driver's license issued by the Division of Motor Vehicles;
- (5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and
- (6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 1998 Ky. Acts ch. 153, sec. 1, ch. 565, sec. 1, [486-020] and Chapters 189 and 189A.
- (7) Never leave children in a vehicle unattended by an adult.
- (8) Never use the back of pickup trucks to transport children.

Section 9. [Child] Records. The provider and the cabinet shall provide, upon request, public information pursuant to 1998 Ky. Acts ch. 524, sec. 2. ~~[shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Families and Children or as governed by this administrative regulation.]~~

Section 10. The program shall ensure ongoing communication with a child's parent by:

- (1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;
- (2) Make available a copy of the certification standards to each parent;
- (3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; [and]
- (4) Post and provide to each parent copies of children and parent rights pursuant to 1998 Ky. Acts ch. 524, sec. 3; and

(5) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes. [KRS-199-898.]

Section 11. Incorporated [The provider shall comply with the following:

- (1) ~~Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.~~
- (2) ~~Wash hands with soap and water before and after diapering a child.~~
- (3) ~~Use sanitary procedures when preparing and serving food.~~
- (4) ~~Assure that children shall not share cups, eating utensils, wash cloths or towels.~~
- (5) ~~The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.~~
- (6) ~~Prohibit smoking in the presence of children in care.~~
- (7) ~~In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.~~
- (8) ~~An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.~~
- (9) ~~Infants in care shall be held during feeding and bottles shall never be propped.~~
- (10) ~~If overnight care is provided, the provider shall:~~
 - (a) ~~Remain awake until every child in care is asleep;~~
 - (b) ~~Sleep on the same level as infants and toddlers; and~~
 - (c) ~~Provide comfortable, clean and safe bedding for each child.~~
- (11) ~~Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.~~
- (12) ~~Provide opportunities for outdoor play or fresh air.~~
- (13) ~~Be able to recognize symptoms of childhood illnesses.~~
- (14) ~~Visually supervise children who are awake and be able to respond to the children immediately.~~
- (15) ~~Be able to provide basic first aid.~~
- (16) ~~Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes.~~

~~Section 12. Incorporation] by Reference. (1) [The] DSS-78, "Application for Family Child Care Certification", "September, 1998", Cabinet for Families and Children, is incorporated by reference.~~

~~(2) [revised June 1996, and the] DSS-79, "Self Check List", "September, 1998", Cabinet for Families and Children is [revised July 1996, shall be herein] incorporated by reference.~~

~~(3) This material [incorporated by reference] may be inspected, [or] copied, or obtained at the Department for Community-Based [Social] Services, Cabinet for Human Resources Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.~~

DEITRA PARIS, Commissioner
VIOLA MILLER, Secretary
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 1, 1998

FILED WITH LRC: October 14, 1998 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, December 8, 1998)

907 KAR 1:038. Hearing and vision program services.

RELATES TO: KRS 205.520, 42 CFR 440.140, 441.30, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 1998 Ky. Acts [~~ch. 426, sec. 4(3),~~] ch. 615 [~~194.050, EO 96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the program of Medical Assistance. [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.~~] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the hearing services and vision program services for which payment shall be made by the Medicaid Program for both categorically needy and medically needy.

Section 1. Hearing Services. (1) Audiological benefits. Coverage shall be limited to the following services provided to a child under age twenty-one (21) by a certified audiologist:

- (a) Complete hearing evaluation;
 - (b) Hearing aid evaluation;
 - (c) A maximum of three (3) follow-up visits within the six (6) month period immediately following fitting of a hearing aid, the visits to be related to the proper fit and adjustment of that hearing aid;
 - (d) One (1) follow-up visit six (6) months following fitting of a hearing aid, to assure patient's successful use of the aid.
- (2) Hearing aid benefits. Coverage shall be provided to a child under age twenty-one (21) for a [~~monaural~~] hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. A recipient is limited to one (1) hearing aid per ear, annually. [~~A binaural hearing aid shall not be covered.~~]

Section 2. Vision Program Services. (1) Coverage for all age groups shall be limited to prescription services, repair services made to a frame or lens, and diagnostic services provided by an ophthalmologist or optometrist, to the extent the optometrist is licensed to perform the service and the service is covered in the ophthalmologist portion of the physician's program.

(2) Medicaid shall use the current procedural terminology codes as referenced in 907 KAR 3:005.

(3) Eyeglasses shall be provided to a child under age twenty-one (21) on a preauthorized basis.

(4) Coverage for eyeglasses shall be limited to two (2) pairs of eyeglasses per year per person. This limitation includes the initial eyeglasses and one (1) replacement per year or two (2) replacements per year.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Vision Program Manual", February, 1997, edition, Department for Medicaid Services[~~is incorporated by reference~~];

(b) The Hearing Program Manual, July 1998 edition, Department for Medicaid Services.

(2) This material [H] may be inspected, copied, or obtained at the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 15, 1998 at noon

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, December 8, 1998)

907 KAR 1:039. Payments for hearing services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 1998 Ky.

Acts [~~ch. 426, sec. 4(3),~~] ch. 615 [~~194.050~~]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [~~Human Resources~~] has responsibility to administer the program of Medical Assistance [in accordance with Title XIX of the Social Security Act]. KRS 205.520 authorizes [~~empowers~~] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [~~sets forth~~] the method for determining amounts payable by the cabinet for hearing services.

Section 1. Audiologist. (1) [~~For services provided on or after July 1, 1990;~~] The cabinet shall reimburse a participating audiologist [audiologists] at usual and customary actual billed charges up to the fixed upper limit per procedure established by the cabinet at sixty-five (65) percent of the median billed charge using 1989 calendar year billed charges.

(2) If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.

(3) An audiologist [Audiologists] shall be entitled to the same dispensing fee for a hearing aid [aids] as shown in Section 2 of this administrative regulation.

(4) Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation [~~if any~~] due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

Section 2. Hearing Aid Dealers. (1) If the manufacturer of the hearing aid billed to the program has submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) That dealer price in the price schedule plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) [~~or at~~] The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) [~~at~~] The suggested retail price submitted by the manufacturer for that aid[~~, whichever is less~~].

(2) If the manufacturer of the hearing aid billed to the program has not submitted a dealer price schedule which includes that hearing aid, the cabinet shall reimburse the participating hearing aid dealer at the lesser of:

(a) The lowest dealer price submitted for a comparable hearing aid plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date;

(b) [~~or at~~] The actual dealer cost plus a professional fee of seventy-five (75) dollars for the first aid and twenty-five (25) dollars for the second aid when two (2) hearing aids are dispensed on the same date; or

(c) [~~at~~] The lowest suggested retail price submitted for a comparable aid[~~, whichever is the lesser amount~~]. A comparable aid is [aids are] defined as an aid [aids] falling within the general classifications of fitting type, i.e. body, behind-the-ear, in-the-ear, eyeglasses.

Section 3. Cords. The cabinet shall make payment for a replacement cord [cords] at the dealer's cost, plus a professional fee set at the fixed upper limit.

Section 4. Hearing Aid Repairs. The cabinet shall reimburse a hearing aid dealer [dealers] for a hearing aid repair [repairs] on the basis of the manufacturer's charge for repair or replacement of parts, plus the dealer's cost for postage and insurance relative to the repair, plus a professional fee set at the fixed upper limit.

DENNIS BOYD, Commissioner

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

JOHN MORSE, Secretary
JOHN WALKER, Attorney
APPROVED BY AGENCY: October 5, 1998
FILED WITH LRC: October 14, 1998 at 2 p.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, December 8, 1998)

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

RELATES TO: KRS 205.520, 42 CFR 431.615

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520
~~[194.050, 205.520, 1998 Ky. Acts ch. 426, sec. 4(3)]~~

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance] in accordance with requirements of 42 USC 1396 through 1396v [Title XIX of the Social Security Act]. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the coverage and payment conditions for preventive public and remedial health [care] services provided eligible medical assistance recipients through interagency agreement between the Medicaid single state agency and the state health department.

Section 1. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Department for Public Health [Services] for the provision of covered preventive and remedial public health [care] services to eligible Medicaid recipients by the Department for Public Health [Services]. The [That] agreement shall be consistent with the terms and conditions established [shown] in this administrative regulation.

Section 2. Subcontracted Services. (1) The Department for Public Health [Services] may subcontract with the local health departments under its jurisdiction for the provision of health care services as specified in Section 1 of this administrative regulation.

(2) A [Such] agreement shall not extend to services not specified in Section 3 of this administrative regulation. [determined by the Department for Medicaid Services to be uncovered services within the Medicaid program.]

(3) A copy of the subcontract shall be provided to the Department for Medicaid Services for retention in its files as appropriate.

Section 3. Covered Services. (1) The Department for Public Health [Services] may provide a broad array of preventive, screening, diagnostic, rehabilitative, and remedial services.

(2) These services shall:

(a) [will] Be specifically identified by procedure in the interagency agreement; and

(b) [will] Generally be classified as one (1) of the following types of medical care services:

1. Early and periodic screening, diagnosis, and treatment (EPSDT);

2. Pediatric services;

3. Prenatal and related services;

4. Epidemiology;

5. Family planning; and

6. Unrestricted medical services.

Section 4. Payments. The Department for Public Health shall [Services will] be paid for each service at an amount which the Department for Medicaid Services determines [finds] is reasonably equivalent to cost. ~~[The first year of payments shall be prospective in nature with no cost settlements. After the first year.]~~ The Department for Medicaid Services shall [will] set rates using actual utilization data and shall [will] not settle back to costs unless required to do so to

avoid paying the Department for Public Health [Services] an amount substantially in excess of cost. Payment rates shall be set annually to be effective on July 1 of each year.

Section 5. Participation. (1) Local health departments operating primary care centers may elect to have the [such] primary care centers participate separately in the Medicaid program.

(2) All other Medicaid related functions of the local health departments shall be construed as covered or coverable under this provision for interagency agreement (and subsequent subcontracting) unless determined otherwise by the Department for Medicaid Services.

Section 6. Audits. (1) The Department for Public Health or subcontracting local health departments shall provide to the Department for Medicaid Services or a representative of an agency or office listed in subsection (2) of this section, upon request:

(a) Information maintained by the provider to document the service provided;

(b) Information regarding a payment claimed by the provider for furnishing a service; or

(c) Information documenting the cost of the service;

(2) Access to provider or subcontractor records relating to a service provided shall be required for:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Health Care Financing Administration;

(c) The United States Attorney General's Office;

(d) The state Attorney General's Office;

(e) The state Auditor's office;

(f) The Office of the Inspector General; or

(g) An agent or representative as may be designated by the Secretary of the Cabinet for Health Services. [The Department for Medicaid Services reserves the right to examine and audit appropriate financial and service records of the Department for Health Services and subcontracting local health departments to determine the allowability of costs, provision of services, and appropriateness of services and further reserves such right to the following named organizations or agencies and their lawfully appointed agents and representatives in the performance of their duties: the United States Department of Health and Human Services, the United States Health Care Financing Administration, the United States Attorney's Office, the Kentucky Attorney General's Office, and such other agents or representatives as may be designated by the Secretary, Cabinet for Human Resources.]

Section 7. Incorporation by Reference. (1) "Preventive Public Health Services Manual", September 1998 edition, Department for Medicaid Services, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Effective Date. The provisions contained herein shall be effective with regard to services provided on or after July 1, 1988.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: September 25, 1998

FILED WITH LRC: September 25, 1998 at noon

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(As Amended at ARRS, December 8, 1998)

907 KAR 3:065. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 96A.010, 96A.095, 96A.170, 194A.025, 194A.030, 195.025, 281.014, 281.6185, 281.635, 42 CFR 431.53, 440.710, 42 USC 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050, 205.520, 1998 Ky.

Acts ch. [607:] 615[-426-]Sec.4(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to a waiver of Section 1915(b) of the Social Security Act, approved by the Health Care Financing Administration to waive Medicaid requirements related to nonemergency medical transportation.

Section 1. Definitions. (1) "Capitated rate" means one (1) amount paid each month for each Medicaid recipient covered by the agreement reached with the provider under authority of the waiver. The capitated rate shall not be a statewide rate but shall be set individually for each Human Service Transportation delivery region as established in 603 KAR 7:080.

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Human service transportation" is defined as the provision of mass transportation, taxi services and volunteer providers to transport an individual who is eligible to receive Medicaid services.

(4) "Nonemergency medical transportation" means transportation service provided by a provider who is a:

(a) Specialty carrier who transports, through specially equipped vehicles, an individual who needs a wheelchair. The equipment required shall be a van or van-type vehicle with a ramp or lift for wheelchairs as defined in KRS 281.014;

(b) Specialty carrier who transports an individual who due to physical or mental impairment needs to be accompanied from his door to the door of the medical provider;

(c) Transportation provider who provides door to door transportation in areas where fixed routes are not available; or

(d) Fixed route mass transit system that provides transportation to the general public and Medicaid recipients.

(5) "Risk" means the difference between the capitated payment and the expense incurred by the human service transportation delivery broker or provider to provide the nonemergency medical transportation services.

(6) "Transportation broker or provider" is defined as the entity awarded a contract to provide human service transportation in a specified region.

(7) "Waiver authority" means the provisions contained in 42 USC 1396n(b).

Section 2. Interagency Agreement. The Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient in the human service transportation regions established in 603 KAR 7:080.

Section 3. Reimbursement. (1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient residing in a county covered by the contract.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

(3) The transportation broker or provider is responsible for all risk associated with the provision of the nonemergency medical transportation.

Section 4. Subcontracted Services. (1) ~~[The Transportation Cabinet may subcontract with a transportation broker in accordance with 603 KAR 7:080, Section 4.~~

~~(2) The transportation broker or provider and a subcontracted provider, except for a volunteer provider, shall have operating authority issued by the Transportation Cabinet pursuant to KRS Chapter 281 or 96A to operate in the region covered by the contract.~~

(2) A transportation provider under contract shall publicly

display its certification in its office.

(3) ~~[The certification for a provider under contract shall be publicly displayed at the office of the provider.~~

(4) A transportation provider under contract with a broker shall notify within five (5) working days the broker and the department of any change in operating authority requested by the Transportation Cabinet.

Section 5. General Medicaid Coverage Provisions. (1) Non-emergency medical transportation to and from Medicaid-covered services (except pharmacy services), including the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, shall be provided to a Medicaid-eligible individual:

(a) Who is unable to provide his own transportation; and

(b) When free transportation is unavailable.

(2) The recipient shall contact the transportation broker or provider for the area for approval and scheduling of transportation.

Section 6. Appeals. A Medicaid recipient shall be provided the right to an administrative hearing if dissatisfied with any action or inaction on the part of a transportation broker or provider or a subcontracted provider in accordance with 907 KAR 1:563.

Section 7. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided pursuant to a contract in accordance with KRS Chapter 45A and Section 2 of this administrative regulation.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

**CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(As Amended at ARRS, December 8, 1998)**

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

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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 eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

9. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

10. For a physical therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

11. For a speech therapist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

12. For a social worker:

a. In the office or center based site, the fee shall be eighty-three (83) per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

13. For a teacher of the deaf and hard of hearing:

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a. In the office or center based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

14. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$108 per hour of direct contact service.

15. For an assistive technology specialist:

a. In the office or center based site, the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be \$112 per hour of direct contact service.

(f) [(e)] Therapeutic intervention and collateral services:

1. For an audiologist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

2. For a family therapist:

a. In the office or center based site, the fee shall be seventy (70) per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) per hour of direct contact service.

3. For a licensed psychologist or certified psychologist with autonomous functioning:

a. In the office or center based site, the fee shall be \$155 per hour of direct contact service.

b. In the home or community site, the fee shall be \$226 per hour of direct contact service.

4. For a certified psychological associate:

a. In the office or center based site, the fee shall be \$116 per hour of direct contact service.

b. In the home or community site, the fee shall be \$170 per hour of direct contact service.

5. For a developmental interventionist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

6. For a developmental associate:

a. In the office or center based site, the fee shall be fifty-one (51) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

7. For a developmental assistant, in the office or center based site, the fee shall be ten (10) dollars per hour of direct contact service.

8. For a registered nurse:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

9. For a licensed practical nurse:

a. In the office or center based site, the fee shall be twenty-four (24) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be thirty-two (32) dollars per hour of direct contact service.

10. For a nutritionist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

11. For a dietitian:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

12. For an occupational therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

13. For an occupational therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

14. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-one (91) dollars per hour of direct contact service.

15. For a physical therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

16. For a physical therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

17. For a speech therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

18. For a speech therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

19. For a social worker:

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 technologist 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 [multi-disciplinary] [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 preauthorized by the department.

(b) Payment shall be limited to four (4) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the department.

(c) A service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of that discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(4) For therapeutic intervention:

(a) For office and center:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional meeting the qualifications in 908 KAR 2:150 unless preauthorized by the department[~~except if the professional or discipline and paraprofessional is participating in a group. In a group setting, the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day unless preauthorized by the department.~~].

2. Payment shall be limited to no more than one (1) office visit per child, per day, per discipline unless preauthorized by the department except that billing for 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 annually 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 to the state coordinator a request to have the amount of the family share payment reduced or be exempted from paying the family share payment; and

2. By undergoing a financial review by the department which may:

a. Adjust the gross family income by subtracting extraordinary medical costs, equipment costs, exceptional child care costs, and other costs of care associated with the child's disability; and

b. Result in a calculation of a new family share payment amount based on the family's adjusted income compared to the appropriate percentage of the poverty level. If a recalculation is completed, the department shall conduct a review at least annually.

(d) Not apply to a family who chooses to use their private insurance.

(4) A family who chooses to use its private insurance for payment of a First Steps service shall not be responsible for payment of insurance deductibles or copayments related to this service. Payment of First Steps related coinsurance and deductibles shall be assumed by First Steps. [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.

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING
OR RECEIPT OF WRITTEN COMMENTS

LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:026. Group self-insurers.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, 342.340, 342.345, 342.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to establish the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR 25:025, which is repealed.

Section 1. Definitions. (1) "Administrator" means an individual or legal entity engaged by a group self-insurance fund board of trustees to carry out the policies established by the group self-insurance fund's board of trustees and provide day-to-day management of the self-insurance fund.

(2) "Aggregate excess insurance" means an insurance policy written on a claims incurred basis which insures claims to a stated limit in excess of a specified percentage of the earned premium [~~or in excess of the group retention amount~~].

(3) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the state of Kentucky for at least two (2) years prior to its sponsorship of a group self-insurance fund.

(4) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(5) "Common interests" means that employers are engaged in similar activities, share common standard industrial classification codes and common risk factors.

(6) "Dividends" mean disbursements [~~to group members~~] from surplus funds to group members pursuant to a plan filed with the commissioner.

(7) "Earned premium" means the pro rated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.

(8) "Fiscal agent" means a person, or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest and disburse the self-insurance group's funds.

(9) "Group members" means employers who have joined a group self-insurance fund.

(10) "Group self-insurance fund" means the total contractual arrangement whereby eleven (11) or more employers or two (2) or more city, county, municipal or urban-county employers or their agencies associate to jointly self-insure their workers' compensation liability.

(11) "Insolvent" or "insolvency" means the inability of a group self-insurance fund to pay its outstanding lawful obligations as they mature in the regular course of business, or which holds insufficient assets to prospectively pay all incurred workers' compensation benefits when due.

(12) "Loss fund" means the total amount of the group self-insurance fund's retained liability for claims against the group members.

(13) "Premium" means the amount of money charged each member to fund the obligations and expenses of the group self-insurance fund.

(14) "Qualified actuary" means a member or fellow [~~of the American Academy of Actuaries or a member~~] of the Casualty Actuarial Society.

(15) "Service organization" means a person or entity which pro-

vides services which may include but is not limited to, claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports, and other required self-insurance reports, administration of the fund, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, and legal assistance.

(16) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

(17) "Surplus funds" means the excess of the group self-insurer's assets over its liabilities [~~monies in the self-insurance fund in excess of all losses, reserves and other costs~~].

(18) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association or association of governmental entities to oversee the administration of the group self-insurance fund.

Section 2. Certification. Except for activities arising in the creation of a group self-insurance fund, no person or entity shall issue binders or certificates of insurance for workers' compensation coverage unless the group self-insurance fund has been certified to do so by the commissioner. All certifications issued by the commissioner shall remain in effect until revoked or suspended by the commissioner pursuant to Section 11 [12] of this administrative regulation.

Section 3. Initial Application. (1) An application for certification as a workers' compensation group self-insurance fund may be filed on form SI-06 with the commissioner by a group of eleven (11) or more employers having common interests or membership in a bona fide trade association. Any group members having more than fifty (50) percent common ownership shall constitute one (1) group member. Each initial application shall set forth or be accompanied by:

(a) The fund's name, location of principal office, date of organization, name and address of each member, and the dates of the fiscal year for accounting purposes;

(b) A description of the group members' common interest or a description of the bona fide trade association including date of organization, articles of incorporation, and a history of the association's activities;

(c) A copy of the articles of association, articles of incorporation, trust agreement or bylaws of the proposed group self-insured fund. The group self-insurance fund's enabling documents shall describe the time and methodology by which premiums shall be determined, assessed and collected during regular operations and in the event of insolvency of the group self-insurance fund;

(d) The managed care and utilization review plans, if any, for the group self-insurance fund;

(e) Copies of any instruments by which the applicant or its agents have made any commitments to pay for any past or purchase any future goods or services;

(f) An executed copy of the indemnity agreement by which group members jointly and severally bind themselves to pay their workers' compensation liability;

(g) Identification by name, address, and term of the initial board of trustees, administrator, and service organization together with a statement that there exists no [real or potential] pecuniary or personal [other] conflict between the official duties of such trustees, administrators and service organizations and the [personal] interests of the [individual] members [or their families or heirs or assigns];

(h) The name of the custodian and the address where the group self-insurance fund's books and records will be kept;

(i) Specimen of the proposed policy and certificate of insurance for the specific and aggregate excess coverage;

(j) Copies of surety deposits and fidelity bonds as required by Section 11 of this administrative regulation;

(k) A proposed schedule of premium rates and any plan by which rates will be modified. If employment classifications are to vary from

those utilized by the National Council on ~~[of Workers']~~ Compensation Insurance ~~[Insurers]~~, a description of each classification shall be presented;

(l) A schedule of projected annual premiums and expenses; and
(m) Financial statements for initial group members prepared by a certified public accountant and signed by an owner or officer of each member demonstrating a combined net worth of no less than \$5,000,000 for the group and the financial stability of each member.

(2) The premium of one (1) group member shall not exceed forty (40) percent of the estimated total premium for the group self-insurance fund.

(3) The first year's premium for the initial membership of the group self-insurance fund shall be no less than \$750,000. Verification must be presented that twenty-five (25) percent of the initial estimated premium has been paid and deposited with the group's fiscal agent.

(4) The initial application shall ~~[must]~~ be filed no later than sixty (60) days prior to the proposed inception date of the group self-insurance fund.

(5) Certification as a group self-insurance fund shall be granted if the commissioner finds the following:

(a) ~~[that]~~ The applicant has complied with all requirements of this administrative regulation;

(b) ~~[that]~~ The persons responsible for the affairs of the group self-insurance fund are financially stable, competent and experienced in the administration of workers' compensation self-insurance; and

(c) ~~[that]~~ The proposed group self-insurance fund has demonstrated the ability to meet all of its obligations.

(6) Before granting certification, the commissioner shall consider the following:

(a) The adequacy of the funding mechanisms;

(b) The presence of excess insurance;

(c) The financial strength of the participating members; the stability of the membership; and

(d) The risks of the industry.

Section 4. Annual Filing. The following information and reports shall be filed by the group self-insurance fund with the commissioner on an annual basis:

(1) Within thirty (30) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file:

(a) Copies of all fidelity and surety bonds or surety deposits;

(b) A current listing of the group members of the fund;

(c) A schedule of proposed premiums by employment classifications; and

(d) Any material changes in administration or the service organization.

(e) A plan by which premium shall be determined, assessed, and collected in the event of insolvency or liquidation of the group self-insurance fund, unless such a plan has been previously submitted a statement relating to conflicts as described in Section 3(1)(g) of this administrative regulation.

(2) Within ten (10) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file proof of excess insurance coverage for the ensuing year.

(3) Within 120 days from the end of the group self-insurer's fiscal year, the statement of financial condition required by KRS 342.347(2) [Within 150 days after the close of a self-insurance year, the group self-insurance fund shall file:

(a) ~~The actuarial information required by Section 5 of this administrative regulation;~~

(b) ~~A certified audit report in conformity with generally accepted accounting principles; and~~

(c) ~~any other relevant financial information requested by the commissioner.~~

(4) In the event the statement of financial condition ~~[certified audit report]~~ reveals a fund deficit or inadequate reserves, the trustees shall prepare and file a plan of remedial action within thirty (30) days of the receipt of the statement of financial condition ~~[certified audit report]~~.

(5) Within 150 days after the end of each self-insurance year, ~~[the trustees shall furnish to the group members]~~ a statement setting forth all premiums, losses, expenses and distributions for the group self-insurance fund and the trustees shall furnish a copy of this statement to the group members.

Section 5. ~~[Actuarial Reports. (1) On an annual basis, the group self-insurance fund shall file with the commissioner an actuarial opinion by a qualified actuary addressing the adequacy of current premium levels and setting forth the actuarial assumptions on which the opinion is based. The opinion shall advise if the premium levels are adequate to provide financial resources to reasonably meet all of the fund's estimated liability for the payment of all workers' compensation benefits previously incurred and projected for the ensuing year, including a reasonable allowance for incurred but not reported claims plus all administrative, marketing and reinsurance costs of the program.~~

~~(2) If in the opinion of the qualified actuary, the group self-insurance fund's current premium levels are not adequate to provide for the payment of all incurred and projected losses and related expenses, the fund's trustees shall adjust the rates and the plan by which premiums will be collected to the level estimated by the qualified actuary to be sufficient to cover all incurred and projected liabilities and other expenses.~~

Section 6. ~~[Withdrawals and Terminations. (1) A member may withdraw from a group self-insurance fund upon sixty (60) days notice to the commissioner and the trustees.~~

~~(2) If a group self-insurance fund determines to terminate its self-insurance program, the trustees:~~

~~(a) Shall give thirty (30) days advance written notice by certified mail to the commissioner and each group member; and~~

~~(b) Shall not pay [no] dividends without the written approval of the commissioner for five (5) years following the close of the last year in which it operated; [The trustees] shall demonstrate to the commissioner that satisfactory arrangements have been made for the continued payment and servicing of all outstanding claims.~~

Section 6. ~~[7.] Trustees; Duties. (1) The Board of Trustees of the group self-insurance fund shall consist of no less than three (3) nor more than eleven (11) [seven (7)] persons, none of whom are to be owners, officers, employees or agents of a service organization or have any direct or indirect pecuniary interest in a service organization.~~

~~(2) The trustees on behalf of the group members shall be responsible for the following:~~

~~(a) Administration of the group self-insurance fund;~~

~~(b) [for] The assessment and collection of premium;~~

~~(c) [for] Disbursements from the group self-insurance fund; and~~

~~(d) Investment of the fund's monies.~~

~~(3) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the group self-insurance fund.~~

~~(a) A service organization, its employees and agents shall [must] be duly licensed to perform those functions for which a license is required under Kentucky law.~~

~~(b) Any contract with a service organization that includes the adjustment and settlement of claims shall include a requirement that the service organization will adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.~~

~~(c) A revolving fund of not more than twenty (20) percent of estimated premiums may be established for use by a servicing organization for the payment of claims.~~

Section 7. ~~[8.] Excess Insurance. (1) With the exception of group self-insurance funds qualifying under subsection (2) of this section, the trustees shall purchase aggregate excess insurance. The retained liability and other fixed costs of the fund shall not exceed 100 percent of the annual assessment of the group members, unless the [such] amount over 100 percent is secured by unencumbered surplus funds. In the computation of the retained liabilities of the group self-insurance fund, reserves for claims or projected reserves for claims may be discounted for their present value, provided such discounting is based upon the computation of a qualified actuary. The limit of liability of the aggregate excess insurance coverage shall be no less than \$2,000,000 or fifty (50) percent of the earned premium, whichever is greater.~~

~~(2) A group self-insurance fund meeting all of the following conditions may annually seek a waiver from the commissioner of the requirement [is not required] to purchase aggregate excess insurance:~~

(a) The fund has been in continuous operation for at least five (5) years;

(b) The fund's annual premium has exceeded \$5,000,000 ~~[\$10,000,000]~~ ~~[\$5,000,000]~~ in each of the three (3) preceding years; and

(c) Reserves and premium structure have been established so as to secure adequately all predictable losses.

(3) The trustees shall purchase specific excess insurance coverage with a limit of at least \$25,000,000 per occurrence.

(4) To be eligible to write excess liability coverage for group self-insurance funds, a casualty insurance company shall at all times maintain on file with the Kentucky Insurance Commissioner financial statements demonstrating assets, including surplus to policyholders, at least equal to the Insurance Department requirements of a carrier to do business in the state. The latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000 and the carrier shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over a long period of time.

Section 8. [9:] Fund Balances. (1) Prior to inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five (25) percent of the estimated premium for the ensuing year. The balance of the estimated premium shall be collected in either quarterly or monthly installments. Each group member's payroll shall be audited and an adjustment to premium shall be made accordingly.

(2) Disbursements from the fund shall be only for those purposes related to the group self-insurance fund. Dividends shall not be paid until at least twenty-four (24) months after the expiration of the self-insurance year and shall be paid only from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications as the directors may in their discretion from time to time establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications.

(3) The formula to be used for collection of assessments ~~[premiums]~~ and for the distribution of dividends shall be determined by the trustees and approved by the commissioner. Any dividend plan shall specify whether past fund members are eligible for such dividend.

(4)(a) A trustee ~~[No trustees]~~, fiscal agent or service organization shall not utilize any asset ~~[assets]~~ of the group self-insurance fund for any purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.

(b) The trustees may ~~[-at their discretion;-]~~ invest any surplus funds not needed for current obligations in: ~~[-but such investments shall be limited to]~~

1. U.S. government bonds, U.S. Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government and its agencies, tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor, or obligations issued by a county, district, municipality or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit if issued by a duly chartered commercial bank. Such deposits in savings and loan associations and commercial banks shall be limited to institutions in the state of Kentucky ~~[and the safety of any investments which exceed the federally insured amounts shall be the responsibility of the trustees].~~

2. Individual equity securities actively traded on the New York or NASDAQ Stock Exchanges with no individual equity holding comprising greater than ten (10) percent of the equity portion of the portfolio at the time of purchase. An investment in any individual equity holding shall not represent at the time of purchase more than five (5) percent of the total market value of the security. Investments in equity securities shall not exceed twenty (20) percent of the total market value of the investment portfolio of the self-insurance group at the time of purchase;

3. Corporate bonds issued, assumed, or guaranteed by any

solvent institution created or existing under the laws of the United States, or any state, province, district, or territory. However, corporate bond investments shall not exceed fifteen (15) percent of the total market value of the investment portfolio at the time of purchase. The minimum standard for quality of these securities is an "A" rating by Standard & Poor;

4. Mutual funds that are registered investment advisors licensed by the Security and Exchange Commission and Commonwealth of Kentucky to perform such investment services. Investments in mutual funds shall not exceed twenty (20) percent of the total market value of the investment portfolio at the time of purchase;

(c) Of the aggregate investments made by the self-insurance group under 803 KAR 25:026, Section (9) paragraph (4)(a) and (b);

1. Not less than seventy-five (75) percent of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities described in paragraph (b)1 of this subsection;

2. A minimum of fifteen (15) percent of the total investment portfolio value shall be maintained in cash or cash equivalent accounts and/or U.S. Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.

~~(d) [Each trustee shall personally be jointly and severally liable for the safety of any investment exceeding the limitations set forth in paragraph (b)2, 3, 4 and 4(c) of this subsection.~~

~~(5) Group self-insurance funds shall have six (6) months from the effective date of this administrative regulation to restructure investments to conform to the mandates set forth herein. Variation from the requirements of this section for good cause shown may be sought by application to the commissioner.~~

Section 9. ~~[10:]~~ Group Members. (1) The trustees shall not accept as a member of the group, any employer that does not have a net worth of at least two (2) times its estimated annual premium, unless ~~the~~ [such] employer pays its full estimated annual premium in advance. The trustees shall not accept as a member of the group any employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(2) At the discretion of the trustees, the group self-insurance fund may include the Kentucky employees of foreign (out-of-state) employers.

(3) The trustees may suspend or expel any member from the group due to adverse claims experience or lack of cooperation with safety and loss prevention policies by giving the member and the commissioner thirty (30) days advance written notice.

(4) The trustees shall report to the commissioner any attempt by any person as defined in KRS 342.0011 who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentation of hazards, classifications, payrolls, or other facts of an employer or its agent that are designed to cause a reduction in the employer's premium. The trustees shall secure from each member an agreement to report payroll in accordance with the rules and rating plan of the fund. Willful failure to properly report in accordance with the rules and rating plan is ground for expulsion pursuant to subsection 3 of this section.

(5) At least thirty (30) days prior to due date, the trustees shall notify each group member of all premium due, including adjustments. Failure by any member to pay the premium due prior to the due date may result in immediate suspension or expulsion from the group by the trustees. Ten (10) days advance written notice shall be given to the member and the commissioner.

(6) The group self-insurance fund shall be considered as an individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the group self-insurance fund.

Section 10. ~~[11:]~~ Bonds. (1) The trustees and fund administrators shall provide a fidelity bond to the commissioner in the amount of not less than \$300,000, which may be subject to a deductible not exceeding \$10,000 for each trustee, each fund administrator and the administrator's employees.

(2) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty (50) percent or \$1,000,000, whichever is lower, of

the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(3) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(4) In lieu of the bonds required under subsections (1), (2) and (3) of this section, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of the self-insurance fund or \$2,000,000, whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization and the fiscal agent, unless the fiscal agent is a national bank.

(5) The fund shall provide surety to the commissioner on form SI-03 in an amount no less than \$250,000, [or] ten (10) percent of the annual premium or ten (10) percent of the reserve requirement as established in the most recent certified statement of financial condition [audit] on file with the commissioner, whichever is greater.

(6) Any corporate surety, to be eligible for writing group self-insurance fund bonds in the state of Kentucky, shall be authorized by the Kentucky Insurance Commissioner to transact [such] business in the state, and its latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. On its latest financial statement, the corporate surety shall reflect a minimum policyholder surplus of not less than \$25,000,000. The corporate surety shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over a long period of time. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(7) The trustees may file a cash or cash equivalent security deposit on form SI-05 or bank letter of credit on form SI-04 in satisfaction of the surety requirement.

Section 11. ~~[42- Suspension:]~~ Revocation or Modification of Certification. (1) The commissioner may ~~[suspend;]~~ revoke or direct remedial actions regarding any group's certification as a group self-insurance fund if he finds any of the following conditions exist:

(a) The group self-insurance fund is operating significantly in contravention of the basic organizing documents of the group self-insurance fund or is in material violation of this administrative regulation or KRS Chapter 342;

(b) The group self-insurance fund is no longer financially responsible and may reasonably be expected to be unable to meet its current obligation to participants or employees of participants for the payment of workers' compensation medical and indemnity benefits; or

(c) There has been a significant and adverse change in the administration of the group self-insurance fund.

(2) In the event the commissioner ~~[suspends or]~~ revokes any group self-insurance fund's certification, the commissioner shall immediately notify the Kentucky group self-insurer's guaranty fund. [may appoint one (1) or more individuals or professional corporations as a receiver to conduct the ongoing workers' compensation affairs of the group self-insurance fund. In the event the commissioner appoints a receiver to assume certain administrative responsibilities over the activities of the group self-insurance fund, the trustees, service organization and administrator shall cooperate with the commissioner or receiver and are required to reply promptly in writing to any inquiry from the commissioner or his representative, to make available and to deliver to the commissioner or his representative any books, accounts, documents, or other records or information in their custody and control. The receiver may take any action necessary and reasonable to preserve all of the group self-insurance fund's assets and to insure timely payment of all workers' compensation benefits. The receiver may consult with and obtain advice or professional services from appropriate experts or other third-party professionals.]

(3) A group self-insurance fund's certification may be ~~[suspended or]~~ revoked or made subject to remedial action after compliance with the following procedures:

(a) The commissioner shall conduct a hearing upon a written application by any person or group aggrieved by an order of the commissioner or on his own violation. Written request for a hearing shall be filed within thirty (30) days after an order by the commissioner. The

application for hearing shall briefly state the grounds on which the aggrieved party is relying and a basis for the relief sought. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, stating the date, time and place for the hearing, and specify the matters to be considered.

(b) The commissioner, during the pendency of any appeal or request for hearing, may utilize the surety deposit provided by the group self-insurance fund to make any payment of workers' compensation benefits which is currently due.

(c) Any party to the hearing shall have the right to appear in person or by counsel and to be present during the giving of all evidence and to have a reasonable opportunity to inspect all documentary and other evidence, and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may be taken orally or by deposition, and the parties shall have the [such] right of introducing evidence by interrogatories or by deposition as may be obtained in circuit court. Formal rules of pleadings or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) Within thirty (30) days after the conclusion of the hearing, the commissioner shall make his order covering all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain concise findings of fact and conclusions of law. The final order may ~~[suspend;]~~ revoke or modify a group self-insurance fund's certification.

(4) The group self-insurer may appeal the ruling of the commissioner to the Franklin Circuit Court in accordance with KRS 13B.140.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) 51-03 (March 15, 1995 edition);

(b) 51-04 (March 15, 1995 edition);

(c) 51-05 (March 15, 1995 edition); and

(d) 51-06 (March 15, 1995 edition);

(2) This material may be inspected, copied, or obtained at the Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601, Monday through Friday, 8:30 a.m. to 4:30 p.m.

[Section 13. Forms. (1) Forms SI-03, SI-04, SI-05 and SI-06, (all revised 3/15/95), are hereby adopted and incorporated by reference.

(2) Obtaining forms:

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims:

1. Frankfort -- Perimeter Park West -- Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville -- 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah -- 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville -- 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., local time, Monday through Friday, inclusive, for this purpose.]

WALTER W. TURNER, Commissioner

STEPHEN B COX, General Counsel

APPROVED BY AGENCY: December 7, 1998

FILED WITH LRC: December 8, 1998 at 11 am.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 10 group self-insurers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public com-

ments were received.

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

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

1. First year following implementation: There will be additional financial documents filed annually with the department. Self-insurers have six months to comply with the investment guidelines, There is a conflict of interest statement.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect in costs or savings on agency.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: No additional paperwork requirements. The department will be receiving additional financial documents.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for Department of Workers' Claims will continue to be used to implement this regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments are necessary to continue to bring the self-insurance carrier into the same financial requirements as an insurance company. These requirements are necessary to fulfill both the statutory duties of Department of Workers' Claims and the protection of policyholders.

(8) Assessment of expected benefits: Policyholders will benefit from the assurances of financial stability and Self-Insured Groups will be able to fully demonstrate financial strengths and improve weak areas.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: No conflict.

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because all group self-insurers will be subject to this regulation.

LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:240. Workers' compensation unfair claims settlement practices.

RELATES TO: KRS 304.12-230, 342.267

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 342.260(1), the Commissioner of the Department of Workers' Claims is authorized to promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims,

administrative law judges and arbitrators. The commissioner is required to fine carriers for engaging in unfair claims settlement practices. This administrative regulation provides standards for the commissioner and carriers with regard to unfair claims settlement practices.

Section 1. Definitions. (1) "Carrier" is defined in KRS 342.0011(6).

(2) "Agent" is a person or entity performing claims adjusting, case management, [or] utilization review, or other services on behalf of the carrier [services].

Section 2. File and Record Documentation. (1) Each carrier's claim files and files held by an agent of the carrier shall be subject to examination by the commissioner or the commissioner's designees.

(2) Each carrier and agent of the carrier shall maintain claim data that is readily accessible and retrievable for examination.

(3) Documentation shall be contained in each claim file:

(a) Detailing the activities of each carrier and any agent of the carrier; and

(b) Detailing the foundations for the decision of the carrier or agent of the carrier upon material matters of the claim.

(4) Each document within a claim file shall be noted as to date received, date processed, or date mailed.

(5) For those carriers which do not maintain hard copy files, claim files shall be capable of duplication to legible hard copy.

(6) Claim files shall be maintained for a period not less than five (5) years following the creation of the material or the completion of the purpose for which it was created, whichever shall occur last.

Section 3. Notice of Policy Provisions and Information. (1) A carrier shall provide adequate notice with regard to policy provisions and information with regard to coverage and benefits.

(2) Failure of a carrier to provide the notice required by KRS 342.610(6) in the form prescribed by 803 KAR 25:200 shall constitute an unfair claims settlement practice.

Section 4. Duty to Investigate. Upon notice of a work-related injury, a carrier shall diligently investigate a claim for facts warranting the extension or denial of benefits.

Section 5. Standards for Prompt and Timely Actions. (1) After receipt of notice of a work-related injury necessitating medical care or causing lost work days, a carrier shall as soon as practicable advise an injured employee of acceptance or denial of the claim.

(2) A carrier shall provide to the employee in writing the specific reasons for denial of any claim.

(3) A carrier shall inform an employee of additional information needed for the claim to be accepted.

(4) A carrier shall meet the time constraints for accepting and paying workers' compensation claims found in KRS Chapter 342 and applicable administrative regulations.

Section 6. Standards for Fair and Equitable Settlement. (1) A carrier shall attempt in good faith to promptly pay a claim in which liability is clear;

(2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;

(3) A carrier shall not compel an employee to institute formal proceedings with the Department of Workers' Claims to recover benefits where liability is clear;

(4) A carrier shall not offer a settlement which is substantially less than the reasonable value of a claim;

(5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose of compelling a settlement for less than a workers' compensation award or benefit review determination; and

(6) A carrier shall not require an employee to obtain information which is accessible to the carrier.

Section 7. Acknowledgment of Communications. (1) Upon receipt of an inquiry from the Department of Workers' Claims, each carrier shall furnish the Department of Workers' Claims a full response within fifteen (15) days.

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(2) Upon receipt of a communication from an injured employee which reasonably suggests a response is expected, a carrier shall make a prompt and appropriate reply to the employee.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: December 7, 1998

FILED WITH LRC: December 8, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 550 carriers as defined in KRS 342.0011(6). -

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received as to the cost of living or employment. The department anticipates no effect.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. However, the department does not anticipate an effect on the cost of doing business.

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

1. First year following implementation: Carriers will be required to maintain files and documentation. However, most carriers already have this requirement with the Department of Insurance. There is more specific unfair claims settlement practice requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There should be no effect on costs or savings for Department of Workers' Claims. The department is already pursuing violations of the unfair claims settlement practices act.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Workers' Claims will be used to implement the regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The department does not anticipate an effect on economic activities.

(b) Kentucky: No public comments were received. The department does not anticipate an effect on economic activities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Commissioner of the Department of Workers' Claims is required to fine carriers for unfair claims settlement practices pursuant to KRS 342.267. This regulation sets forth specific standards for workers' compensation carriers to follow to avoid these practices. The department cannot ignore this statutory requirement. There are no alternatives to satisfy our duties pursuant to KRS 342.267.

(8) Assessment of expected benefits: The Department of Workers' Claims and carriers will have a clearer understanding of actions that constitute unfair claims settlement practices and can attempt to eliminate these problems.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare.

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

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

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because this regulation applies equally to all carriers defined in KRS 342.0011(6).

CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(Amended After Hearing)

900 KAR 6:050. Certificate of need administrative regulation.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 13A.350, 194A.030, 194A.060, 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is required by statute to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary. This administrative regulation sets forth those administrative regulations necessary to the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters.

(4) "Days" means calendar days.

(5) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(6) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth.

(7) "Formal review" means the review of those applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 7 [6] of this administrative regulation.

(8) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(9) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(10) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer disease facility beds.

(11) "Nonsubstantive review" means expedited review of an application for certificate of need which has been granted nonsubstantive review status pursuant to the provisions of KRS 216B.095 and Section 8 of this administrative regulation if granted status pursuant to KRS 216B.095(3)(f).

(12) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(13) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(14) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(15) "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why the person should not be required to obtain a certificate of need or not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of such receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until such time as the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) All applicants for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B, or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and two (2) copies of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Neither formal nor nonsubstantive review of an application for a certificate of need shall begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant may not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the legal applicant, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete, may only be amended at a public hearing, and may then only be amended to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need provided that the location is within the county listed on the certificate of need application, and provided that the applicant file a written request with the cabinet within thirty (30) days of the date of approval. Such request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for hospital, psychiatric, comprehensive physical

rehabilitation, chemical dependency and psychiatric residential treatment facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

1. February; and

2. August.

(b) Public notice for hospice and home health agencies shall be given on the third Thursday of the following months:

1. March; and

2. September.

(c) Public notice for mobile services [~~and private pay/third party payor home health agencies~~] shall be given on the third Thursday of the following months:

1. April; and

2. October.

(d) Public notice for ground ambulance providers, [~~air-ambulance providers;~~] and day health care programs, shall be given on the third Thursday of the following months:

1. May; and

2. November.

(e) Public notice for personal care beds and rehab agencies shall be given on the third Thursday of the following months:

1. June; and

2. December.

(f) Public notice for long-term care beds and intermediate care beds for Mental Retardation and Developmentally Disabled facilities shall be given on the third Thursday of June.

(g) Public notice for organ transplantation, magnetic resonance imaging, lithotripter, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July.

(h) Any proposals not listed above shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application must be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) [Within] Fifteen (15) days prior to [of] the deadline for deeming an application complete for the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review granted pursuant to Section 8 of this administrative regulation. Applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that

the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall [will] be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) will be mailed to affected persons.

(6) Deeming an application complete means only that the applicant has minimally responded to the necessary items on the application. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval of a certificate of need.

(7) [(6)] If the cabinet finds that the application is incomplete, the cabinet shall provide the applicant with written notice of the information necessary to complete the application and shall notify the applicant that the cabinet will not deem the application complete unless within ten (10) days of the date of the cabinet's request for additional information:

(a) The applicant submits the information necessary to complete the application by the date specified in the request; or

(b) The applicant requests in writing that the cabinet review its application as submitted.

(8) [(7)] If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) [(8)] If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that:

(a) The application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) A decision to grant or deny nonsubstantive review status shall [will] be made within ten (10) days of the date that the application was deemed complete.

(c) The cabinet shall give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) will be mailed to affected persons.

(10) [(9)] If the [applicant fails to provide the information necessary to complete the] application, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the [its] application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) [(10)] Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty-five (25) days prior to the date that the

deferred application is placed on public notice [prior to the date that the application must be declared complete as provided for in Section 5 of this administrative regulation].

(12) Deeming an application complete means only that the application is sufficiently complete to be reviewed for approval or disapproval. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current state health plan.

(b) Whether the proposal is consistent with applicable biennial budget authorizations and limitations.

(c) Whether the proposal would adversely impact health care costs in the Commonwealth.

(d) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(2) Need.

(a) Whether the applicant has identified a need for the proposal in the geographic area defined in the application.

(b) Whether the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. Whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. Whether the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state, and whether the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(a) Whether it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system within the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth.

(b) If it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system in the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth, whether such linkages have been or will be established.

(5) Costs, economic feasibility, and resource availability.

(a) Whether it is economically feasible for the applicant to implement and operate the proposal.

(b) If applicable, whether the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet.

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (e), the cabinet may grant nonsubstantive review status to an application for which a certificate of need is required in circumstances wherein:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there are no standards or review criteria in the state health plan.

(b) The proposal involves the establishment or expansion of an ambulatory surgery center by an ambulatory surgery center that is existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians.

~~[(c) The proposal involves a physician-owned magnetic resonance imaging service currently serving a family practice residency program at a regional medical center.]~~

(2) If an application is denied nonsubstantive review status, the application shall automatically be placed in the formal review process.

(3) If an application is granted nonsubstantive review status, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(4) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings.

(5) If an application for certificate of need is granted nonsubstantive review status there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status shall not be reviewed for consistency with the State Health Plan. The cabinet shall approve applications for certificate of need that have been granted nonsubstantive review status, unless the presumption of need is rebutted by clear and convincing evidence that there is not a need for the proposed facility or service in the geographic area defined in the application.

(6) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status within thirty-five (35) days of the date that notice is given that nonsubstantive review status has been granted.

(7) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 [46] of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Written notification of approval shall include:

(a) Verification that the review criteria for approval have been met;

(b) ~~[If the application is inconsistent with any review criteria, the reasons for approval despite the inconsistency;~~

(c) Notice of appeal rights; and

(d) ~~[(d)]~~ The amount of capital expenditure authorized, where applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refilled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review. If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing. If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing. [An applicant may defer review of an application by notifying the cabinet of its wish to defer review of its application at any time prior to the entry of a decision to approve or deny the application.] If a hearing has been scheduled [or held on the application], the appli-

cant shall also notify all parties to the proceedings in writing of the applicant's intent [decision] to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

(5) An application shall not be deferred more than one (1) time unless the applicant can document that state statute, administrative regulation, State Health Plan or the cabinet's utilization statistics affecting the application have changed in the applicant's favor. Under no circumstances shall an application be deferred more than twice.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need ~~[at any time]~~ prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(2) If an application is withdrawn, the applicant shall file a new letter of intent before resubmitting the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need provided:

(a) The person ~~[health facility or health service]~~ is licensed by the cabinet to provide the service necessary to alleviate the emergency; and

(b) The cabinet is notified in writing within five (5) days after the commencement of the service required to alleviate the emergency.

(2) The notice to the cabinet shall contain the following information:

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) If applicable, the name and addresses of the person to whom emergency services are being provided.

(3) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 3 of this administrative regulation.

(4) The person providing the emergency service may continue to alleviate the emergency circumstances until such time as the emergency ceases to exist or the cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfers ~~[Transfer]~~ of Certificates ~~[a Certificate]~~ of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615 ~~[246B.061(5)]~~.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission provided that:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(4) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and such endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Service's Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area, via the CON newsletter when applicable not less than ten (10) days prior to the date of the hearing; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons [all persons] who requested the hearing withdrawn their request(s) by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled. [agree in writing to its cancellation; agreement of other affected persons shall not be required.]

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference are to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer may tape record the conference or if requested by a party to the proceedings arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other

matters.

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any non-substantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file two (2) copies of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Witness List, Form #3;

(b) Exhibit List, Form #4 and attached exhibits; and

(c) Notice of Appearance, Form #5.

(8) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(9) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, upon other matters relevant to the issues.

(10) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(11) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(12) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(13) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(14) Witnesses shall be examined under oath or affirmation.

(15) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(16) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original and provided that the documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #4) and filed with the hearing officer and other parties at least seven (7) working days before the hearing for formal review applications and five (5) working days for nonsubstantive review applications.

(17) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(18) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(19) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is

filed.

(20) In the case of a hearing on an application for a certificate of need, the hearing officer may, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(21) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

- (b) An advisory opinion entered after a public hearing; or
- (c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of any person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky.*, 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations or is subject to penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(3) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(4) The notice shall advise the person of:

- (a) The allegations against him;
- (b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(5) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(6) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(7) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(8) If a violation is found to have occurred, the cabinet shall take action as provided by KRS Chapter 216B.

Section 19. Administrative Escalations. (1) No person may obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits provided there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section, shall constitute a substantial change in a project and shall require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be presumed to be a willful violation of KRS Chapter 216B and shall be subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #7, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall:

(a) Determine whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (5)(a) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of exist-

ing services that do not involve construction, renovation or the installation of equipment shall provide plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects [not] involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than three (3) additional [two-(2)] extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements.

(20) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(22) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) The cabinet shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The cabinet may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of the certificate of need as determined by a biennial review.

(6) The cabinet shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion Form, Form Number #8.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the state health plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the state health plan but for which a certificate of need is not required, shall notify the cabinet that such a service or equipment has been added within ten (10) of such addition.

(2) Notification of the Addition of a Health Service or Equipment (Form #10) shall be used in making such notification.

Section 24. Acquisition and Relocation of Nonconforming Nursing Facility. (1) Any person proposing to acquire a nursing facility in excess of 300 beds that is not in substantial compliance with 902 KAR 20:310 shall provide a notification of intent to acquire pursuant to KRS 216B.065.

(2) The nursing facility acquired pursuant to subsection (1) of this section may be relocated to more than one (1) location, provided that all the beds remain within the county of location of the original facility.

(3) Applications to relocate the nursing facility acquired pursuant to subsection (1) of this section, shall be filed pursuant to KRS 216B.095.

(4) Once relocated and licensed, any person proposing to acquire the relocated nursing facilities shall provide notifications of intent to acquire pursuant to KRS 216B.065.

Section 25. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

- (a) Letter of Intent (Form #1);
- (b) Certificate of Need Application - Formal and Nonsubstantive Review (Form #2A);
- (c) Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers (Form #2B);
- (d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C);
- (e) Witness List (Form #3);
- (f) Exhibit List (Form #4);
- (g) Notice of Appearance (Form #5);
- (h) Administrative Escalation (Form #6);
- (i) Six (6) Month Progress Report (Form #7);
- (j) Advisory Opinion Request (Form #8);
- (k) Acquisition of a Health Facility, Notice of Intent (Form #9);
- (l) Notification of the Addition of a Health Service or Equipment (Form #10).

(2) These forms may be inspected and copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN H. GRAY, Executive Director
JOHN MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998
FILED WITH LRC: December 15, 1998 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments

were received on this issue.

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

1. First year following implementation: There are no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications will be reviewed to determine whether they exceed minimum expenditure thresholds.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process. The agency also collects fees for the filing of applications.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received on this issue.

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Annual adjustment of expenditure thresholds is required by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Cabinet for Health Services to adjust the expenditure minimums for capital expenditures and major medical equipment for a set time frame.

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

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented The Cabinet for Health Services would not be allowed to adjust expenditure minimums as required by statute which could have a detrimental effect on services.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied as the Certificate of Need Process is applied uniformly for all of those entities that apply.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

4. How does this administrative regulation affect the local government or any service it provides? NA

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, DECEMBER 15, 1998

DEPARTMENT OF STATE
Kentucky Registry of Election Finance
(Amendment)

32 KAR 2:210. Three (3) judge panel procedures.

RELATES TO: KRS 121.140(4)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: 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 [a three (3) judge panel] 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 and [;] selection of a justice or judge [judges to sit on the panels, and payment of per diem compensation and expenses of judges].

Section 1. Administrative Pleadings. (1) Upon the failure of the registry and the respondent to reach a conciliation agreement, and submission of a request for retired or former justices or judges [panelists] as required by KRS 121.140(4), the general counsel shall prepare an administrative complaint which shall include the following:

(a) A statement of the allegations contained in the original complaint;

(b) The registry's findings of fact and conclusions of law in support of a finding of probable cause or the registry's notice of noncompliance with reporting requirements pursuant to 32 KAR 2:040(10);

(c) A statement that attempts to negotiate a conciliation agreement have been unsuccessful; and

(d) A statement that conciliation negotiations have been extended for the maximum period allowed by 32 KAR 2:050(3).

(2) The general counsel shall prepare an administrative summons [subpoena] which, along with a copy of the administrative complaint, shall be served upon the respondent either personally or by certified mail, return receipt requested. This notification shall be made in accordance with the schedule established by KRS 121.140(4).

(3) A respondent to an administrative complaint as provided in subsection (1) of this section shall have twenty (20) days from the date of receipt of the administrative summons [subpoena] and complaint to file a written response. The response shall be filed at the offices of the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(4) Within a reasonable time of the final selection of one (1) retired or former justice or judge in the manner provided by KRS 121.140 [the three (3) panelists], the general counsel shall forward copies of the administrative complaint to the justice or judge selected [each member of the panel] and shall, thereafter, forward copies of all other pleadings filed up to the dates of the hearing.

(5) One (1) retired or former justice or judge shall be selected for each hearing required under KRS 121.140(4) and shall serve through the completion of the hearing process and until the justice or judge renders a decision. [The executive director shall randomly select a three (3) member panel to serve for a period of three (3) months.

Section 2. Retired or former justice or judge selected to serve on a three (3) judge panel shall receive:

(1) \$300 per diem for the performance of his duties; and

(2) Reimbursement for actual and necessary expenses.]

DONALD L. COX, Chair

ROSEMARY F. CENTER, General Counsel

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 14, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on January 21, 1999 at 9:30 a.m. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 1999, five (5) working days prior to

the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT: Rosemary F. Center, General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601, (502) 573-2226, FAX (502) 573-5622.

REGULATORY IMPACT ANALYSIS

Contact Person: Rosemary F. Center

(1) Type and number of entities affected: Kentucky Registry of Election Finance.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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 paperwork: *By operation of the relevant statute, KRS 121.140(4), as amended by 1998 Acts, the Registry's hearing procedures now only require the selection of one (1) judge or justice per hearing rather than three (3), resulting in decreased paperwork and a savings in reimbursable expenses for the reasonable and necessary expenses incurred by the judge or justice in the performance of his duties.

(b) Reporting and paperwork requirements: Reduced

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Registry's budget.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons by alternatives were rejected: The proposed amendment to the administrative regulation is required by the operation and effects of the amendments to the statute. No alternative methods to provide procedures as required by due process were available.

(8) Assessment of expected benefits: The proposed administrative regulation will provide necessary procedural due process for the judicial hearings required by KRS 121.140(4) as amended.

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

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

(9) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping or duplication: There is

no statute, administrative regulation, or government policy which may be in conflict, overlapping or duplicated by the proposed administrative regulation that is known to the registry at this time.

(a) Necessity of proposed regulation if conflict:

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

(10) Any additional information or comments: No additional comments.

(11) TIERING: Is tiering applied? No, tiering is not applied because the provisions of this regulation apply equally to all individuals affected. The administrative regulation provides procedures that shall apply uniformly to all candidates, committees or other entities affected by KRS 121.140(4).

KENTUCKY REAL ESTATE COMMISSION (Amendment)

201 KAR 11:230. Mandatory continuing education.

RELATES TO: KRS 324.281(7)

STATUTORY AUTHORITY: KRS 324.281(5), (7), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(7) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of license renewal and requires that two (2) of the six (6) hours pertain to the study of real estate law. This administrative regulation establishes the requirements relating to continuing education.

Section 1. (1)(a) Except as provided in paragraph (b) of this subsection, an active licensee shall meet the requirements of KRS 324.281(7) by attending a continuing education course sponsored or approved by the commission that meets the requirements established in this section of this administrative regulation.

(b) An active licensee shall attend a commission-approved core course once every four (4) years. The core course shall:

1. Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken;

2. Be a six (6) hour comprehensive review of the requirements of KRS Chapter 324, 201 KAR Chapter 11, common and federal law relating to real estate, and the standards of practice for a real estate licensee; and

3. Be taken according to the following schedule:

a. If the licensee's birth month is January, February, or March, the licensee shall take the core course in the first year of a four (4) year cycle.

b. If the licensee's birth month is April, May, or June, the licensee shall take the core course in the second year of a four (4) year cycle.

c. If the licensee's birth month is July, August, or September, the licensee shall take the core course in the third year of a four (4) year cycle.

d. If the licensee's birth month is October, November, or December, the licensee shall take the core course in the fourth year of a four (4) year cycle.

(2) To apply for approval of a continuing education course, a sponsor shall submit a:

(a) Completed Continuing Education Course Application, which shall:

1. Include information concerning curriculum, instructors, and educational materials and policies; and

2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education, if the sponsor is:

1. Not an accredited college or university; and

2. Is certified by the State Board for Proprietary Education;

(c) Completed Real Estate Instructor Application for each instructor, as required by 201 KAR 11:175; and

(d) Copy of all advertising or brochures advertising the continuing education course.

(3) To receive approval, an education course shall consist of topics that shall:

(a) Enable a student to better understand the brokerage business; and

(b) serve the public.

(4) A course that is self-motivational in nature shall not be approved.

(5) A course instructor shall:

(a) Be reasonably competent by educational background or work experience;

(b) Have adequate knowledge of the course material; and

(c) Be an "approved instructor" under the prelicensure education requirements established in 201 KAR 11:175.

(6) An education course shall be sponsored by:

(a) An accredited real estate school;

(b) A school that has been given a certificate of approval by the Kentucky Board of Proprietary Education;

(c) An appropriate governmental regulatory body; or

(d) An approved real estate school.

(7) A sponsor shall:

(a) At least thirty (30) days prior to the scheduling of a continuing education course, submit to the commission a completed Continuing Education Schedule that identifies the course provider, course title and number, instructor, date, time, and location;

(b) Give to each attendee listed on the roster a completed Continuing Education Completion Certificate;

(c) Within ten (10) days of a continuing education course, submit to the commission:

1. A completed Continuing Education Attendance Roster, which shall include the name, address, and Social Security number of each attendee, in alphabetical order;

2. Each completed Continuing Education Course Evaluation completed by each attendee listed on the roster; and

3. A completed CE Course Evaluation Transmittal Form;

(d) Permit monitoring and inspection by the commission; and

(e) Make the course available to all licensed agents, subject to space limitations.

(8) An education course shall consist of a minimum of two (2) hours. One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.

(9) An escrowed licensee shall not be required to attend a continuing education course. Before a license is changed from escrow to active, a licensee shall provide the commission with documentation of the completion of the current calendar year's continuing education requirements. Beginning January 1, 1999, if the licensee has not completed a commission-approved core course in the previous four (4) years as required by subsection (1)(b) of this section, the core course shall become the current calendar year's continuing education requirement for a license changing from escrow to active.

(10) A [sales associate] licensee shall not be required to attend a continuing education course during the first calendar year in which he is first licensed in Kentucky.

(11) An active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.

(12) (a) A licensee shall complete the mandatory continuing education requirements of this administrative regulation by December 31 of each calendar year.

(b) Proof of completion of the mandatory continuing education requirements shall be submitted to the commission on or before January 15 of the following calendar year.

(c) If a licensee fails to comply with the provisions of paragraphs (a) and (b) of this subsection, the executive director shall notify him as soon as practicable on or after January 15 of the following calendar year.

(d) A license shall not be expired if a licensee:

1. Places his license in escrow; or

2. Completes the requirements of a delinquency plan that complies with subsection (13) of this section.

(e) A licensee who fails to either place his license in escrow or file the delinquency plan on or before February 15 as required by subsection (13) of this section shall have his license expired as of that date.

(13) On or before February 15 of the following calendar year, a licensee shall submit a written delinquency plan to complete the con-

tinuing education requirements for the previous calendar year.

(a) The delinquency plan shall provide that the continuing education requirements for the previous calendar year shall be completed on or before June 15.

(b) The licensee shall submit a fee of \$200 with his delinquency plan, as required by KRS 324.090(2).

(c) 1. If a licensee fails to complete an approved delinquency plan, his license shall be suspended for two (2) years.

2. To reinstate an expired license at the conclusion of the two (2) year period, the licensee shall, within ninety (90) days of the expiration of the suspension:

- a. Complete the current year's continuing education requirements;
- b. Submit required documentation to reinstate the license; and
- c. Pay all necessary renewal and transfer fees as required by KRS 324.287.

3. If the licensee does not comply with the requirements of subparagraph 2 of this paragraph, after ninety (90) days:

- a. The license shall be expired; and
- b. The licensee shall meet the requirements for initial licensure, including retaking the examination.

(14) A licensee who places his license in escrow under the provisions of subsection (12) (d) of this section shall not reactivate his license unless he has:

(a) Completed the current year's mandatory continuing education requirements; and

(b) Paid the fee required by KRS 324.287.

(15) The time requirements established in this administrative regulation may be extended by the commission if:

- (a) A true hardship or other good cause clearly warrants relief; and
- (b) The request for extension is requested in writing on or before January 30 of the following calendar year.

(16)(a) A licensee who teaches an approved continuing education course shall be entitled to:

1. One (1) hour of credit for each hour of instruction he teaches; and

2. Two (2) hours credit for preparation for each course he teaches.

(b) The instructor's supervisor shall submit a written request for credit to be awarded for teaching a class. The request shall contain the instructor's name, date and name of course, and the number of hours.

(c) The instructor shall not receive credit more than once in a calendar year for teaching a specific course.

(17) Hours of instruction in prelicense real estate education courses shall be credited to the mandatory continuing education requirements.

(a) The licensee shall submit a transcript or course completion certificate for the prelicense course in order to receive credit toward the continuing education requirements for that calendar year.

(b) An instructor of an approved prelicense real estate course shall receive credit toward his continuing education requirements. Instructor credit for a prelicense course shall comply with the requirements for a continuing education course, as established in subsection (17) of this section.

(18) Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year's requirements.

(19) The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Continuing Education Course Application", 11/97 edition, Kentucky Real Estate Commission;

(b) "Continuing Education Schedule", 11/97 edition, Kentucky Real Estate Commission;

(c) "Continuing Education Attendance Roster", 11/97 edition, Kentucky Real Estate Commission;

(d) "CE Course Evaluation Transmittal Form", 11/97 edition, Kentucky Real Estate Commission;

(e) "Continuing Education Course Evaluation", 11/97 edition, Kentucky Real Estate Commission; and

(f) "Continuing Education Completion Certificate", 11/97 edition,

Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

BETTY J. KAISER, Chairperson

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: November 19, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 1999, 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 the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, Attorney for the Commission, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone: (502) 425-4273, Facsimile: (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

(1) Type and number of entities affected: The proposed amended to 201 KAR 11:230, Section 1(10) will affect new broker licensees only.

(2) Direct and in direct costs or savings on the:

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost of doing business will be decreased because the broker licensee will not have to pay for their continuing education classes during their first calendar year of licensure.

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

1. First year following implementation: The cost of doing business will be decreased because the licensee will not have to pay for courses the first year of licensure.

2. Second and subsequent years: No affect on cost of doing business in the second or subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No significant cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Lessens the reporting and paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact expected.

(b) Kentucky: No impact expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The change is so that all licensees will be treated the same and there will be no distinction between a sales associate and a broker.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Tiering is not necessary because the changes proposed do not effect any class differently than another. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not effect small business concerns mentioned in KRS 13A.210(5).

KENTUCKY REAL ESTATE COMMISSION (Amendment)

201 KAR 11:400. Agency disclosure requirements.

RELATES TO: KRS 324.160(1)(e)

STATUTORY AUTHORITY: KRS 324.160(1)(e), (j), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.160(1)(e) authorizes the commission to take disciplinary action if a licensee acts for more than one (1) party in a transaction without the knowledge of all parties. KRS 324.282 authorizes the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. This administrative regulation establishes a specific format for disclosing the relationship between a broker or sales associate, seller, and buyer in a residential transaction to: (1) ensure that each party knows what relationship exists between the parties; and (2) have documented evidence that the disclosure occurred.

Section 1. Definitions. (1) "Commercial transaction" means a transaction other than the sale of a single-family residential property, multifamily property containing four (4) units or less, single-family residential lot, or agricultural property.

(2) "Delivery" means delivery of an item to a prospective party or his broker or sales associate by:

- (a) Mail;
- (b) FAX transmission;
- (c) Messenger; or
- (d) Hand.

(3) "First contact" means the period:

(a) Before a contract containing a duty of representation and compensation is entered into by a:

- 1. Prospective party who does not have a broker or sales associate; and
- 2. A broker or sales associate who has offered to represent him; or

(b) Before the beginning of discussions relating to a real estate transaction between a:

- 1. Prospective party who does not have a broker or sales associate; and
- 2. A broker or sales associate who has proposed to discuss the real estate transaction with him.

(4) "First substantial contact" means the period between the first

contact and the period immediately preceding the presentation of a written offer to purchase.

(5) "Prospective party" means a person who:

- (a) Enters a listing contract as a seller;
- (b) Enters a buyer broker agreement as a buyer; or
- (c) Seeks or uses the services of a broker or sales associate.

(6) "Prospective party who is represented by a broker or sales associate" means a person who has entered into a current listing contract, or buyer broker agreement with a broker or sales associate.

Section 2. The provisions of this administrative regulation shall not apply to a:

- (1) Sale of real estate at auction;
- (2) Property management of real estate; or
- (3) Commercial transaction.

Section 3. Prospective Party Information. (1) A broker or sales associate shall deliver to a prospective party an Agency Information Bulletin on the first contact. The Agency Information Bulletin shall:

- (a) Be prepared by the broker or sales associate; and
- (b) Generally summarize the possible relationships that may exist between the broker or sales associate, and the buyer and seller.

(2) A broker or sales associate shall deliver to a prospective party an "Agency Disclosure Form" on the first substantial contact. The "Agency Disclosure Form" shall:

- (a) Be signed by each:
 - 1. Prospective party to the transaction; and
 - 2. Broker or sales associate involved in the transaction; and

(b) Identify:

1. Each prospective party known to the broker or sales associate making the disclosure;

2. If a prospective party is represented by a broker or sales associate, the name of the broker or sales associate, his real estate company, and whom he represents; and

3. The real estate that is the subject of the negotiation;

(c) Describe the personal, family, or business relationships between:

- 1. The broker or sales associate making the disclosure; and
- 2. Each prospective party known to the broker or sales associate when the disclosure is made;

(d) State whether the broker or sales associate making the disclosure is acting as a principal as a prospective:

- 1. Seller;
- 2. Buyer;
- 3. Lender; or
- 4. Investor; and

(e) Contain a statement that:

- 1. An agent owes a fiduciary duty to his client, including:
 - a. A duty of loyalty;

b. Giving the client all the information the agent knows about the property;

c. Honesty and fair dealing; and

d. Negotiating in the best interests of his client;

2. An agent owes a duty of honesty and fair dealing to his customer; and

3. The payment of a fee to an agent shall not create a fiduciary duty to the person paying the fee.

(f) Indicate whether the listing and selling licensees are acting as designated agents.

(3) The "Agency Disclosure Form" and the "Agency Information For Consumers Bulletin" required by subsection (1) of this section shall be:

(a) The "Agency Disclosure Form Approved By Kentucky Real Estate Commission", and the "Agency Information For Consumers Bulletin Approved by Kentucky Real Estate Commission"; or

(b) An Agency Disclosure Form, and Agency Information For Consumers Bulletin, that have been developed by the broker or sales associate and approved by the commission.

(4)(a) An "Agency Disclosure Form" that has been developed by the broker or sales associate, shall be submitted to the commission for approval.

(b) The general counsel of the commission shall:

- 1. Review the form;

2. Make a recommendation to the commission that the form be approved or disapproved; and
3. Inform the broker or sales associate of the commission's decision.

Section 4. Commission Review of Licensee Documents. The commission shall:

- (1) Review a licensee listing agreement, buyer broker agreement, and purchase agreement;
- (2) Approve an agreement that it determines contains the information required by this administrative regulation; and
- (3) Inform the broker or sales associate of the commission's action.

Section 5. Incorporation By Reference. (1) "Agency Disclosure Form Approved By Kentucky Real Estate Commission (November 19, 1998 [Sep-07-1995])", is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville Kentucky 40223, 8 a.m. to 4:30 p.m., Monday through Friday.

BETTY J. KAISER, Chairperson

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: November 19, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 1999, 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 the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, Attorney for the Commission, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone: (502) 425-4273, Facsimile: (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeffrey Blair

- (1) Type and number of entities affected: Affects all real estate licensees and consumers 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: No effect.
 - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No effect.
 - (c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: No effect.
 2. Second and subsequent years: No effect.
 - (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: No cost reduction.
 2. Continuing costs or savings: No cost reduction.
 3. Additional factors increasing or decreasing costs:
 - (b) Reporting and paperwork requirements: This amendment will not alter the requirement that copies of the form incorporated by reference be delivered and retained by licensees.
 - (4) Assessment of anticipated effect on state and local revenues: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No extra funds needed to implement this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: No impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment is an improvement on the current system of agency required by statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

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

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

(10) Any additional information or comments: None

(11) TIERING: Tiering is not applicable. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and nonsize variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not affect small business concerns mentioned in KRS 13A.210(5).

TOURISM CABINET

Department of Fish and Wildlife Resources (Amendment)

301 KAR 1:058. Methods for taking turtles.

RELATES TO: KRS 150.010, 150.025(1), 150.400[~~150.175; 150.235; 150.360; 150.440; 150.445; 150.450~~]

STATUTORY AUTHORITY: KRS ~~[13A.350;]~~ 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate methods and devices for taking wildlife, the buying and selling of wildlife and the places where taking is allowed. This administrative regulation is necessary to specify the species of turtles which may be taken, methods which shall be used to take turtles, waters in which certain methods may not be used, and requirements for selling turtles. [This administrative regulation is necessary to describe legal methods for harvest of turtles.]

Section 1. Definitions. "Turtle" means a:

(1) Snapping turtle (*Chelydra serpentina*), except the alligator snapping turtle (*Macrochelys temminckii*);

(2) Smooth softshell turtle (*Apalone mutica*);

(e) Spiny softshell turtle (*Apalone spinifer*). [Turtles may be taken by angling and in the same manner as rough fish may be taken, with the same restrictions and license requirements.]

Section 2. (1) Turtle season shall be open year-round.

(2) Unless exempt from license requirements by KRS 150.170(2) or (3) a person who takes a turtle shall have in his possession a valid:

(a) Hunting license if he uses:

1. A gun; or

2. Bow and arrow;

(b) Fishing license if he uses a:

1. Method by which sport or rough fish may be taken on a sport fishing license; or

2. Turtle trap as specified in Section 3 of this administrative regulation.

(c) Commercial fishing license if he sells turtles.

(3) A person shall not take a turtle by hand or by a hooked rod in a lake or stream listed as closed in 301 KAR 1:075, Section 5. [In addition, turtles may be shot with gun or bow and arrow if a valid hunting license is in possession and subject to the same closed season in November as other types of hunting; all other methods of taking require a fishing license.]

Section 3. (1) A person shall not use a turtle trap:

(a) Except a:

1. Barrel or drum with a tilting board trigger;

2. Floating log raft with an enclosed twine or wire mesh bag.

(b) Constructed or set so that other animals would reasonably be expected to be caught.

(2) A person setting a turtle trap shall:

(a) Inspect the trap daily;

(b) Remove turtles from the trap, except that one (1) decoy turtle may remain in the trap;

(c) Release unharmed a species except a turtle caught in the trap. [In addition, turtles only may be taken if the following conditions are met:

(1) All turtle devices must be constructed and set so that no other animals or fish would reasonably be expected to be caught. Anything other than turtles caught in the devices must immediately be released unharmed.

(2) All turtle devices must be inspected for catch and catch removed, with the possible exception of one (1) live decoy turtle, at least once each twenty-four (24) hours or the device removed if the device cannot be inspected during any twenty-four (24) hour period.

(3) Barrel or drum devices using a tilting board as the trigger or catching device, or floating log rafts using an enclosed bag of twine or wire mesh, in which the turtle must enter by climbing over the enclosing logs, may be used.

Section 4. Turtles may be taken by hand or hooked rod while wading, only in those waters open for gigging, grabbing, or snagging, or tickling and noodling, as set out in 301 KAR 1:075, except they may be taken year round. No fish may be taken by use of the hooked rod at any time.

Section 5. If turtles are to be sold, a commercial fishing license is required.]

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTI, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 200 people actively trap or otherwise take turtles.

(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.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation should have no impact on costs of doing business.

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

1. First year following implementation: None

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

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

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: 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendment to this long-standing administrative regulation specifies the species of turtles which may be taken and sold. The alternative of doing nothing was rejected because the unamended regulation allowed the commercial exploitation of all species of turtles.

(8) Assessment of expected benefits: By addressing which species of turtles may be taken or sold, this administrative regulation will help protect some species of turtles for which there appears to be a growing market for the pet store trade, an activity which could cause declines in wild populations.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Controlling the commercial harvest of some species of turtles will have a positive impact on species diversity in Kentucky.

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

(c) If detrimental effect would result, explain detrimental effect: Some turtle species could be impacted to the extent that they would be candidates for listing on federal threatened or endangered species lists.

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

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

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

(10) Any additional information or comments:

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

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:140. Special commercial fishing permit.

RELATES TO: KRS 150.025(1), [150.110, 150.120, 150.170, 150.175, 150.190,] 150.450(2)

STATUTORY AUTHORITY: KRS [13A.350,] 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of devices and methods used to take wildlife, including rough fish and the places where they may be taken. This administrative regulation is necessary to specify the waters open to, and other restrictions on the use of, gill and trammel nets. [Gill and trammel nets are the most effective gear for the taking of certain rough fishes, but they pose a danger of over-harvest of the most desirable rough species and are a threat to certain sport fish if not properly regulated; therefore, the commissioner with the concurrence of the commission finds a need to authorize additional use of such gear through the issuance of a permit which will have strict termination provisions and other safeguards to control their use. This amendment is necessary in order to close gill and trammel net fishing at Rough River Lake.]

Section 1. Definitions. (1) "Bar mesh size" means the distance between two (2) knots on a line of a net.

(2) "Permit" means a special commercial fishing permit.

(3) "Rough fish" is defined by KRS 150.010(32).

(4) "Whip set" means a gill net or a trammel net rigged so it is free-floating.

Section 2. A person who has in his possession a valid special commercial fishing permit and a commercial fishing license may use a gill net or a trammel net to take rough fish:

(1) From November 1 through:

(a) March 31 in Kentucky Lake; and

(b) The last day of February in Barkley Lake.

(2) In the portions of Kentucky and Barkley lakes open to commercial fishing as specified in 301 KAR 1:150.

Section 3. A person using a gill net or a trammel net in the waters specified in Section 2 of this administrative regulation shall:

(1) Before fishing, apply for a permit by providing on a form provided by the department his:

(a) Name;

(b) Address;

(c) Telephone number; and

(d) Fish markets he intends to use.

(2) Have the permit in his possession while:

(a) Fishing with a gill net or a trammel net;

(b) Transporting a gill net or a trammel net; or

(c) Selling fish taken with a gill net or a trammel net.

(3) Tag a gill net or a trammel net as specified in KRS 150.175(1)(d).

(4) Not use a gill net or a trammel net with a bar mesh size smaller than three and one-half (3-1/2) inches or larger than four and one-half (4-1/2) inches, except that a whip set may have a minimum bar mesh size of three (3) inches.

(5) Not fish a stationary set net with the top of the net or float line shallower than three (3) feet below the surface.

(6) Tend each net, except whip sets, at least once every twenty-four (24) hours.

(7) Not leave whip sets unattended.

(8) Affix a decal supplied by the department:

(a) To each side of the boat or motor he uses for fishing under the special commercial fishing permit;

(b) So that the decal is clearly visible while the boat is used for fishing with a gill net or a trammel net.

(9) Not release a rough fish.

(10) Fish a minimum of 800 linear feet of net for at least one-fourth (1/4) of the season.

Section 4. The permit holder may be accompanied by one (1)

unlicensed helper, who shall be:

(1) In the same boat with the permit holder while fishing with a gill net or a trammel net; or

(2) Accompanied by the permit holder while transporting or selling fish taken under the permit.

Section 5. The permit holder shall:

(1) Maintain an accurate record of daily fishing activity and fish sales; and

(2) Submit a weekly report to the department:

(a) On a form provided by the department, providing information on:

1. The number of each species of rough fish taken;

2. How the fish were disposed of; and

3. The average total length of nets fished each day, with separate entries for:

a. Gill nets;

b. Trammel nets; and

c. Whip sets.

(b) Duplicate receipts for fish sold.

Section 6. The department shall:

(1) Not renew the permit of a person who does not submit a report as specified in Section 5 of this administrative regulation.

(2) Revoke the permit of a person found guilty of violating a statute or administrative regulation pertaining to commercial fishing for three (3) years.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Application for a Special Commercial Fishing Permit, 1998.

(b) Permit Fisherman's Daily Catch Report, 1998.

(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. to 4:30 p.m.

[Section 1. Issuance of Special Permit. The commissioner, after giving due consideration to the composition of the commercial fish population, the vulnerability of the game fish involved, and the ability and reliability of the applicant may issue a special commercial fishing permit to use gill and trammel nets in specified waters, other than those designated in 301 KAR 1:146, Section 3(2):

Section 2. Application for Permits and Revocation. An applicant for a special permit to use gill and trammel nets shall file an application to which he signs his name attesting that he has read and will abide by all of the provisions of the permit and will obey all applicable game and fish laws and administrative regulations or have his permit revoked without refund if found in violation by the commissioner. The offending permittee and assistant shall be ineligible to apply together or separately for another permit or to be an assistant on any other permit for a period of three (3) years following revocation:

Section 3. General Provisions of the Special Permit to Use Gill and Trammel Nets:

(1) The applicant for a permit must possess a valid commercial fishing license.

(2) The permit fee shall be \$500.

(3) Mesh size:

(a) Gill and trammel nets set and left must have a bar mesh size no smaller than three and one-half (3-1/2) inches and no larger than four and one-half (4-1/2) inch bar mesh size.

(b) Gill and trammel nets used as whip sets may have a minimum bar mesh size of three (3) inches, and no larger than four and one-half (4-1/2) inch bar mesh size, but must be constantly attended by the permittee and/or assistant.

(4) Waters open to special permit fishing:

(a) Commercial fishing waters of Barkley Lake.

(b) Commercial fishing waters of Kentucky Lake.

(5) The permit shall be valid for five (5) months only, November 1 through March 31 at Kentucky Lake, and for four (4) months only, November 1 through the last day of February at Barkley Lake.

(6) The permittee shall have no more than one (1) assistant who is a licensed commercial fisherman listed on the permit. Assistant may be replaced at any time, after the conservation officer or officers in the counties fished are notified, and a written notice given to the commissioner. The name of a new assistant must be listed on the permit and all copies, and his predecessor's name marked out with ink.

(7) The permittee or assistant must have the permit or copy of the permit in possession at all times gear is being transported, set, raised, or run. Their names shall be on the permit or copy, and each must contain the same names.

(8) Illegal acts by permittee or assistant acting together or separately may result in permit revocation.

(9) The permittee shall keep daily catch and sales reports and submit weekly to the commissioner. No subsequent permit shall be issued until all reports required by the preceding permit are received by the commissioner. The reports shall include:

(a) The number of each species caught by common name.

(b) Disposition of each fish.

(c) Duplicate sales receipt of all fish sold.

(d) The average total length of nets fished daily listing gill and trammel nets separately and whip sets separately.

(e) Daily catch and sales reports and duplicate receipts of fish and fish products sold must be sent in weekly in postage paid envelopes provided by the department.

(10) All rough fish taken in the nets must be removed from the lake.

(11) Each net must be run at least once every twenty-four (24) hours.

(12) Each 100 feet of net must have attached one (1) commercial gear tag as required in KRS 150.175, subsection (6). Tags shall be grouped on the inshore end of each continuous net.

(13) A permittee must tag and fish at least 800 yards of netting an equivalent of twenty-five (25) percent of the open session.

(14) Each permittee must mark his netting boat with two (2) special net permit decals supplied by the department. One (1) decal shall be affixed to each side of the boat or motor so as to be clearly visible when the boat is being used for special permit netting purposes.

(15) Gill and trammel nets used as stationary set nets must be set so that the top of the net or float line is a minimum of three (3) feet below the waters surface. Whip set nets that are attended constantly by the fisherman may be set at any depth.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Fewer than 20 commercial fishermen apply for and are granted a special commercial

fishing permit annually.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Approximately 40 people (assuming that each permit holder employs an unlicensed helper) will be employed during the months that commercial netting is allowed in Kentucky and Barkley Lakes.

(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 cost of the permit is the only cost imposed by this administrative regulation.

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

1. First year following implementation: Commercial fishermen are required to submit week reports of fishing and sales activity to the department.

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 amendment to this administrative regulation creates no new costs or savings. Existing costs consist of collecting and analyzing weekly reports, and issuing permits.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Permittees must complete an application form, and must submit weekly reports of fishing activity and fish sales to the department.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: A positive impact from the revenue generated by the sale of rough fish.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not allowing commercial harvest of over-abundant rough fish was rejected because of the negative impacts on sport fish populations. The alternative of allowing any holder of a commercial fishing license to use gill and trammel nets in these waters was rejected because of real and perceived conflicts between net fishermen and sport fishermen.

(8) Assessment of expected benefits: Reduction of rough fish populations; utilization of rough fish for food purposes.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Commercial gill and trammel net fishermen contribute to the ecological balance of Kentucky and Barkley Lakes by removing surplus numbers of rough fish.

(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: Possible over-population of certain fish species, leading to direct and indirect competition with sport fish for food and habitat.

(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: This administrative regulation is being amended to allow each holder of a special commercial fishing permit to employ one unlicensed helper. This change makes this regulation consistent with other commercial fishing regulations, which also allow an unlicensed helper.

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

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TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:049. [Seasons for furbearers and] Small game and furbearer hunting on public [specified] areas.

RELATES TO: KRS 150.010, 150.025(1) [~~150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.360, 150.365, 150.370(1), 150.399, 150.400, 150.410, 150.620, 150.990~~]

STATUTORY AUTHORITY: KRS 150.025(1), 150.620 [~~13A.350, 150.015, 150.021, 150.170, 150.175~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to set seasons, limits and other requirements for hunting, and to make these requirements apply statewide or to a limited area; KRS 150.620 authorizes the department to regulate the lands it has acquired for public recreation. This administrative regulation is necessary to specify exceptions on wildlife management areas to statewide small game and furbearer hunting regulations. [This amendment is necessary to open the spring squirrel season at Land Between the Lakes.]

Section 1. The [All] provisions of 301 KAR 2:251 shall apply on a wildlife management area unless specified otherwise by this administrative regulation.

Section 2. On a wildlife management area [areas] owned or managed by the department:

(1) A person shall wear hunter orange as specified in Section 12 of 301 KAR 2:172 when a firearm is [During periods when firearms are] allowed for deer hunting.

(2) The hunter orange requirement in subsection (1) of this section shall not apply to a person hunting:

(a) Waterfowl; or

(b) Raccoon or opossum at night. [; persons shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at least the head, chest and back.

(a) Mesh weave openings in the hunter orange garment shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter orange color of the garment.

(b) Camouflage pattern hunter orange garments worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

(c) Waterfowl hunters shall be exempt from the hunter orange requirements.]

(3) [(2) During dates] When deer hunting with a breech-loading firearm [firearms] is allowed, a person [persons] shall not:

(a) Hunt small game or furbearers;

(b) Trap; or

(c) Allow an unleashed dog [dogs].

(4) A person [(3) Persons] may hunt small game or a furbearer during the modern gun deer season on a wildlife management area [areas] where gun deer hunting is not permitted during the modern gun deer season.

(5) [(4)] Unless specified otherwise in Section 3 of this administrative regulation, a person [persons] shall not allow a dog [their dogs] to be unleashed from March 1 until the third Saturday in August, except an unleashed dog shall be permitted:

(a) At a department-authorized field trial [Persons participating in department-authorized] field trials [may use unleashed dogs]; or

(b) By a squirrel hunter during an open [Squirrel hunters may use unleashed dogs during the June 1 through June 14] spring squirrel season.

[(5) Persons may hunt squirrels from June 1 through June 14. This season shall be open on Land Between the Lakes.

(6) Persons shall not hunt on portions of wildlife management areas designated by signs as closed to hunting.

(7) Persons shall not enter portions of wildlife management areas designated by signs as closed to public access.]

Section 3. Exceptions on Specific Wildlife Management Areas. (1) Barren River Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not:

1. Hunt with a breech-loading firearm;

2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or

3. Hunt small game with shot larger than number two (#2).

(2) Beaver Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper [Trappers] shall complete a harvest survey [form obtained from the area manager].

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(4) Cane Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper [Trappers] shall complete a harvest survey [form obtained from the area manager].

(5) Central Kentucky Wildlife Management Area.

(a) [This area shall be] Closed to small game and furbearer hunting except squirrels.

(b) A person [Persons] shall not allow a dog [their dogs] to be unleashed from:

1. April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation; or [;

1. Persons participating in department-authorized field trials may use unleashed dogs;

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.]

2. [(e)] At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial, [unleashed dogs are permitted only on Tuesdays, Thursdays, Saturdays, Sundays, or during permitted field trials.]

(c) [(d)] A trapper [Trappers] shall obtain prior written permission from the area manager.

(d) [(e)] A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.

(a) Quail and rabbit: closed after December 31.

(b) A person [Persons] shall not allow a dog [their dogs] to be unleashed from April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation. [;

1. Persons participating in department-authorized field trials may use unleashed dogs;

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.]

(c) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area. Closed to hunting and trapping for small game and furbearers.

(9) Dewey Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(10) Fishtrap Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(11) Fleming Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

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- (12) Grayson Lake Wildlife Management Area.
(a) Quail and rabbit: closed after December 31.
(b) Grouse: October 1 through December 31.
(c) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at a designated check station.
- (13) Green River Lake Wildlife Management Area.
(a) Quail and rabbit: closed after December 31.
(b) Grouse: closed to hunting and trapping.
(c) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at a designated check station.
- (14) Higginson-Henry Wildlife Management Area.
(a) Quail and rabbit: closed after December 31.
(b) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at the designated check station.
- (15) Kleber Wildlife Management Area.
(a) Quail and rabbit: closed after December 31.
(b) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at the designated check station.
- (16) Lake Cumberland Wildlife Management Area.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(17) Mill Creek Wildlife Management Area, including private in-holdings.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearer: December 5 through December 31. A trapper [~~Trappers~~] shall complete a harvest survey.
- (18) Nolin Lake [~~Reservoir~~] Wildlife Management Area. Quail and rabbit: closed after December 31.
- (19) Paintsville Lake Wildlife Management Area.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearers: closed after December 31.
- (20) Peal Wildlife Management Area.
(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.
(b) Furbearer trapping: December 1 through 10, water sets only. Trappers shall be selected by drawing conducted by the area manager.
- (c) Quail and rabbit: closed after December 31.
- (21) Pennyryle Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).
- (22) Pioneer Weapons Wildlife Management Area. A person shall not:
(a) Hunt with a [~~Hunters shall not use~~] breech-loading firearm [~~firearms~~].
(b) Except as authorized by the department, [~~Persons except authorized personnel shall not~~] carry a breech-loading firearm [~~firearms~~] with ammunition in the chamber or magazine; or
(c) [~~Persons shall not~~] Hunt small game with shot larger than number two (#2).
- (23) Redbird Wildlife Management Area.
(a) Grouse: October 1 through December 31.
(b) Quail and rabbit: closed after December 31.
(c) Furbearers: closed after December 31.
- (24) Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200.
- (25) Taylorsville Lake Wildlife Management Area.
(a) The area east of Van Buren Boat Ramp shall be [~~is~~] closed to public access the day after the deer quota hunt through March 15.
(b) Quail and rabbit: closed after December 31.
(c) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at a designated check station.
- (26) Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).
- (27) West Kentucky Wildlife Management Area, McCracken County.
(a) A person [~~Persons~~] shall not hunt on a tract [~~tracts~~] designated by numbers followed by the letter "A".
(b) Quail and rabbit:
1. [~~On~~] Tracts 2, 3, 6 and 7: closed after December 31.
2. [~~On~~] Tracts 1, 4 and 5: January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as

determined from hunter use data.

(3) If a tract is closed before January 10, a sign [~~Signs~~] announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at the designated check station.

(d) A person shall not:

1. Use a rifle [~~Small game or furbearer hunters shall not use rifles~~] or ball or slug ammunition;

2. Allow an unleashed dog except as provided in Section 2(5) of this administrative regulation; or

3. Operate a vehicle on Tract 6 from February 1 through April 16.

[~~(e) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:~~

1. ~~Persons participating in department authorized field trials may use unleashed dogs.~~

2. ~~Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.~~

[~~(f) Vehicular traffic on Tract 6 is prohibited February 1 through April 16.~~]

(28) Westvaco Public Hunting Areas. A person [~~Persons~~] hunting on a Westvaco Public Hunting Area [~~Areas~~] shall possess a valid Westvaco Hunting Permit.

(29) White City Wildlife Management Area. Quail and rabbit: closed after December 31.

(30) Yatesville Wildlife Management Area. A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at a designated check station.

(31) Yellowbank Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at the designated check station.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: Roy Grimes

(1) Type and number of entities affected: Approximately 60,00 small game and furbearer hunters utilize the wildlife management areas covered by this administrative regulation.

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

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

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

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

1. First year following implementation: This administrative regulation imposes no new paperwork or reporting requirements. Some wildlife management areas required hunters to check in and check out.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation imposes no new direct or indirect costs.

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

3. 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: Hunting on, and other recreational uses of, wildlife management areas create positive economic impacts upon local economies in the vicinity of these areas. Each small game hunters spends approximately \$200 annually for equipment, transportation, food and lodging.

(b) Kentucky: Same as for local areas.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is applying statewide hunting seasons to wildlife management areas. This alternative was rejected because these areas, because of high public use, require different seasons or other requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Wildlife management areas represent environmentally valuable natural areas. This regulation allows public recreation on these areas while affording them needed protection from overuse.

(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 special regulations, wildlife management areas could lose valuable wildlife populations or other natural features.

(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? (Explain why tiering was or was not used) Tiering was used in setting different seasons dates for various wildlife management areas, taking into account both biological concerns and hunter preference. Specific season dates or other requirements for wildlife areas allow public recreation while at the same time helping protect the flora and fauna of these areas.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:140. Requirements for wild turkey hunting.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170(3), 150.175(4), 150.305, 150.360, 150.365, 150.390(1), 150.990(11); 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget-Final

Budget-Memorandum, FB-94-96, page 537]

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620[~~1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget-Final~~ Budget-Memorandum, FB-94-96, page 537]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. The function of this administrative regulation is to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state.

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

Section 2. A person shall not take wild turkeys:

(1) Except on the dates and during the times specified in:

(a) 301 KAR 2:142;

(b) 301 KAR 2:144; or

(c) 301 KAR 2:111.

(2) By means other than those specified in this administrative regulation.

Section 3. Unless exempted by KRS 150.170(3), a person hunting wild turkeys shall possess a:

(1) Spring turkey hunting permit during the spring season.

(2) Fall turkey archery hunting permit during the fall archery season.

(3) Fall turkey gun hunting permit during the fall gun season.

Section 4. (1) An adult shall accompany and maintain control of a person under sixteen (16) years of age turkey hunting with a firearm.

(2) After taking a wild turkey, and before moving the carcass, a person shall:

(a) Cut, punch, or mark with ink or indelible pencil the number and month on the carcass tag portion of the turkey permit corresponding to the current date.

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

(c) Have the turkey checked at a check station or by an authorized employee of the department:

1. On the same day it was taken during the spring or fall gun season;

2. By 9 a.m. on the day after it was taken during the fall archery season.

(d) Fill out a game check card and return it to the person checking the turkey.

(e) Keep the hunter's portion of the game check card in possession until the turkey is processed.

(f) Attach to a turkey taken to a taxidermist:

1. The taxidermy portion of the game check card;

2. A Ft. Campbell game check card; or

3. A Land Between the Lakes game check card.

(g) Check the turkey before transporting them out of Kentucky.

(3) A person taking a turkey on a wildlife management area shall follow the tagging and checking requirements in 301 KAR 2:142 or 301 KAR 2:111.

(4)(a) A person exempt from turkey permit requirements by KRS 150.170(3) shall:

1. [(a)] Write his name, address, the date when, and the county where, the turkey was taken on a card; and

2. [(b)] Attach the card to the carcass when he removes the turkey from the property where it was taken.

(b) A person turkey hunting with a senior/disabled license as authorized by KRS 150.175(1)(aa) shall:

1. Before hunting, write his name and address on cards corresponding to the number of turkeys he is allowed to take during the appropriate season;

2. Immediately after taking a turkey and before moving the car-

case, write the date the turkey was taken on the card; and

3. Attach the tag to a turkey while it is being transported by vehicle or is out of the hunter's possession.

Section 5. Firearms and Archery Equipment. A person hunting wild turkey shall not use or carry:

- (1) A rifle or handgun.
- (2) A shotgun larger than ten (10) gauge or smaller than twenty (20) gauge.
- (3) Shot larger than number four (4).
- (4) Shotgun slugs.
- (5) A firearm during archery-only seasons.
- (6) A crossbow, except on the Pioneer Weapons Area.
- (7) Barbed broadheads.
- (8) Broadheads smaller than seven-eighths (7/8) inch wide.
- (9) Arrows with chemical treatments or attachments containing chemicals.

Section 6. Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

- (a) While bait is present; or
- (b) For thirty (30) days after the bait has been removed.
- (2) A person may hunt wild turkey on an area where grain, feed or other substance exists as the result of:
 - (a) Bona fide agricultural practice; or
 - (b) Manipulating a crop for a wildlife management purpose.
- (3) A field shall be considered baited if grain, feed or other substance grown on the field is removed and later returned to the field.

Section 7. Turkey Hunting Restrictions. (1) A person hunting wild turkeys:

- (a) May use a hand or mouth-operated call;
- (b) Shall not:
 1. Use a dog;
 2. Hunt from a boat;
 3. Use an electronic call;
 4. Use a live decoy; or
 5. Take a roosting turkey.
- (2) A person shall not mimic the sound of a turkey:
 - (a) From March 1 until the opening of the spring season;
 - (b) In an area open to hunting if turkeys are reasonably expected to occur.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

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REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

- (1) Type and number of entities affected: Approximately 15,000

persons hunt wild turkey 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. The amendment to this administrative regulation will have no impact on cost of living or employment.

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

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

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

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

(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: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

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

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(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: This amendment deletes season dates, which will be promulgated in separate administrative regulations for spring and fall turkey hunting, a move necessitated by the Fish and Wildlife Commission's approval of a fall turkey gun hunting season.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "Quota hunt" means a hunt whose participants register in advance and are selected by a random drawing.

(2) "Youth hunt" means a hunt open to a person at least ten (10) years old but who has not reached his 16th birthday by the day of the hunt.

Section 2. A person may take wild turkeys:

(1) For twenty-one (21) consecutive days beginning on the Monday closest to April 15;

(2) Using firearms or archery equipment as specified in Section 5 of 301 KAR 2:140;

(3) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 3. A person shall not take more than:

(1) One (1) male turkey or turkey with a visible beard per day; or

(2) Two (2) male turkeys or turkeys with visible beards during the spring season.

Section 4. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to wildlife management areas.

(2) A person shall not hunt wild turkeys during the spring on the areas listed in this section except on the dates specified in this administrative regulation.

(3) Turkeys listed as bonus birds shall not:

(a) Count against statewide limits.

(b) Require a carcass tag portion of the turkey permit be attached to the carcass.

(4) Ballard Wildlife Management Area.

(a) Season. Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) Applicants for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(5) Fort Campbell Wildlife Management Area.

(a) Season. The last Saturday in March through the second Sunday in May.

(b) Turkeys taken on Fort Campbell shall be bonus birds.

(c) A person shall:

1. Obtain a post combination hunting-fishing permit before hunting.

2. Attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area.

(a) Seasons. The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas.

2. Not take more than one (1) turkey during the spring season.

(c) Turkeys taken on Fort Knox shall be bonus birds.

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons. Quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkeys:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area.

(a) This area shall be open during the spring season.

(b) Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(c) An applicant for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(d) Shooting hours for the youth hunt shall be one-half (1/2) hour before sunrise until noon.

(e) A person participating in the youth hunt shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(9) Higginson-Henry Wildlife Management Area. During the spring season a person:

(a) Shall not use or possess firearms while turkey hunting.

(b) Shall check in and check out daily.

(10) Land Between the Lakes.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April.

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May.

(b) A person shall:

1. Check in and out.

2. Hunt in assigned areas.

3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. Affix a Land Between the Lakes game check card and the carcass tag portion of the state turkey permit to the carcass.

5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(11) Pioneer Weapons Wildlife Management Area. During the spring season a person:

(a) Shall not use a breech-loading shotgun.

(b) May use a crossbow with a working safety device.

(12) Reelfoot National Wildlife Refuge.

(a) Season. Quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) A person shall:

1. Not take more than one (1) turkey.

2. Obtain written permission from the area manager before hunting.

(13) The main block of Robinson Forest shall be closed to turkey hunting.

(14) Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(15) West Kentucky Wildlife Management Area shall be closed to spring turkey hunting except for a quota youth hunt the Saturday and Sunday before the Monday closest to April 15.

(a) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(b) Shooting hours are one-half (1/2) hour before sunrise until noon.

(c) A person hunting wild turkeys shall:

1. Check in and out daily; and

2. Not take more than one (1) turkey.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey in Kentucky. Most of this activity occurs during the spring firearms season.

(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. The amendment to this administrative regulation will have no impact on cost of living or employment.

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

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

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

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

(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: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

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

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(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: This new administrative regulation contains season dates and other requirements for spring turkey hunting which were formerly contained in 301 KAR 2:140. The Fish and Wildlife Commission's approval of a fall turkey gun hunting season makes it desirable to split 301 KAR 2:140 into three separate administrative regulation, one for spring hunting, one for fall hunting, and one with general turkey hunting requirements applicable to spring and fall seasons.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for fall gun and archery turkey seasons.

Section 1. A person may take wild turkeys:

(1) From the third Saturday in September through December 31, except during the modern gun deer season:

(a) Using archery equipment as specified in Section 5 of 301 KAR 2:140; and

(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(2) Beginning in 1998, for five (5) consecutive days beginning on the Wednesday closest to December 1:

(a) Using firearms as specified in Section 5 of 301 KAR 2:140; and

(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 2. Except as specified by 301 KAR 2:111, a person shall not take more than:

(1) One (1) wild turkey per day;

(2) Two (2) wild turkeys of either sex during the fall archery season; and

(3) One (1) wild turkey of either sex during the fall gun season.

Section 3. A person shall not hunt wild turkeys during the fall gun season except in Adair, Anderson, Allen, Barren, Boone, Bracken, Bullitt, Butler, Caldwell, Carroll, Christian, Crittenden, Cumberland,

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Edmonson, Franklin, Gallatin, Grant, Grayson, Green, Hardin, Harrison, Hart, Henry, Hopkins, Larue, Logan, Marion, Mason, Metcalfe, Muhlenburg, Nelson, Ohio, Owen, Pendleton, Robertson, Shelby, Spencer, Taylor, Todd, Trimble, Warren or Washington counties.

Section 4. On a wildlife management area owned, operated or under license to the department, a person:

(1) Shall not hunt wild turkey:

(a) During the fall gun turkey season unless:

1. The wildlife management area lies partially or complete within a county listed in Section 3 of this administrative regulation; and

2. A firearm deer season is not open on the area. [-

(b) On a day when a firearm is allowed for deer hunting.-]

(b) [(e)] During the fall turkey gun or archery season on:

1. Ballard Wildlife Management Area;

2. Grayson Lake Wildlife Management Area;

3. The main block of Robinson Forest; or

4. Swan Lake Wildlife Management Area; or

5. West Kentucky Wildlife Management Area].

(2) May archery turkey hunt during the modern gun deer season if deer hunting with:

(a) A firearm is prohibited; and

(b) Archery equipment is permitted on the area during the modern gun deer season.

(3) Shall check in and out daily at the Higginson-Henry Wildlife Management Area.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey in Kentucky. Most of this activity occurs during the spring firearms season. It is unknown at this time how many hunters will participate in the fall firearm season initiated by this administrative regulation.

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

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

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

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

1. First year following implementation: No additional paperwork requirements.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: None

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

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

(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: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

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

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of wild turkey, leading to reduced seasons and lessened hunter opportunity.

(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: This new administrative regulation contains season dates and other requirements for fall archery turkey hunting which were formerly contained in 301 KAR 2:140, and adds the season dates and requirements for a new fall firearms season. The Fish and Wildlife Commission's approval of a fall turkey gun hunting season makes it desirable to split 301 KAR 2:140 into 3 separate administrative regulations, 1 for spring hunting, one for fall hunting, and 1 with general turkey hunting requirements applicable to spring and fall seasons.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

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TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:221. Waterfowl seasons and limits.

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to set waterfowl season dates and limits. This administrative regulation is necessary to set limits and dates within federal waterfowl hunting frameworks established by 50 CFR Part 20. This administrative regulation imposes a shorter season in the 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(40).

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.

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;

(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 [20], dark 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) In a county [(b) In 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;

DOUGLAS SCOTT PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

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 re-

source 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? 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 6 bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into 2 zones with no more than 2 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 addi-

tional 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.

**TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)**

301 KAR 2:222. Waterfowl hunting requirements.

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

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21

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

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 Monday, Tuesday, [Sunday, Monday,] 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. ~~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 the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose [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.

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(b) On the Grassy-Pond Powell's 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 [in his possession].

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(f) The Crenshaw and Duncan tracts shall be closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit shall be closed to the public from October 15 through March 15.

(22) 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.

(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.

DOUGLAS SCOTT PORTER, Assistant Attorney General
C. THOMAS BENNETT, Commissioner

ANN R. LATTI, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

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 alterna-

tives 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? 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 6 bird bag limit between the Saturday closest to October 1 and the Sunday closest to January 20. The state may be split into 2 zones with no more than 2 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.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:223. 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~~]

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 of a noncommercial waterfowl hunting area shall: [~~Operators of noncommercial waterfowl hunting areas~~]

(a) [Shall] Obtain a noncommercial migratory goose hunting per-

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mit 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 of a [Operators of] commercial or a noncommercial waterfowl hunting area shall [areas]:

(a) [Shall] Close the [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) Enter his name, address, hunting license number [Shall enter their 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 hear [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:

(a) [- 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:

(+) 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.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

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 covered 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 noncommercial 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? Tiering was used to the extent that differing requirements are placed on operators of commercial waterfowl hunting areas, operators of noncommercial 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.

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, December 15 [~~November 12~~], 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 |
| 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 |
| 3.20 | Communication and Recording Devices (Added 12/15/98) |
| 4.2 | Staff Training and Development |
| 4.3 | Firearms and Chemical Agents Training |
| 4.7 | Uniformed Employee Dress Code |
| 6.1 | Open Records Law |
| 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 |
| 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 |
| 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 |
| 13.9 | Dental Services |

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14.1	Investigation of Missing Inmate Property	27-06-02	Equal Access to Services
14.2	Personal Hygiene Items	27-07-01	Cooperation with Law Enforcement Agencies
14.3	Marriage of Inmates	27-08-01	Use of Force
14.4	Legal Services Program	27-09-01	Kentucky Community Resources Directory
14.6	Inmate Grievance Procedures	27-10-01	Pretrial Diversion
15.1	Hair and Grooming Standards	27-11-01	Intensive Supervision
15.2	Offenses and Penalties	27-11-02	Prerelease Probation
15.3	Meritorious Good Time	27-12-01	Supervision: Case Classification
15-05-01	Restoration of Forfeited Good Time	27-12-02	Risk Assessment
15.6	Adjustment Procedures and Programs	27-12-03	Initial Interview
15.7	Inmate Account Restriction	27-12-04	Conditions of Regular Supervision/Request for Modification
15.8	Unauthorized Substance Abuse Testing		
16.1	Inmate Visits	27-12-05	Releasee's Report
16.2	Inmate Correspondence	27-12-06	Grievance Procedures for Offenders
16.3	Telephone Calls	27-12-07	Employment, Education/Vocational Referral
16.4	Inmate Packages	27-12-08	Supervision Plan
17.1	Inmate Personal Property	27-12-09	Casebook
17.2	Assessment Center Operations	27-12-10	Guidelines for Monitoring Supervision Fee
17.3	Controlled Intake of Inmates	27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
(b) "Department of Corrections Policies and Procedures, Volume II, July 13, 1998":		27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
18.1	Classification of the Inmate	27-12-13	Community Service Work
18.5	Custody and Security Guidelines	27-12-14	Client Travel Restrictions
18.7	Transfers	27-13-01	Drug and Alcohol Testing of Offenders
18.9	Out-of-state Transfers	27-13-02	Alcohol Detection
18-10-01	Preparole Progress Reports	27-14-01	Interstate Compact Transfers
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures	27-14-02	Interstate Compact Out-of-state Probation and Parole Violation
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill	27-15-01	Supervision Report; Violations, Unusual Incidents
18.13	Population Categories	27-15-02	Community Confinement Program Subject: Electronic Monitoring
18.15	Protective Custody	27-16-01	Search; Seizure; Chain of Custody; Disposal of Evidence
18.17	Interstate Agreement on Transfers	27-17-01	Absconder Procedures
18.18	International Transfer of Inmates	27-18-01	Probation and Parole Issuance of Detainer/Warrant
19.1	Government Services Projects	27-19-01	Preliminary Revocation Hearing
19.2	Community Services Projects	27-20-01	Division of Probation and Parole Controlled Intake Program
19.3	Inmate Wage Program	27-20-02	Prisoner Intake Notification
20.1	Educational Programs and Educational Good Time	27-20-03	Prisoner Status Change
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)	27-21-01	Apprehension and Transportation of Probation and Parole Violators
21.2	Phase I: Program Selection Assessment Criteria	27-22-01	Fugitive Unit - Apprehensions
21.3	Program Schedule - Phase II and Phase III	27-22-02	Fugitive Unit - Transportation of Fugitives
21.4	Platoon Size and Composition	27-23-01	In-state Transfer
21.5	Physical Conditions Program Component	27-24-01	Closing Supervision Report
21.6	Group and Individual Counseling	27-24-02	Reinstatement of Clients to Active Supervision
21.7	Drug and Alcohol Abuse Counseling and Treatment	27-25-01	Application for Final Discharge from Parole
21.8	Work Programs Component	27-26-01	Assistance to Former Clients and Dischargees
21.9	Education and Life Management	27-27-01	Restoration of Civil Rights
21.10	Auxiliary Services	27-28-01	Firearms/Explosives: Application for Relief from Disability
21.11	Offenses and Penalties	27-29-01	Parole Review Dates Modification
22.1	Privilege Trips	27-30-01	Sex Offender Registration
23.1	Religious Programs	28-01-01	Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
25.1	Gratuities		
25.2	Public Official Notification of Release of an Inmate		
25.3	Prerelease Program	28-01-02	Probation and Parole Investigation Reports (Administrative Responsibilities)
25.4	Inmate Furloughs	28-01-03	Presentence, Postsentence, Supplemental and Partial Investigations
25.6	Community Center Program		
25.7	Expedient Release	28-01-08	Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
25.8	Extended Furloughs		
25.10	Administrative Release of Inmates	28-01-09	Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
25.11	Victim Notification		
(c) "Department of Corrections Policies and Procedures, Volume III, July 13, 1998":		28-02-01	Expedient Release Program
27-01-01	Probation and Parole Procedures	28-03-01	Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
27-02-01	Duties of Probation and Parole Officers		
27-03-01	Workload Formula Supervisor/Staff Ratio	28-04-01	Furlough Verifications
27-05-01	Testimony, Court Demeanor and Availability of Legal Services	28-05-01	Out-of-state Investigations
27-06-01	Availability of Supervision Services		

(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: December 4, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 22, 1999, 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 January 14, 1999, 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: 2948 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

(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.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Amendment)

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 138.655 through 138.7291, 186.650, [281.725,] 49 CFR Part 390.21, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 138.725, 281.600, 49 USC Chapter 317

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with 49 USC 317.05 and KRS 138.227, Kentucky is [requires that each state be] in conformance with the provisions of the International Fuel Tax Agreement (IFTA) [by September 30, 1996]. If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes which are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through 138.7291. ~~[House Bill 322 passed by the 1996 Regular Session of the General Assembly amended portions of KRS 138.655 through 138.7291 clearly establishing that the tax set forth in KRS 138.6601 (which was in direct conflict with the federal mandate) was repealed and that the motor fuel use taxes imposed by KRS 138.660(1) and (2) were to be applicable to two (2) axle motor vehicles with a gross weight or registered gross weight above 26,000 pounds. The General Assembly did not address the myriad provisions of IFTA relating to application for license, payment of motor fuel taxes, bond requirements, record retention, auditing of the motor carriers, appeal procedure, and other administrative provisions. Attorney General Opinion OAG 95-33 regarding the IFTA federal mandate opined that a state law that is not in conformity with IFTA is preempted on an interstate basis.]~~ This administrative regulation is necessary to set forth the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, to note the differences between the requirements of IFTA and Kentucky state law, to clearly establish, where applicable, when the provisions of IFTA preempt state law, and to provide for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA "Procedures Manual."

(5) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(6) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to an intrastate motor carrier [carriers] subject to the taxes imposed by KRS 138.660(1) and (2).

(7) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to a motor carrier [carriers] subject to the tax imposed by KRS 138.660(3).

(8) "Motor carrier" means as defined in KRS 138.655(5).

(9) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(10)(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, when the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not include the following:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(11) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(12) "Recreational vehicle" means a motor vehicle such as a motor home, a pickup truck with an attached camper, and a bus [motor homes, pickup trucks with attached campers, and buses] when used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.

(13) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association [Agreement are incorporated by reference in Section 15 of this administrative regulation. The provisions of these documents], except where specifically otherwise identified in this administrative regulation regarding the administration for KIT licensees, shall govern the administration of Kentucky's collection of the taxes imposed by KRS 138.660(1) and (2):

(1) Articles of agreement as revised July 1998 [1996];

(2) Procedures Manual as revised July 1998 [1996]; and

(3) Audit Procedures Manual as revised July 1998 [1996].

Section 3. Fuel Tax License. (1)(a) A [Each] motor carrier which operates a qualified motor vehicle in interstate commerce and which has Kentucky as the base jurisdiction for the operation of its qualified motor vehicles shall each year apply to the Division of Motor Carriers for an IFTA license or its renewal.

(b) A motor carrier which operates exclusively in intrastate commerce may apply for an IFTA license.

(c) Application for the IFTA license shall be on form TC 95-203, "Application for Motor Fuel Tax Licensing for IFTA Carriers" as revised February 1996 [which is incorporated by reference in Section 15 of this administrative regulation].

(2)(a) A [Each] motor carrier which operates all of its qualified motor vehicles exclusively in intrastate commerce and which does not apply for an IFTA license pursuant to subsection (1) of this section shall apply each year for a KIT license or its renewal.

(b) Application for the KIT license shall be on form TC 95-200a, "Application for Kentucky Intrastate Tax License" as revised January 1996 [which is incorporated by reference in Section 15 of this administrative regulation].

(3)(a) A [Each] fuel tax license issued shall expire on December 31 of the year in which the license was issued.

(b) The Transportation Cabinet shall begin accepting renewal applications on November 1 of each year.

(4)(a) The original or a legibly reproduced copy of a fuel tax license issued by the Kentucky Transportation Cabinet or an IFTA

license issued by another jurisdiction shall be carried in each qualified motor vehicle when operating on any public highway of Kentucky.

(b) An IFTA license issued by Kentucky authorizes a qualified motor vehicle for motor fuel tax purposes to be operated in any IFTA jurisdiction.

(5)(a) The Transportation Cabinet shall issue two (2) decals per qualified motor vehicle to a [each] holder of a fuel tax license.

(b) Unless the qualified motor vehicle is being operated on a trip permit pursuant to KRS 138.665 and Section 10 of this administrative regulation, a fuel tax decal issued by the Transportation Cabinet or a decal issued by another IFTA jurisdiction denoting proof of issuance of an IFTA license shall be displayed on the lower rear exterior portion of both sides of the cab of each qualified motor vehicle. The decal shall be located so as to be totally visible and the view of the decal shall not be obstructed by any part of the truck.

(c) A decal [The decals] shall not be transferred between qualified motor vehicles.

(d) New decals shall be issued each calendar year.

(6) Each fuel tax licensee which does not have a U.S. Department of Transportation motor carrier identification number or an Interstate Commerce Commission motor carrier identification number shall apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition [which is incorporated by reference in Section 15 of this administrative regulation].

(a) The intrastate motor carrier identification number assigned to a KIT licensee shall be displayed on each qualified motor vehicle the KIT licensee [it] operates in the same manner as required pursuant to 49 CFR Part 390.21 except the KIT identification number shall [not] be preceded by the letters "USDOT" and [but rather] followed by the letters "KY".

(b) A [All] fuel tax licensee [licensees] shall display on each of its qualified motor vehicle in accordance with the provisions of 49 CFR part 390.21 the name of and location of the motor carrier.

(7)(a) Each fuel tax licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations shall be conducted in the name in which the fuel tax license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) A licensee [All licensees] shall use the name utilized in the application for the license in all documents relating to its operation [their operations]. Both this name and the fuel tax license number shall be used in correspondence with the Transportation Cabinet.

Section 4. KYU License. (1) A [Each] motor carrier subject to the tax imposed by KRS 138.660(3) shall apply for a KYU license prior to operating on the highways of Kentucky a motor vehicle subject to the tax imposed by KRS 138.660(3).

(2) Application for the KYU license shall be on form TC 95-200, "Application for Kentucky Highway Use License" as revised June 1995 [which is incorporated by reference in Section 15 of this administrative regulation].

(3) [Every original applicant for a KYU license shall at the time of the application file a bond with the Transportation Cabinet in accordance with the provisions of Section 6 of this administrative regulation.]

(4)(a) A [Each] KYU licensee shall assign a unique number to each individual motor vehicle subject to the tax in KRS 138.660(3).

(b) The unique vehicle identification number shall be displayed on the front of the vehicle readily legible in daylight hours from a distance of 100 feet when the vehicle is not in motion.

(c) This number shall be in sharp color contrast to the background of the vehicle.

(d) This number shall not be placed higher than the bottom of the windshield or lower than the bottom of the front bumper.

(4) A [5]-Each KYU licensee shall either:

(a) File a form TC 95-9, "Request for Validation of Motor Carrier Control Number", June 1996 edition with the Transportation Cabinet; or

(b) Display the KYU number on each motor vehicle subject to the tax imposed by KRS 138.660(3) it operates in the same manner as required pursuant to 49 CFR Part 390.21.

(5) [(6)](a) A [Each] KYU licensee shall immediately report any

change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations subject to KRS 138.660(3) shall be conducted in the name in which the KYU license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) A KYU licensee [All KYU licensees] shall use the name utilized in the application for the license in all documents relating to its [their] operations. Both this name and the KYU license number shall be used in correspondence with the Transportation Cabinet.

(6) [(7)](a) A [Each] KYU licensee shall register each of its vehicles subject to the tax imposed by KRS 138.660(3) with the Transportation Cabinet. The registration shall be reported on form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition. [This form is incorporated by reference in Section 15 of this administrative regulation.]

(b) If the licensee sells, leases, or buys a vehicle subject to the tax imposed by KRS 138.660(3), the KYU licensee shall immediately file a copy of the Form TC 95-38 with the Transportation Cabinet showing the addition to or deletion from its fleet.

Section 5. Leasing of Motor Vehicles. The following shall apply in the case of lessor, lessee, independent contractors, and household goods agents:

(1) A lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee. The lessor may be issued a license if an application has been properly filed and approved pursuant to the provisions of Sections 3 or 4 of this administrative regulation.

(2) If a motor carrier used independent contractors under leases of thirty (30) days or more, the lessor and lessee shall have the option of designating which party is to report and pay the fuel use tax imposed by KRS 138.660(1) and (2) and the fuel taxes imposed by other jurisdictions.

(3) If the lessee assumes responsibility for reporting and paying motor fuel taxes pursuant to subsection (2) of this section, the base jurisdiction for IFTA purposes shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor.

(4) If a motor carrier rented a motor vehicle for a period of less than thirty (30) days, from a lessor regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees, the lessor shall pay the fuel use taxes unless both of the following conditions are met:

(a) The lessor has a written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and

(b) The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

(5) If the motor carrier uses independent contractors under leases of thirty (30) days or less, the trip lessor shall report and pay all fuel taxes.

(6) If the motor carrier is a household goods carrier using independent contractors, agents, or service representatives, under intermittent leases, the party liable for all motor fuel taxes shall be:

(a) The lessee when the qualified motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of IFTA shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor or lessee; or [-]

(b) The lessor who is the independent contractor, agent, or service representative when the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purpose of IFTA shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes.

(7) The lease shall be made available by either the lessee or the lessor upon request of the Transportation Cabinet.

Section 6. Bonding Requirements. (1) ~~The bond required by KRS 138.670 shall be applicable to the taxpayers subject to KRS 138.660(3);~~

(2) The Transportation Cabinet shall ~~not~~ require the bond for the payment of the taxes imposed by KRS 138.660 ~~if [(1) and (2) unless] the licensee meets one (1) of the following criteria:~~

(a) The licensee has failed to timely file a report required by Section 7 of this administrative regulation for three (3) quarters of sixteen (16) consecutive quarters;

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

(c) An audit of the licensee indicates recordkeeping or other administrative problem; or

(d) The licensee has had his KYU, KIT, or IFTA license ~~or the license required by KRS 138.665~~ revoked, suspended, or canceled.

(2) ~~[(3) If a bond is required pursuant to subsection (2) of this section, the total amount of the bond shall be equivalent to twice the estimated average tax liability for the reporting period or as required by KRS 138.670, whichever is greater.~~

(4) A licensee required to post a bond pursuant to this section may deposit with the Transportation Cabinet one (1) of the following:

(a) A surety bond;

(b) Bonds or other obligations of the United States, Canada, or the Commonwealth of Kentucky made payable to the Commonwealth of Kentucky;

(c) Automatically renewable time certificates of deposit issued by a bank doing business in the Commonwealth of Kentucky and insured by the Federal Deposit Insurance Corporation, made in the name of licensee, payable to the Commonwealth of Kentucky and containing the provision that interest earned shall be payable to the licensee but that the certificates can only be canceled by written authorization from the Transportation Cabinet;

(d) Investment certificates or share accounts issued by a savings and loan association doing business in the Commonwealth of Kentucky and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, shall be delivered to the Transportation Cabinet with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Commonwealth of Kentucky; or

(e) A cash bond submitted in the form of a cashier's check, money order, or other certified funds which are payable to the Commonwealth of Kentucky.

(3) ~~[(5)]~~ The licensee shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee.

(4) ~~[(6)]~~(a) Proof of the bond required pursuant to subsection (1) of this section, may be filed on form TC 95-201, "Kentucky Highway Use Bond", June 1998 ~~[1995] edition [which is incorporated by reference in Section 15 of this administrative regulation].~~

~~[(b) Proof of the bond required pursuant to subsection (2) of this section, may be filed on form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.]~~

Section 7. Tax Payment and Reporting. (1) The Transportation Cabinet shall by the last day of each quarterly reporting period mail the appropriate tax report form to each fuel tax licensee.

(a) Kentucky-based IFTA licensees shall be mailed form "IFTA Quarterly Fuel Tax Report" IFTA 100, November 1994 edition ~~[which is incorporated by reference in Section 15 of this administrative regulation].~~

(b) KIT licensees shall be mailed form "Highway Quarterly Tax Return", Form TC 95-101a, January 1996 edition ~~[which is incorporated by reference in Section 15 of this administrative regulation].~~

(c) Except as provided in subsection (3) of this section, each licensee shall comply with KRS 138.685.

(d) Even if a fuel tax licensee had no operations during the reporting quarter, the licensee shall file the tax reporting form.

(2)(a) The Transportation Cabinet shall send ~~[to each]~~ at the beginning of each calendar year to each KYU licensee all of the KRS 138.660(3) quarterly tax report forms "Kentucky Weight Distance Tax Form", Form TC 95-101, May 1996 edition due for that calendar year. ~~[This form is incorporated by reference in Section 15 of this administrative regulation.]~~

(b) A KYU licensee [licensees] shall comply with the provisions of KRS 138.685.

(3)(a) When filing a motor fuel tax report, an IFTA licensee shall

apply the overpayment generated in one (1) jurisdiction to the motor fuel taxes owed to another jurisdiction, remitting the net amount owed to the Transportation Cabinet.

(b) IFTA licenses shall present one (1) check to the Transportation Cabinet to pay the motor fuel taxes due pursuant to KRS 138.660(1) and (2) as well as the motor fuel taxes due all other IFTA jurisdictions.

(c) If a fuel tax licensee has been required to file a bond pursuant to Section 6[(2)] of this administrative regulation, the check to pay the motor fuel taxes due shall be certified.

(d) The requirement for a certified check for KYU licensees is waived pursuant to KRS 138.665 unless the motor carrier is notified by the Transportation Cabinet to the contrary. The cabinet may require a certified check from a motor carrier when the motor carrier:

1. Pursuant to Section 6 of this administrative regulation is required to post a bond for its fuel taxes;

2. Has not established a record of consistent and continued compliance with KRS 138.655 through 138.7291; or

3. Is operating on the highways of Kentucky without a KYU license.

(4) Computer-generated tax returns can be used in lieu of the forms sent out by the Transportation Cabinet only if the licensee receives advance written approval of its format from the Transportation Cabinet, Division of Motor Carriers.

Section 8. Tax Recordkeeping. Each fuel tax licensee or KYU licensee shall maintain records as set forth in 601 KAR 1:201. [(1) Each fuel tax licensee shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain at least the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person from whom purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel as set forth in subsection (15) of this section.

(2) Except as set forth in subsection (14) of this section, each fuel tax licensee shall maintain detailed distance records which show operations on an individual vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use; and

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) In order for a fuel tax licensee to obtain credit for tax-paid fuel purchases, a receipt or invoice, a credit card receipt or automated vendor-generated invoice or transaction listing shall be maintained by the fuel tax licensee. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person from whom purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. (In the case of a lessee/lessor agreement, receipts are acceptable in either name, provided the records firmly indicate the legal connection to the reporting party.)

(4) A fuel tax licensee may only apply for credit in the case of withdrawals from licensee-owned, tax-paid bulk fuel storage if the following detailed records are kept:

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number of the motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) Fuel tax licensees shall account separately for tax-paid fuel purchased as storage or bulk from fuel purchased over the road.

(b) Copies of all delivery tickets and receipts for storage or bulk fuel shall be retained by the licensee.

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in qualified motor vehicles from other uses.

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing.

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number, since only vehicles identified with the fuel tax licensee's operation may be reported for mileage or fuel consumption.

(6) Separate totals shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;

(c) Kerosene;

(d) Gasohol;

(e) Liquid petroleum gas; and

(f) Compressed natural gas.

(7) Each fuel tax licensee shall retain the information required by subsections (1) through (6) of this section for a period of four (4) years from the date of filing the tax report based on these records.

(8) Each KYU licensee shall maintain the following records on the operation within Kentucky of each motor vehicle which is subject to the tax imposed by KRS 138.660(3):

(a) Type of motor vehicle;

(b) Declared gross weight of the motor vehicle;

(c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (14) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs which shall include the following:

1. Beginning and ending odometer readings of each trip;

2. Each route driven;

3. Beginning and ending date of each trip;

4. Trip origin and destination;

5. Total trip miles;

(e) Bills of lading; and

(f) Off-highway mileage which includes periodical logs showing entering and leaving of public highways; and

(g) Manual or computer-generated mileage recaps for Kentucky.

(9)(a) Each KYU licensee shall retain the information required by subsection (8) of this section for a period of five (5) years from the date of filing the tax report based on these records.

(b) If the records required to be maintained in subsection (8) of this section are insufficient for the auditor to complete an audit, incomplete, or unavailable, the auditor may examine any other records of the motor carrier which might assist in establishing the tax liability of the motor carrier.

(10) Both the lessor and lessee involved in the short- or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and any supplemental agreements, to allow determination at any time of the entity responsible for reporting or payment of the taxes.

(11) Records may be retained on microfilm, microfiche, or other computerized or condensed record storage system if the system has been preapproved by the Transportation Cabinet's Division of Audit Review.

(12) Failure to provide records required for the purpose of an audit shall extend the limitations set forth in subsections (7) or (9) of this section until the records are provided.

(13) If a motor carrier chooses to use on-board computer recording devices in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and motor carrier responsibility shall be as set forth in Section III.A.5. of the IFTA "Pro-

cedures Manual" which is incorporated by reference in Section 15 of this administrative regulation:

(14)(a) A fuel tax licensee who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (2) of this section.

(b) A KYU licensee who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (8)(d) of this section.

(15) A fuel tax licensee applying for a refund pursuant to Section 12(5) of this administrative regulation shall in addition to the other requirements of this section maintain the following records:

(a) Proof of power take-off exemption percentage including how the percentage was calculated;

(b) Listing of bulk fuel storage which includes:

1. Location of bulk fuel storage;
2. Capacity of bulk fuel storage; and
3. Whether tanks are designated for "on" or "non" highway use;

(c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable;

(d) Equipment listing for each motor vehicle on which the refund is being requested including:

1. Vehicle type;
2. Use of power take-off;
3. Vehicle unit number;
4. Vehicle identification number; and
5. Type of fuel used in each vehicle.

Section 9. Auditing. (1)(a) The audit of the fuel tax licensees shall be performed in accordance with the provisions of the "IFTA Audit Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

(b) The audit of KRS 138.660(3) tax records shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;
2. Odometer correctness;
3. Reports of each trip which adequately identifies the truck, trip mileage, and route driven;
4. Weight reports;
5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.

(2) The Transportation Cabinet shall audit at least fifteen (15) percent of the IFTA licensees with a Kentucky base jurisdiction during a five (5) year period.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the motor carrier in writing advising of the approximate date that the audit is to be conducted and the time period the audit will cover.

(4) If it is determined that the fuel tax licensee's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the fuel tax licensee shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(5) The auditor shall conduct and document a preaudit conference with the motor carrier outlining the motor carrier's operation, audit procedures, records to be examined, sample period, and sampling procedures. The motor carrier and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(6) The auditor shall conduct and document a close-out conference with the motor carrier outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(7) The Transportation Cabinet shall furnish the motor carrier a

letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the motor carrier.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(9) The motor carrier shall within forty-five (45) days of the date of the audit supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Audit Review.

(10) The motor carrier may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet any portion of the audit.

(11) If the motor carrier does not protest pursuant to subsection (9) or (10) of this section, the audit or the audit supplemental tax statement shall be final on the beginning of the 46th day.

(12)(a) If a motor carrier protests pursuant to subsection (9) or (10) of this section the protest shall include a supporting statement and documents which identify the specific adjustments requested or the portions of the audit being protested and setting forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the motor carrier shall be notified of the change and the amended audit or amended audit supplemental tax statement shall become final.

(c) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final audit or final audit supplemental tax statement.

(13) If the motor carrier so desires, he may, within thirty (30) days of the date of the final audit or final audit supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

(14)(a) In the case of a fuel tax audit of an IFTA licensee, the licensee may request any other jurisdiction to audit Kentucky's audit findings.

(b) Each jurisdiction to whom a request is made may elect to accept or deny the request.

(c) Each jurisdiction electing to audit the licensee's records shall audit only for its own portion of the licensee's operations. The licensee shall make its records available at the office of the jurisdiction; at a place designated by the jurisdiction; or pay per diem and travel expenses associated with conducting an audit at the licensee's place of business.

Section 9. [40:] Assessment. (1)(a) If a fuel tax licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the fuel tax liability of the licensee for each jurisdiction.

(b) If a KYU licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the tax liability of the licensee relating to KRS 138.660(3).

(c) If a motor carrier fails, neglects, or refuses to obtain either a fuel tax license or a KYU license, the Transportation Cabinet may, on the basis of the best information available to the cabinet, determine the KRS 138.660(1) and (2) or (3) tax liability of the motor carrier for Kentucky.

(2) The motor carrier shall be notified of additional tax assessments by mail. Payment, including interest from the original due date, in the absence of protest, must be made within forty-five (45) days from the date of the notice of tax due. [If an examination of a motor carrier's tax returns indicate that additional tax is owed or if the Transportation Cabinet determines a tax liability pursuant to subsection (1); (2) or (3) of this section, the Transportation Cabinet shall mail the motor carrier a supplemental tax statement.]

(3) A written protest may be filed by the motor carrier, or other persons representing the motor carrier, and must include a supporting statement and documents which identify the specific adjustments requested or the portions of the assessment being protested and setting forth the reasons the protest is being made (KRS 131.110(1)). The protest shall be filed with the Transportation Cabinet, Division of Audit Review within forty-five (45) days from the date of the notice of tax due.

(4) If an IFTA license motor carrier elects to exercise the right under Section 1450.200 of the IFTA Articles of Agreement for Further Requests for Appeal, the cabinet shall consider this a protest of the assessment by the taxpayer, and place the taxpayer into protest status.

(5) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the IFTA Articles of Agreement to reaudit the motor carrier, the cabinet shall consider this a protest of the assessment by the taxpayer.

(6) If the supporting statements and documentation are not sufficient to change the assessment results, the motor carrier may request an information gathering or protest conference with the Division of Audit Review.

(7) Within a reasonable period after the information gathering or protest conference is held, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(8) If the motor carrier does not request a conference, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(9) Within thirty (30) days from the date of the final ruling by the cabinet, a written protest may be filed by the taxpayer, or other persons representing the taxpayer, with the Kentucky Board of Tax Appeals (KRS 131.110).

(10) The motor carrier shall within forty-five (45) days of the date of the supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Motor Carriers:

(4) If the motor carrier does not protest pursuant to subsection (3) of this section, the supplemental tax statement shall be final at the beginning of the 46th day:

(5)(a) If a motor carrier protests pursuant to subsection (3) of this section, the protest shall include a supporting statement which identifies the specific adjustments requested and setting forth the reasons the protest is being made:

(b) If the supporting statement is sufficient to cause the Transportation Cabinet to change the supplemental tax statement, the motor carrier shall be notified of the change and the amended supplemental tax statement shall become final:

(c) If the supporting statement is not sufficient to cause the Transportation Cabinet to change the supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Motor Carriers. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party:

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final supplemental tax statement:

(6) If the motor carrier so desires, he may, within thirty (30) days of the date of the final supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.]

Section 10. [11:] Trip Permits. (1) A motor carrier who does not have a required license may operate on Kentucky's highways pursuant to a temporary trip permit issued pursuant to KRS 138.665.

(2) Application for a temporary trip permit shall [may] be made by applying to the Division of Motor Carriers. The application may be made in person, in writing, or by telephone or facsimile communication.

(a) The address for written requests is P.O. Box 2007, Frankfort, Kentucky 40602;

(b) The location for in person requests is Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky;

(c) The telephone number of the Division of Motor Carriers is (502) 564-4540;

(d) The telephone number for the facsimile machine in the Division of Motor Carriers is (502) 564-4138.

(3) The application for a temporary trip permit shall contain the following information:

(a) The name and address of the applicant;

(b) The year, make, and serial (vehicle identification) number of the motor vehicle for which the application is being made; and

(c) The combined gross weight of the motor vehicle.

Section 11. [42:] Fuel Tax Refunds or Credits. (1) A fuel tax licensee shall be allowed to carry forward a motor fuel tax credit for eight (8) quarters.

(2) A refund request from a fuel tax licensee shall be presented in writing and detail the reason for the requested refund.

(3)(a) A full credit shall be allowed IFTA and KIT licensees for tax-paid fuel purchases placed in a qualified motor vehicle.

(b) Any excess of fuel tax paid over tax liability in any member jurisdiction shall be credited in full to tax liability in other member jurisdictions or to the IFTA licensee's account ledger, as appropriate.

(4)(a) Motor fuel tax refunds to IFTA licensees shall be made only if [when] all motor fuel tax liability, including audit assessments, has been satisfied to all member jurisdictions.

(b) If a fuel tax licensee's refund request is determined to be properly due, the refund shall be paid within ninety (90) days after receipt of a request for payment from a fuel tax licensee.

(5)(a) A fuel tax licensee may apply within two (2) quarters to the Transportation Cabinet for refund of the fuel tax imposed by KRS 138.660(1) or (2) if [when] the fuel was consumed on the public highways and from the same tank that is permanently attached to the power unit of the qualified motor vehicle and serves to power the operation of the qualified motor vehicle on the highways and if [when] the fuel was used for power take-off equipment such as mixers, pumps, load lifts, and refrigeration units.

(b) The application for the refund of fuel defined in paragraph (a) of this subsection shall be made on form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition to substantiate the nonhighway use of the fuel. [This form is incorporated by reference in Section 15 of this administrative regulation.]

Section 12. [13:] Tax Penalties and Interest. (1) The penalty for the late payment of the tax imposed by KRS 138.660(3) shall be as set forth in KRS 138.715.

(2) The penalty for the late payment of motor fuel tax imposed by KRS 138.660(1) and (2) or an IFTA jurisdiction shall be ten (10) percent of the tax due or fifty (50) dollars whichever is greater.

(3) The interest on the late payment of any of the taxes administered pursuant to this administrative regulation shall be as set forth in KRS 138.715.

(4) The taxes, penalties, and interest identified in KRS 138.675 shall also include the motor fuel taxes, penalties, and interest owed to other IFTA jurisdictions.

(5) The penalties and interest due for the overpayment of a refund shall begin [being] accruing fifteen (15) days after the motor carrier is notified of the overpayment.

Section 13. [14:] License Cancellation, Refusal, and Reinstatement. (1) If a motor carrier fails to comply with the provisions of KRS 138.655 through 138.7291, or this administrative regulation, the fuel tax license or KYU license may be canceled in accordance with the provisions of KRS 138.675.

(2) Reasons for cancellation of or refusal to issue a license shall include, but not be limited to the following:

(a) Improper use of license or decal;

(b) Failure to file a tax return when due;

(c) Failure to pay all of the taxes owed;

(d) Failure to produce records after written request for the records;

(e) Failure to maintain records in the required manner; or

(f) Notification from another IFTA jurisdiction of motor fuel tax violations in that jurisdiction.

(3) A motor carrier shall be notified of the pending license cancellation or license refusal and offered the opportunity for an administrative hearing pursuant to Section 14 of this administrative regulation.

(4) If a license is canceled by the Transportation Cabinet, the motor carrier shall immediately return the license.

(5) If a motor carrier desires to have a canceled license reinstated, the carrier shall meet the following criteria:

(a) Prove to the Transportation Cabinet that sufficient records are being and will be maintained to file accurate tax reports;

(b) Submit quarterly tax reports for all missed reporting periods;

(c) Pay all taxes, penalties, and interest owed;

(d) Provide a bond pursuant to Section 6 of this administrative regulation; and

(e) Provide evidence of liability insurance, operating authority, and other items of KRS Chapter 281 applicable to the motor carrier.

Section 14, [15:] Appeal Procedure. (1) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to KRS 138.655 through 138.7295 shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 15, [16:] Incorporation by Reference. The following documents are incorporated by reference in this administrative regulation:

(1) IFTA "Articles of Agreement," July 1998 [1996] edition;

(2) IFTA "Procedures Manual," July 1998 [1996] edition;

(3) IFTA "Audit Procedures Manual," July 1998 [1996] edition;

(4) [Transportation Cabinet Form, "Application for Motor Fuel Tax Licensing for IFTA Carriers," TC 95-203, February 1996 edition;

(5) Transportation Cabinet Form "Application for Kentucky Intra-state Tax License," TC 95-200a, January 1996 edition;

(6) Transportation Cabinet Form TC 92-150, "Application for Intra-state Carrier Identification Number," March 1996 edition;

(7) Transportation Cabinet Form TC 95-200, "Application for Kentucky Highway Use License," June 1995 edition;

(8) [9] Transportation Cabinet Form TC 95-9, "Request for Validation of Motor Carrier Control Number," August [June] 1996 edition;

(5) [(9)] Transportation Cabinet Form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky," October [June] 1996 edition;

(6) [(10)] Transportation Cabinet Form TC 95-201, "Kentucky Highway Use Bond," June 1995 edition;

(7) Transportation Cabinet Form TC 95-1, "Kentucky Trucking Application," October 1998 edition;

(8) [(11)] Transportation Cabinet Form TC 95-205, "Kentucky Fuel Users Bond," June 1996 edition;

(9) [(12)] Transportation Cabinet Form "IFTA Quarterly Fuel Tax Report" IFTA 100, August 1998 [November 1994] edition;

(10) [(13)] Transportation Cabinet Form "Highway Quarterly Tax Return," Form TC 95-101a, September [January] 1996 edition;

(11) [(14)] Transportation Cabinet Form "Kentucky Weight Distance Tax", Form TC 95-101, May 1996 edition; and

(12) [(15)] Transportation Cabinet Form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

PATRICIA K. FOLEY, Deputy General Counsel

APPROVED BY AGENCY: November 17, 1998

FILED WITH LRC: November 18, 1998 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 26, 1999 at 10:30 a.m. local prevailing time in the Transportation Cabinet, Tenth Floor General Counsel Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by January 19, 1999. 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 re-

quest for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by January 19, 1999. 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 January 26, 1999. 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, Staff Assistant

(1) Type and number of entities affected: 50,000 motor carriers who operate trucks on the public highways 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 change is expected in the cost of living or employment in Kentucky as a result of amending this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change is expected in the cost of doing business in Kentucky as a result of amending this regulation.

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

1. First year following implementation: Fewer requirements on reporting and other paperwork. Allow tax payments by credit cards. Fewer carriers are required to file bond with cabinet.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will benefit by reducing paperwork and reduced mailings from the Division of Motor Carriers.

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

3. Additional factors increasing or decreasing costs: Credit card payments will decrease costs by eliminating the handling of non-sufficient funds checks.

(b) Reporting and paperwork requirements: There will be fewer checks to deposit and a minimal number of required carrier bonds.

(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 Road Funds were appropriated for the Department of Vehicle Regulation in the biennium 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 comment hearing was held on May 22, 1998, and the administrative regulation will be implemented on a statewide basis.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was designed to implement the removal of bonding requirement for most carriers. There were no alternative methods.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None identified.

- 9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict: None
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Yes. There are different requirements for those carriers subject to the weight distance tax (KRS 138.660(3)).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 USC Chapter 317.
2. State compliance standards. Kentucky adopted the provisions of the International Fuel Tax Agreement but expanded them to include those motor carriers operating exclusively in intrastate commerce.
3. Minimum or uniform standards contained in the federal mandate. By December 31, 1996, each state, except Hawaii, must have required the reporting and collection of fuel taxes from interstate motor carriers in accordance with the requirements of the International Fuel Tax Agreement. Therefore, the provisions of the International Fuel Tax Agreement become the federal mandate standards. The amendment of this regulation is to conform to the bonding and penalty requirements.
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 address the imposition and collection of fuel taxes on motor carriers, which operate exclusively in interstate commerce. This administrative regulation addresses those motor carriers as well as the motor carriers, which operate in interstate commerce.
5. Justification for the imposition of the stricter standard, additional or different responsibilities or requirements. The Equal Protection Clause of the Constitution requires that entities which are essentially the same be treated the same. Therefore, the motor carriers operating in intrastate and interstate commerce must be treated the same.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:015. Rank I classification.

RELATES TO: KRS 157.390, 161.010, 161.095

STATUTORY AUTHORITY: KRS 156.070, 157.390, 161.028, 161.030, 161.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.390(1) and (2) requires the State Board of Education to promulgate an administrative regulation to determine the salary rank of a certified teacher and to determine the equivalent qualification for the salary rank. 704 KAR 3:470, promulgated by the State Board of Education, gives authority to the Education Professional Standards Board to establish the standards and procedures for the classification of teachers in rank for purposes of the state teacher salary schedule. KRS 161.095 requires the Education Professional Standards Board to establish procedures for a teacher to maintain his certificate by successfully completing meaningful continuing education. This administrative regulation defines approved graduate work for the Rank I classification and defines equivalent programs for Rank I.

Section 1. The preparation program for a Rank I classification shall require the completion of the following:

- (1) Completion of the requirements for a Rank II classification as established in 704 KAR 20:021; and
- (2) The completion of one (1) of the plans described in this subsection:
 - (a) Plan I. Thirty (30) semester hours of approved graduate level credit or approved equivalent;
 - (b) Plan II. Sixty (60) semester hours of approved graduate level

credit or approved equivalent including a master's degree;

- (c) Plan III. National Board Certification; or
- (d) Plan IV. Equivalent continuing education with evidence of continuous progress as required by Section 5 of this administrative regulation.

Section 2. The Plan I and II equivalent preparation shall be approved by the Education Professional Standards Board on the basis of the following criteria:

- (1) Approved equivalent credit shall be offered in the form of a teacher institute designed for the purpose of upgrading classroom teaching personnel in a teaching specialty;
- (2) A teacher institute shall be offered by an institution that is approved by the Education Professional Standards Board for offering a Rank I program. A teacher education institution shall make application to the Education Professional Standards Board for the advanced approval of a teacher institute;
- (3) Operation of a teacher institute shall meet the standards for accreditation of a teacher preparation program;
- (4) Equivalency credit toward a Rank I classification shall be earned by professional personnel who have already attained a Rank II classification;
- (5) Equivalency credit toward a Rank I classification shall be limited to a maximum of fifteen (15) semester hours of the requirements for Rank I. Equivalency credit shall be the amount of contact time required for graduate credit at the teacher education institution; and
- (6) Approved equivalency credit shall be an integrated part of an individualized Rank I program as planned with a graduate curriculum adviser. Approved equivalency credit earned through an approved teacher institute may be applied for teacher certification purposes as described in 704 KAR 20:030.

Section 3. The appropriate official designated by the teacher education institution shall certify to the Education Professional Standards Board when the curriculum requirements have been completed for the Rank I program at the institution.

Section 4. Of the thirty (30) semester hour program, at least fifteen (15) semester hours shall be taken at the college making the recommendation. The remaining fifteen (15) semester hours credit shall be taken at:

- (1) The same institution; or
- (2) Upon approval of the college adviser, another institution.

Section 5. The Plan IV equivalent continuing education program shall be approved by the Division of Certification on the basis of the following criteria:

- (1) An individualized professional development plan shall be designed by the teacher. The plan shall focus on the teacher's needs with consideration given to how the needs relate to the school transformation plan;
- (2) The plan shall include goals related to continuing growth on each of the nine (9) experienced teacher standards established in 704 KAR 20:021 and may be developed in collaboration with a team of colleagues whom the teacher chooses;
- (3) The plan shall be submitted for review to a three (3) member state review team;
- (4) The teacher shall participate in a professional development experience that will assist in the accomplishment of the goals established. A professional development experience shall include a combination of graduate college credit, individual research, field-experience, and professional development activities or workshops. A professional development experience chosen shall be listed within the professional development plan;
- (5) A professional development experience may be:
 - (a) A part of the approved school professional development plan; or
 - (b) An experience specifically needed by the individual teacher;
- (6) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that the teacher has demonstrated continuing growth on each of the experienced teacher standards; and

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(7) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including videotape, research, data, or instructional logs; and

(b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 6. (1) The state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that the professional development plan was accomplished and that growth on each of the experienced teacher standards was evident;

(d) Recommend the teacher for Rank I classification and certificate renewal to the Education Professional Standards Board; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 7. An assessment fee of \$1200 shall be assessed to a teacher who chooses to follow the Plan IV option for advancement in rank classification and certificate renewal. The fee shall be used to pay the expenses related to the administration of the continuing education option, including the cost of the review and scoring of portfolios.

Section 8. A teacher who chooses to follow Plan IV option for advancement in rank classification shall be required to attend a program orientation meeting at his or her own expense prior to applying for this program.

Section 9. A teacher who chooses to follow the Plan IV continuing education program shall:

(1) Submit application and professional development plan to the Division of Certification between July 15 and August 15; and

(2) Submit portfolio to the Division of Certification between April 15 and May 15.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Office of Legal Services

APPROVED BY AGENCY: November 20, 1998

FILED WITH LRC: November 25, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held January 21, 1999, at 10 a.m. in the Local District Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 1999, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All rank II certified in Kentucky may be affected by this amendment to the administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The certified teacher who chooses this option for salary rank change will be expected to attend an orientation meeting within his or her geographic region at their own expense prior to applying for the program. However, it may result in a savings for the applicant if he or she discovers that this is not the appropriate option for them to follow prior to sending in the \$400 application fee.

(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: There is no more paperwork required, but the teacher applicant is required to submit paperwork within a specific period of time and comply with the requirement of attending an orientation meeting.

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

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Requiring the orientation meeting will result in a savings of staff time. The current situation is that staff is having to spend a lot of time on the telephone with each individual potential applicant.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Keeping a record of applicants who have attended the required orientation meeting.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

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

(b) Kentucky: None

(7) Assessment of alternative methods, reasons why alternatives were rejected: Working individually with each potential applicant proved to be too time-consuming.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict: 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. Requirements are for all applicants.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:022. Continuing education alternative to planned fifth-year program.

RELATES TO: KRS 157.390(1)(a), 161.095

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board, with the advice of the State Board of Education, to promulgate an administrative regulation establishing procedures for a teacher to maintain a certi-

cate by successfully completing meaningful continuing education. KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the procedures for a continuing education alternative to the planned fifth-year program for certificate renewal.

Section 1. Procedures for the first and second renewal of a teaching certificate shall require completion of:

- (1) The continuing education alternative established in this administrative regulation; or
- (2) A planned fifth-year program established in 704 KAR 20:021.

Section 2. The continuing education alternative to the planned fifth-year program for certificate renewal of a teaching certificate shall require completion of the following procedures:

(1) An individual professional development plan shall be designed by the teacher. The plan shall:

- (a) Focus on the teacher needs with consideration given to how the needs relate to the school transformation plan;
- (b) Include goals related to each of the nine (9) experienced teacher standards as established in 704 KAR 20:021;
- (c) Be developed in collaboration with a team of colleagues chosen by the teacher; and
- (d) Be submitted for review by a three (3) member state team.

(2) The teacher shall participate in a professional development experience that will assist in the accomplishment of the established goals. A professional development experience shall include a combination of graduate college credit, individual research, field-experience, or professional development activities. The experience shall be identified in the professional development plan.

(3) The professional development experience may be:

- (a) A part of an approved school professional development plan; or

(b) An experience specifically needed by the teacher.

(4) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that all experienced teacher standards have been met.

(5) The evidence shall be presented:

- (a) In a portfolio using a variety of mediums including videotape, research data, and instructional logs; and
- (b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 3. (1) The three (3) member state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and the Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that goals were accomplished and that all experienced teacher standards were met;

(d) Recommend the teacher for certificate renewal to the Education Professional Standards Board prior to the expiration date of the certificate; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 4. (1) A teacher following the continuing education alternative to the fifth-year program for certificate renewal shall complete the program by the end of the second certificate renewal period.

(2) For the first renewal, the teacher shall show evidence of the development of a professional development plan and evidence of meeting a minimum of four (4) experienced teacher standards.

(3) The continuing education alternative to the fifth-year program shall be completed by the end of the first certificate renewal period.

Section 5. An assessment fee of \$1200 shall be charged to a teacher following the continuing education alternative for certificate renewal. This fee shall be used to pay expenses related to administration of the continuing education alternative program including the cost of scoring portfolios and training for the state scoring team members.

Section 6. A teacher who chooses to follow the continuing education alternative for certificate renewal and rank change shall be required to attend a program orientation meeting at his or her own expense prior to applying for this program.

Section 7. A teacher who chooses to follow the continuing education alternative for certificate renewal and rank change shall:

(1) Submit the application and professional development plan to the Division of Certification between July 15 and August 15; and

(2) Submit portfolio to the Division of Certification between April 15 and May 15.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Office of Legal Services

APPROVED BY AGENCY: November 20, 1998

FILED WITH LRC: November 25, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held January 21, 1999, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 1999, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: All certified teachers in Kentucky may be affected by this amendment to the administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The applicants for this program will incur the expense of attending an orientation meeting prior to applying for the program. This may result in a savings for the applicant if he or she discovers that the program is not appropriate for him or her prior to submitting the \$400 application fee.

(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: No extra paperwork, but a specific time within which to submit paperwork.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Requiring the orientation meeting will result in a savings of staff time. The current situation is that staff is having to spend a lot of time on the telephone with each individual potential applicant.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: Keeping a record of applicants who have attended the required orientation meeting.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods, reasons why alternatives were rejected: Working individually with each potential applicant proved to be too time-consuming.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would result, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
 - (a) Necessity of proposed regulation if in conflict: 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. Requirements are for all applicants.

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

902 KAR 20:016. Hospitals; operations and services.

RELATES TO: KRS 214.175, 216B.010 to 216B.130, 216B.990, Chapter 310, 311.241 to 311.247, 311.990, 42 CFR 412.23(e)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 311.560(4), 314.011(8), 314.042(8), 320.210(2) [320.240(14)], 42 USC 263a[-, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires [mandate] that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the minimum licensure requirements for the operation of hospitals and the basic services to be provided by hospitals. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Accredited record technician" means a person who has graduated from a program for medical record technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as an accredited Record Technician by the American Medical Record Association.

(2) "Certified radiation operator" means a person who has been certified pursuant to KRS 211.870 and 902 KAR 105:010 to 105:070 as an operator of radiation producing machines.

(3) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(4) "Induration" means a firm area in the skin which develops as a reaction to the intradermal injection of five (5) tuberculin units of purified protein derivative by the Mantoux technique when a person has tuberculosis infection.

(5) "Long-term acute inpatient hospital services" means acute inpatient services provided to patients whose average inpatient stay is

greater than twenty-five (25) days.

(6) "Medical staff" means an organized body of physicians, and dentists when applicable, appointed to the hospital staff by the governing authority.

(7) "Organ procurement agency" means a federally designated organization which coordinates and performs activities which encourage the donation of organs or tissues for transplantation.

(8) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.

(9) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(10) "Registered, certified or registry-eligible dietician" means a person who is certified in accordance with KRS Chapter 310.

(11) "Registered records administrator" means a person who is certified as a registered records administrator by the American Medical Record Association.

(12) "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

(13) "Skin test" means a tuberculin skin test utilizing the intradermal (Mantoux) technique using five (5) tuberculin units of purified protein derivative (PPD). The results of the test shall [must] be read forty-eight (48) to seventy-two (72) hours after injection and recorded in terms of millimeters of induration.

(14) "Two (2) step skin testing" means a series of two (2) tuberculin skin tests administered seven (7) to fourteen (14) days apart.

Section 2. Scope of Operation and Services. Hospitals are establishments with organized medical staffs and permanent facilities with inpatient beds which provide medical services, including physician services and continuous nursing services for the diagnosis and treatment of patients who have a variety of medical conditions, both surgical and nonsurgical.

Section 3. Administration and Operation. (1) Governing authority licensee.

(a) The hospital shall have a recognized governing authority that has overall responsibility for the management and operation of the hospital and for compliance with federal, state, and local laws and administrative regulations pertaining to its operation.

(b) The governing authority shall appoint an administrator whose qualifications, responsibilities, authority, and accountability shall be defined in writing and approved by the governing authority, and shall designate a mechanism for the periodic performance review of the administrator.

(2) Administrator.

(a) The administrator shall act as the chief executive officer and shall be responsible for the management of the hospital, and shall provide liaison between the governing authority and the medical staff.

(b) The administrator shall keep the governing authority fully informed of the conduct of the hospital through periodic reports and by attendance at meetings of the governing authority.

(c) The administrator shall develop an organizational structure including lines of authority, responsibility, and communication, and shall organize the day-to-day functions of the hospital through appropriate departmentalization and delegation of duties.

(d) The administrator shall establish formal means of accountability on the part of subordinates to whom he has assigned duties.

(e) The administrator shall hold interdepartmental and departmental meetings (where appropriate), shall attend or be represented at the meetings on a regular basis, and shall report to such departments as well as to the governing authority the pertinent activities of the hospital.

(3) Administrative records and reports.

(a) Administrative reports shall be established, maintained and utilized as necessary to guide the operation, measure productivity, and reflect the programs of the facility. These reports shall include: minutes of the governing authority and staff meetings, financial records and reports, personnel records, inspection reports, incident investigation reports, and other pertinent reports made in the regular course of business.

(b) The hospital shall maintain a patient admission and discharge register. Where applicable, a birth register and a surgical register shall also be maintained.

(c) Licensure inspection reports and plans of correction shall be made available to the general public upon request.

(4) Policies. The hospital shall have written policies and procedures governing all aspects of the operation of the facility and the services provided, including:

(a) A written description of the organizational structure of the facility including lines of authority, responsibility and communication, and departmental organization;

(b) Admission policies which assure that patients are admitted to the hospital in accordance with policies of the medical staff;

(c) Constraints imposed on admissions by limitations of services, physical facilities, staff coverage or other factors;

(d) Financial requirements for patients on admission;

(e) Emergency admissions;

(f) Requirements for informed consent by patient, parent, guardian or legal representative for diagnostic and treatment procedures;

(g) There shall be an effective procedure for recording accidents involving a patient, visitor, or staff, and incidents of transfusion reactions, drug reactions, medication errors, etc.; and a statistical analysis shall be reported in writing through the appropriate committee;

(h) Reporting of communicable diseases to the health department in whose jurisdiction the disease occurs pursuant to KRS Chapter 214 and 902 KAR 2:020;

(i) Use of restraints and a mechanism for monitoring and controlling their use;

(j) Internal transfer of patients from one (1) level or type of care to another (if applicable);

(k) Discharge and termination of services; and

(l) Organ procurement for transplant protocol developed by the medical staff in consultation with the organ procurement agency.

(5) Patient identification. The hospital shall have a system for identifying each patient from time of admission to discharge (e.g., an identification bracelet imprinted with name of patient, hospital identification number, date of admission, and name of attending medical staff member).

(6) Discharge planning.

(a) The hospital shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(b) The professional staff of the facility involved in the patient's care during hospitalization shall participate in discharge planning of the patient whose illness requires a level of care outside the scope of the general hospital.

(c) The hospital shall coordinate the discharge of the patient with the patient and the person or agency responsible for the postdischarge care of the patient. All pertinent information concerning post-discharge needs shall be provided to the responsible person or agency.

(7) Transfer procedures and agreements.

(a) The hospital shall have written patient transfer procedures and agreements with at least one (1) of each type of other health care facilities which can provide a level of inpatient care not provided by the hospital. Any facility which does not have a transfer agreement in effect but has documented a good faith effort to enter into such an agreement shall be considered to be in compliance with this requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arranging for appropriate and safe transportation.

(b) If the patient is transferred to another health care facility or to the care of a home health agency, a transfer form shall accompany the patient or be sent immediately to the home health agency. The transfer form shall include at least: attending medical staff member's instructions for continuing care, a current summary of the patient's medical record, information as to special supplies or equipment needed for patient care, and pertinent social information on the patient and family. When such transfer occurs, a copy of the patient's signed discharge summary shall be forwarded to another health care facility or home health agency within thirty (30) days of the patient's dis-

charge.

(c) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(8) Medical staff.

(a) The hospital shall have a medical staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of medical care provided to the patients and for the ethical and professional practice of its members.

(b) The medical staff shall develop and adopt policies or bylaws, subject to the approval of the governing authority, which shall:

1. State the necessary qualifications for medical staff membership including licensure to practice medicine or dentistry in Kentucky, except for graduate physicians in their first year of hospital training. For purposes of this document, medical staff shall mean physicians, and dentists when applicable.

2. Define and describe the responsibilities and duties of each category of medical staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members and allied health professionals, and establish a procedure for granting and withdrawing staff privileges to include credentials review.

3. Provide a mechanism for appeal of decisions regarding staff membership and privileges.

4. Provide a method for the selection of officers of the medical staff.

5. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meeting of the medical staff.

6. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, tissue committee, pharmacy and therapeutics committee, utilization review committee, and quality assurance committee.

(9) Personnel.

(a) The hospital shall employ a sufficient number of qualified personnel to provide effective patient care and all other related services and shall have written personnel policies and procedures which shall be available to all hospital personnel.

(b) There shall be a written job description for each position. Job descriptions shall be reviewed and revised as necessary.

(c) There shall be an employee health program for mutual protection of employees and patients including provisions for preemployment and periodic health examination. The hospital shall comply with the following tuberculosis testing requirements:

1. The skin test status of all staff members shall be documented in the employee's personnel record.

a. A skin test shall be initiated on all new staff members before or during the first week of employment and the results shall be documented in the employee's personnel record within the first month of employment.

b. Skin testing shall not be required at the time of initial employment if the employee documents a prior skin test of ten (10) or more millimeters of induration or if the employee is currently receiving or has completed six (6) months of prophylactic therapy or a course of multiple-drug chemotherapy for tuberculosis.

c. Two (2) step skin testing shall be required for new employees over age forty-five (45) whose initial test shows less than ten (10) millimeters of induration, unless they can document that they have had a tuberculosis skin test within one (1) year prior to their current employment.

d. All staff who have never had a skin test of ten (10) or more millimeters induration shall be skin tested annually on or before the anniversary of their last skin test.

2. All staff who are found to have a skin test of ten (10) or more millimeters induration, on initial employment testing or annual testing, shall receive a chest x-ray unless a chest x-ray within the previous two (2) months showed no evidence of tuberculosis, or the individual can document the previous completion of a course of prophylactic treatment with isoniazid. Such employees shall be advised of the symp-

toms of the disease and instructed to report to their employer and seek medical attention promptly if symptoms persist.

3. The hospital administrator shall be responsible for ensuring that all skin tests and chest x-rays are done in accordance with subparagraphs 1 and 2 of this paragraph. All skin testing dates and results and all chest x-ray reports shall be recorded as a permanent part of the personnel record.

4. The following shall be reported by the hospital administrator to the local health department having jurisdiction immediately upon becoming known: names of staff who convert from a skin test of less than ten (10) to a skin test of ten (10) millimeters or more induration at the time of employment; and all chest x-rays suspicious for tuberculosis.

5. Any staff whose skin test status changes on annual testing from less than ten (10) to ten (10) or more millimeters of induration shall be considered to be recently infected with *Mycobacterium tuberculosis*. Such recently infected persons who have no signs or symptoms of tuberculosis disease on chest x-ray or medical history should be given preventive therapy with isoniazid for six (6) months unless medically contraindicated, as determined by a licensed physician. Medications shall be administered only upon the written order of a physician or ~~other ordering personnel acting within the limits of their statutory scope of practice [advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8)].~~ If such individual is unable to take isoniazid therapy, the individual shall be advised of the clinical symptoms of the disease, and have an interval medical history and a chest x-ray taken and evaluated for tuberculosis disease every six (6) months during the two (2) years following conversion, for a total of five (5) chest x-rays.

6. Any staff who can document completion of preventive treatment with isoniazid shall be exempt from further screening requirements.

(d) Current personnel records shall be maintained for each employee which include the following:

1. Name, address, Social Security number;
2. Health records;
3. Evidence of current registration, certification, or licensure of personnel;
4. Records of training and experience;
5. Records of performance evaluation.

(10) Physical and sanitary environment.

(a) The condition of the physical plant and the overall hospital environment shall be maintained in such a manner that the safety and well-being of patients, personnel and visitors are assured.

(b) A person shall be designated responsible for services and for the establishment of practices and procedures in each of the following areas: plant maintenance, laundry operations (if applicable), and housekeeping.

(c) There shall be an infection control committee charged with the responsibility of investigating, controlling and preventing infections in the hospital. Infection incident reports shall be filed.

(d) There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

1. Policies which address the prevention of disease transmission to and from patients; visitors and employees, including but not limited to:

- a. Universal blood and body fluid precautions;
- b. Precautions for infections which can be transmitted by the airborne route; and

c. Work restrictions for employees with infectious diseases.

2. Policies which address the use of environmental cultures. Results of all testing shall be recorded and reported to the Infection Control Committee; and

3. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

(e) The hospital shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections.

(f) The hospital buildings, equipment, and surroundings shall be kept in a condition of good repair, neat, clean, free from all accumulations of dirt and rubbish, and free from foul, stale or musty odors.

1. An adequate number of housekeeping and maintenance personnel shall be provided.

2. Written housekeeping procedures shall be established for the

cleaning of all areas and copies shall be made available to personnel.

3. Equipment and supplies shall be provided for cleaning of all surfaces. Such equipment shall be maintained in a safe, sanitary condition.

4. Hazardous cleaning solutions, compounds, and substances shall be labeled, stored in closed metal containers and kept separate from other cleaning materials.

5. The facility shall be kept free from insects and rodents with harborages and entrances for these eliminated.

6. Garbage and trash shall be stored in areas separate from those used for preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

(g) Sharp wastes.

1. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

2. Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

3. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous ~~[by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services and the Natural Resources and Environmental Protection Cabinet].~~

4. Nondisposable sharps such as large-bore needles or scissors shall be placed in a puncture resistant container for transport to the Central Medical and Surgical Supply Department in accordance with 902 KAR 20:009, Section 22.

(h) Disposable waste.

1. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

2. The hospital shall establish specific written policies regarding handling and disposal of all wastes.

3. The following wastes shall receive special handling:

a. Microbiology laboratory waste which includes viral or bacterial cultures, contaminated swabs, and specimen containers and test tubes used for microbiologic purposes shall either be incinerated, autoclaved or be rendered nonhazardous ~~[by technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services and the Natural Resources and Environmental Protection Cabinet]; and~~

b. Pathological waste which includes all tissue specimens from surgical or necropsy procedures shall be incinerated.

4. The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

5. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9.

6. Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:020 and 401 KAR 61:010.

(i) The hospital shall have available at all times a quantity of linen essential to the proper care and comfort of patients.

1. Linens shall be handled, stored, and processed so as to control the spread of infection.

2. Clean linen and clothing shall be stored in clean, dry, dust-free areas designated exclusively for this purpose. Uncovered mobile carts may be used to distribute a daily supply of linen in patient care areas.

3. Soiled linen and clothing shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and will be handled in such a way as to minimize direct exposure of personnel to soiled linen. Soiled linen shall be stored in areas separate from clean linen.

(11) Medical and other patient records.

(a) The hospital shall have a medical records service with administrative responsibility for medical records. A medical record shall be maintained, in accordance with accepted professional principles, for every patient admitted to the hospital or receiving outpatient services.

1. The medical records service shall be directed by a registered records administrator, either on a full-time, part-time, or consultative basis, or by an accredited record technician on a full-time or part-time basis, and shall have available a sufficient number of regularly assigned employees so that medical record services may be provided as needed.

2. All medical records shall be retained for a minimum of five (5) years from date of discharge, or in the case of a minor three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

3. Provision shall be made for written designation of specific location for storage of medical records in the event the hospital ceases to operate because of disaster, or for any other reason. It shall be the responsibility of the hospital to safeguard both the record and its informational content against loss, defacement, and tampering. Particular attention shall be given to protection from damage by fire or water.

(b) A system of identification and filing to insure the prompt location of a patient's medical record shall be maintained:

1. Index cards shall bear at least the full name of the patient, the birth date, and the medical record number.

2. There shall be a system for coordinating the inpatient and outpatient medical records of any patient whose admission is a result of or related to outpatient services.

3. All clinical information pertaining to inpatient or outpatient services shall be centralized in the patient's medical record.

4. In hospitals using automated data processing, indexes may be kept on punch cards or reproduced on sheets kept in books.

(c) Records of patients are the property of the hospital and shall not be taken from the facility except by court order. This does not preclude the routing of the patient's records, or portion thereof, including x-ray film, to physicians or dentists for consultation.

1. Only authorized personnel shall be permitted access to the patient's records.

2. Patient information shall be released only on authorization of the patient, the patient's guardian or the executor of his estate.

(d) Medical record contents shall be pertinent and current and shall include the following:

1. Identification data and signed consent forms, including name and address of next of kin, and of person or agency responsible for patient;

2. Date of admission, name of attending medical staff member, and allied health professional in accordance with subsection (8)(b)2 of this section;

3. Chief complaint;

4. Medical history including present illness, past history, family history and physical examination;

5. Report of special examinations or procedures, such as consultations, clinical laboratory tests, x-ray interpretations, EKG interpretations, etc.;

6. Provisional diagnosis or reason for admission;

7. Orders for diet, diagnostic tests, therapeutic procedures, and medications, including patient limitations, signed and dated by the medical staff member or other ordering personnel acting within the limits of their statutory scope of practice [advanced-registered-nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14)];

8. Medical, surgical and dental treatment notes and reports, signed and dated by a physician, [or] dentist, or other ordering personnel acting within the limits of their statutory scope of practice [advanced-registered-nurse practitioner or therapeutically-certified optometrist] when applicable, including records of all medication administered to the patient;

9. Complete surgical record signed by attending surgeon, or oral surgeon, to include anesthesia record signed by anesthesiologist or anesthetist, preoperative physical examination and diagnosis, description of operative procedures and findings, postoperative diagnosis, and tissue diagnosis by qualified pathologist on tissue surgically removed;

10. Patient care plan which addresses the comprehensive care needs of the patient, to include the coordination of the facility's service departments that have impact on patient care;

11. Physician's, [or] dentist's, or other ordering personnel acting

within the limits of their statutory scope of practice [advanced-registered-nurse practitioner or therapeutically-certified optometrist's] when applicable, progress notes and nurses' observations;

12. Record of temperature, blood pressure, pulse and respiration;

13. Final diagnosis using terminology in the current version of the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual, as is applicable;

14. Discharge summary, including condition of patient on discharge, and date of discharge;

15. In case of death, autopsy findings, if performed; and

16. In the case of death, an indication that the patient has been evaluated for organ donation in accordance with hospital protocol.

(e) Records shall be indexed according to disease, operation, and attending medical staff member. For indexing, any recognized system may be used.

1. The disease and operative indices shall be developed using a recognized nomenclature, and shall include each specific disease created and each operative procedure performed, and shall include all essential data on each patient having that particular condition;

2. The attending medical staff index shall include all patients attended or seen in consultation by each medical staff member;

3. Indexing shall be current, within six (6) months following discharge of the patient.

(12) Organ donation.

(a) The hospital shall establish and maintain a written organ procurement for transplant protocol, in consultation with an organ procurement agency, which encourages organ donation and identifies potential organ donors.

(b) In cases where an individual has died or death is imminent, the patient's attending physician shall determine, in accordance with the hospital's protocol, whether the patient is a potential organ or tissue donor.

(c) The hospital protocol shall include:

1. Criteria, developed in consultation with the organ procurement agency for identifying potential donors;

2. Procedures for obtaining consent for organ donation;

3. Procedures for the hospital administrator or his designee to notify the organ procurement agency of potential organ donors;

4. Procedures by which the patient's attending physician or designee in accordance with hospital protocol shall document in the patient's medical record that the organ procurement agency has been notified in the case of potential donors or contraindications to donation.

5. Procedures for the hospital administrator or his designee to report any information about the possible sale, purchase, or brokering of a transplantable organ to the Cabinet for Health Services, Office of the Inspector General, as required by KRS 311.241(3).

(d) A patient with impending or declared brain death or cardiopulmonary death as determined pursuant to KRS 446.400 should not be considered as a potential donor if contraindications are identified and documented in the patient's medical record.

Section 4. Provision of Services. (1) Medical staff services.

(a) Medical care provided in the hospital shall be under the direction of a medical staff member in accordance with staff privileges granted by the governing authority.

(b) The attending medical staff member shall assume full responsibility for diagnosis and care of his patient. Other qualified personnel may complete medical histories, perform physical examinations, record findings, and compile discharge summaries, in accordance with their scope of practice and the hospital's protocols and bylaws.

(c) A complete history and physical examination shall be conducted and recorded within twenty-four (24) hours after admission of the patient.

(d) The attending medical staff member shall state his final diagnosis, assure that the discharge summary is completed and sign the records within thirty (30) days following the patient's discharge.

(e) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(f) There shall be sufficient medical staff coverage for all clinical services of the hospital in keeping with their size and scope of activity.

(2) Nursing service.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established

standards of nursing practice. A registered nurse, preferably one who has a bachelor of science degree in nursing, shall serve as director of the nursing department.

(b) There shall be a registered nurse on duty at all times.

1. There shall be registered nurse supervision and staff nursing personnel for each service or nursing unit to insure the immediate availability of a registered nurse for all patients on a twenty-four (24) hour basis.

2. There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

3. There shall be additional registered nurses for surgical, obstetrical, emergency, and other services of the hospital in keeping with their size and scope of activity.

4. All persons not employed by the hospital who render special duty nursing services in the hospital shall be under the supervision of the nursing supervisor of the department or service concerned.

(c) The hospital shall have written nursing care procedures and written nursing care plans for patients. Patient care shall be carried out in accordance with attending medical staff member's orders, nursing process, and nursing care procedures.

1. The nurse shall evaluate the patient by utilizing the nursing process in accordance with KRS 314.011.

2. A registered nurse shall assign staff and evaluate the nursing care of each patient in accordance with the patient's need and the nursing staff available.

3. Nursing notes shall be written and signed on each shift by persons rendering care to patients. The notes shall be descriptive of the nursing care given and shall include information and observations of significance which contribute to the continuity of patient care.

4. Medications shall be administered by a registered nurse, a physician, or dentist except in the case of a licensed practical nurse under the supervision of a registered nurse.

5. Medications or treatments shall not be given without a written order signed by a physician, [or] dentist, [~~when applicable,~~] or other ordering personnel acting within the limits of their statutory scope of practice [~~advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14)].~~ Telephone orders for medications shall be given only to a licensed practical or registered nurse or a pharmacist and signed by the physician, dentist, or other ordering personnel acting within the limits of their statutory scope of practice [~~advanced registered nurse practitioner or therapeutically-certified optometrist~~] within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

6. Patient restraints or protective devices, other than bed rails, shall not be used, except in an emergency until the attending medical staff member can be contacted, or upon written or telephone orders of the attending medical staff member. When such restraint is necessary, the least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility and protection. In no case shall a locking restraint be used.

7. Meetings of the nursing staff and other nursing personnel shall be held at least monthly to discuss patient care, nursing service problems, and administrative policies. Written minutes of all meetings shall be kept.

(3) Dietary services.

(a) The hospital shall have a dietary department, organized, directed and staffed to provide quality food service and optimal nutritional care.

1. The dietary department shall be directed on a full-time basis by an individual who by education or specialized training and experience is knowledgeable in food service management.

2. The dietary service shall have at least one (1) registered, certified or registry-eligible dietician either full-time, part-time, or on a consultative basis, to supervise the nutritional aspects of patient care.

3. Sufficient additional personnel shall be employed to perform assigned duties to meet the dietary needs of all patients.

4. The dietary department shall have available for all dietary personnel current written policies and procedures for food storage, handling, and preparation.

5. An in-service training program, which shall include the proper

handling of food, safety and personal grooming, shall be given at least quarterly for new dietary employees.

(b) Menus shall be planned, written and rotated to avoid repetition. Nutritional needs shall be met in accordance with recommended dietary allowances of the Food and Nutrition Board of the National Research Council of the National Academy of Sciences and in accordance with the medical staff member's orders.

(c) Meals shall correspond with the posted menu. When changes in menu are necessary, substitution shall provide equal nutritive value and the changes shall be recorded on the menu. Menus shall be kept on file for thirty (30) days.

(d) All diets, regular and therapeutic, shall be prescribed in writing, dated, and signed by the attending medical staff member or other ordering personnel acting within the limits of their statutory scope of practice. Information on the diet order shall be specific and complete and shall include the title of the diet, modifications in specific nutrients stating the amount to be allowed in the diet, and specific problems that may affect the diet or eating habits.

(e) Food shall be prepared by methods that conserve nutritive value, flavor, and appearance, and shall be served at the proper temperatures and in a form to meet individual needs (e.g., it shall be cut, chopped, or ground to meet individual patient needs).

(f) If a patient refuses foods served, nutritious substitutions shall be offered.

(g) At least three (3) meals or their equivalent shall be served daily with not more than a fifteen (15) hour span between a substantial evening meal and a breakfast unless otherwise directed by the attending medical staff member. Meals shall be served at regular times with between-meal or bedtime snacks of nourishing quality offered.

(h) There shall be at least a three (3) day supply of food available in the facility at all times to prepare well-balanced palatable meals for all patients.

(i) There shall be an identification system for patient trays, and methods used to assure that each patient receives the appropriate diet as ordered.

(j) The hospital shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005.

(4) Laboratory services. The hospital shall have a well-organized, adequately supervised laboratory with the necessary space, facilities and equipment to perform those services commensurate with the hospital's needs for its patients. Anatomical pathology services and blood bank services shall be available either in the hospital or by arrangement with other facilities.

(a) Clinical laboratory. Basic clinical laboratory services necessary for routine examinations shall be available regardless of the size, scope and nature of the hospital.

1. Equipment necessary to perform the basic tests shall be provided by the hospital.

2. All equipment shall be in good working order, routinely checked, and precise in terms of calibration.

3. Provision shall be made to carry out adequate clinical laboratory examinations including chemistry, microbiology, hematology, serology, and clinical microscopy.

a. Some of these services may be provided through arrangements with another licensed hospital which has the appropriate laboratory facilities, or with an independent laboratory licensed pursuant to 42 CFR Part 405, KRS 333.030 and any administrative regulations promulgated thereunder.

b. When work is performed by an outside laboratory, the original report from this laboratory shall be contained in the patient's medical record.

4. Laboratory facilities and services shall be available at all times.

a. Adequate provision shall be made to assure the availability of emergency laboratory services twenty-four (24) hours a day, seven (7) days a week, including holidays, either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

b. Where services are provided by an outside laboratory, the conditions, procedures, and availability of such services shall be in writing and available in the hospital.

5. There shall be a clinical laboratory director and a sufficient number of supervisors, technologists and technicians to perform promptly and proficiently the tests requested of the laboratory. The laboratory shall not perform procedures and tests which are outside

the scope of training of the laboratory personnel.

6. Laboratory services shall be under the direction of a pathologist or other doctor of medicine or osteopathy with training and experience in clinical laboratory services, or a laboratory specialist with a doctoral degree in physical, chemical or biological sciences, and training and experience in clinical laboratory services.

7. Signed reports of all laboratory services provided shall be filed with the patient's medical record and duplicate copies kept in the department.

a. The laboratory report shall be signed by the technologist who performed the test.

b. There shall be a procedure for assuring that all requests for laboratory tests are ordered and signed by qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws.

(b) Anatomical pathology. Anatomical pathology services shall be provided as indicated by the needs of the hospital either in the hospital or under arrangements as specified in paragraph (a)3a of this subsection.

1. Anatomical pathology services shall be under the direct supervision of a pathologist on a full-time, regular part-time or regular consultative basis. If the latter pertains, the hospital shall provide for at least monthly consultative visits by a pathologist.

2. The pathologist shall participate in staff, departmental and clinicopathologic conference.

3. The pathologist shall be responsible for establishing the qualifications of staff and for their in-service training.

4. With exceptions of those exclusions listed in written policies of the medical staff, all tissues removed at surgery shall be macroscopically, and if necessary, microscopically examined by the pathologist.

a. A list of tissues which do not routinely require microscopic examination shall be developed in writing by the pathologist or designated physician with the approval of the medical staff.

b. A tissue file shall be maintained in the hospital.

c. In the absence of a pathologist, there shall be an established plan for sending to a pathologist outside the hospital all tissues requiring examination.

5. Signed reports of tissue examinations shall be promptly filed with the patient's medical record and duplicate copies kept in the department.

a. All reports of macro and microscopic examinations performed shall be signed by the pathologist.

b. Provision shall be made for the prompt filing of examination results in the patient's medical record and notification of the medical staff member requesting the examination.

c. Duplicate copies of the examination reports shall be filed in the laboratory in a manner which permits ready identification and accessibility.

(c) The laboratory shall meet the proficiency testing and quality control provisions in accordance with certification requirements under 42 USC Part 263a.

(d) Blood bank. Facilities for procurement, safekeeping and transfusion of blood and blood products shall be provided or be readily available.

1. The hospital shall maintain, as a minimum, proper blood storage facilities under adequate control and supervision of the pathologist or other authorized physician.

2. For emergency situations the hospital shall maintain at least a minimum blood supply in the hospital at all times, shall be able to obtain blood quickly from community blood banks or institutions, or shall have an up-to-date list of donors and equipment necessary to bleed them.

3. If the hospital utilizes outside blood banks, there shall be a written agreement governing the procurement, transfer and availability of blood.

4. There shall be a provision for prompt blood typing and cross-matching and for laboratory investigation of transfusion reactions, either through the hospital or by arrangements with others on a continuous basis, under the supervision of a physician.

5. Blood storage facilities in the hospital shall have an adequate alarm system, which shall be regularly inspected and tested and is otherwise safe and adequate.

6. Records shall be kept on file indicating the receipt and disposition of all blood provided to patients in the hospital.

tion of all blood provided to patients in the hospital.

7. A committee of the medical staff or its equivalent shall review all transfusions of blood or blood derivatives and shall make recommendations concerning policies governing such practices.

8. Samples of each unit of blood used at the hospital shall be retained, according to the instructions of the committee indicated in subparagraph 7 of this paragraph, for further testing in the event of reactions. Blood not so retained which has exceeded its expiration date shall be disposed of promptly.

9. The review committee shall investigate all transfusion reactions occurring in the hospital and shall make recommendations to the medical staff regarding improvements in transfusion procedures.

(5) Pharmaceutical services.

(a) The hospital shall have adequate provisions for the handling, storing, recording, and distributing of pharmaceuticals in accordance with state and federal laws and administrative regulations.

1. A hospital which maintains a pharmacy for the compounding and dispensing of drugs shall provide pharmaceutical services under the supervision of a registered pharmacist on a full-time or part-time basis, according to the size and demands of the hospital.

a. The pharmacist shall be responsible for supervising and coordinating all the activities of the pharmacy department.

b. Additional personnel competent in their respective duties shall be provided in keeping with the size and activity of the department.

2. Hospitals not maintaining a pharmacy shall have a drug room utilized only for the storage and distribution of drugs, drug supplies and equipment. Prescription medications shall be dispensed by a registered pharmacist elsewhere. The drug room shall be operated under the supervision of a pharmacist employed at least on a consultative basis.

a. The consulting pharmacist shall assist in drawing up correct procedures, rules for the distribution of drugs, and shall visit the hospital on a regularly scheduled basis in the course of his duties.

b. The drug room shall be kept locked and the key shall be in the possession of a responsible person on the premises designated by the administrator.

(b) Records shall be kept of the transactions of the pharmacy or drug room and correlated with other hospital records where indicated.

1. In accordance with accounting procedures of the hospital, the pharmacy shall establish and maintain a system of records and book-keeping in accordance with policies of the hospital for maintaining adequate control over the requisitioning and dispensing of all drugs and drug supplies and charging patients for drugs and pharmaceutical supplies.

2. A record of the stock on hand and of the dispensing of all controlled substances shall be maintained in such a manner that the disposition of any particular item may be readily traced.

(c) The medical staff in cooperation with the pharmacist and other disciplines, as necessary, shall develop policies and procedures that govern the safe administration of drugs, including:

1. The administration of medications only upon the order of an individual who has been assigned clinical privileges or who is an authorized member of the house staff;

2. Review of the original order, or a direct copy by the pharmacist dispensing the drugs;

3. The establishment and enforcement of automatic stop orders;

4. Proper accounting for and disposition of unused medications or special prescriptions returned to the pharmacy as a result of patient being discharged, or when such medications or prescriptions do not meet sterile and label requirements;

5. Provision for emergency pharmaceutical services; and

6. Provision for reporting adverse medication reactions to the appropriate committee of the medical staff.

(d) Therapeutic ingredients of medications dispensed shall be included in the United States Pharmacopoeia, National Formulary, United States Homeopath-Pharmacopoeia, New Drugs, or Accepted Dental Remedies (except for any drugs unfavorably evaluated therein), or shall be approved for use by the appropriate committee of the medical staff.

1. A pharmacist shall be responsible for determining specifications and choosing acceptable sources for all drugs, with approval of the appropriate committee of the medical staff.

2. There shall be available a formulary or list of drugs accepted for

use in the hospital which shall be developed and amended at regular intervals by the appropriate committee of the medical staff.

(6) Radiology services.

(a) The hospital shall have diagnostic radiology facilities. The radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

1. The hospital shall provide at least one (1) fixed diagnostic x-ray unit which is capable of general x-ray procedures.

2. The hospital shall have a radiologist on at least a consulting basis to function as medical director of the department and to interpret films that require specialized knowledge for accurate reading.

3. Personnel adequate to supervise and conduct the services shall be provided, and at least one (1) certified radiation operator shall be on duty or on call at all times.

(b) There shall be written policies and procedures governing radiologic services and administrative routines that support sound radiologic practices.

1. Signed reports shall be filed in the patient's record and duplicate copies kept in the department.

2. Radiologic services shall be performed only upon written order of qualified personnel in accordance with their scope of practice and the hospital's protocols and bylaws, and the order shall contain a concise statement of the reason for the service or examination.

3. Reports of interpretations shall be written or dictated and signed by the radiologist.

4. The use of all x-ray apparatus shall be limited to certified radiation operators, under the direction of medical staff members as necessary. The same limitation shall apply to personnel applying, administering and removing radioactive elements, disintegration products, and radioactive isotopes. Certified radiation operators, under the direction of a physician may administer medications allowed within their professional scope of practice and context of radiological services and procedures being performed.

(c) The radiology department shall be free of hazards for patients and personnel. Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(7) Physical restoration or rehabilitation service. If the hospital provides rehabilitation, work hardening, physical therapy, occupational therapy, audiology, or speech pathology services, the services shall be organized and staffed to insure the health and safety of patients.

(a) Hospitals in which physical restoration or rehabilitation services are available shall provide individualized techniques required to achieve maximum physical function normal to the patient while preventing unnecessary debilitation and immobilization.

(b) Written policies and procedures shall be developed for each rehabilitation service provided.

(c) A member of the medical staff shall be designated to have responsibility for coordinating the restorative services provided to the patients in accordance with their needs.

(d) Equipment for therapy shall be adequate to meet the needs of the service and shall be in good condition.

(e) Therapy services shall be provided only upon written orders of qualified personnel in accordance with their scope of practice and according to the hospital's protocols and bylaws.

(f) Therapy services shall be provided by or under the supervision of a licensed therapist, on a full-time, part-time or consultative basis.

(g) Complete therapy reports shall be maintained for each patient provided such services. The reports shall be signed by the therapist who prepared it and shall be a part of the patient's medical record.

(8) Emergency services.

(a) Every hospital shall have procedures for taking care of the emergency patient with at least a registered nurse on duty to evaluate the patient and a physician on call.

(b) If the facility has an organized emergency department or service, policies and an emergency care procedures manual governing medical and nursing care provided in the emergency room shall be established by and be a continuing responsibility of the medical staff.

1. The emergency service shall be under the direction of a licensed physician. Medical staff members shall be available at all times for the emergency service, either on duty or on call. Current schedules and telephone numbers shall be posted in the emergency room.

2. Nursing personnel shall be assigned to, or designated to cover, the emergency service at all times.

3. Facilities shall be provided to assure prompt diagnosis and emergency treatment. A specific area of the hospital shall be utilized for patients requiring emergency care on arrival. The emergency area shall be located in close proximity to an exterior entrance of the facility and shall be independent of the operating room suite.

4. Diagnostic and treatment equipment, drugs, and supplies shall be readily available for the provision of emergency services and shall be adequate in terms of the scope of services provided.

5. Adequate medical records shall be kept on every patient seen in the emergency room. These records shall be under the supervision of the Medical Record Service and, where appropriate, shall be integrated with inpatient and outpatient records. Emergency room records shall include at least:

a. A log book listing chronologically the patient visits to the emergency room including patient identification, means of arrival and person transporting patient, and time of arrival;

b. History of present complaint and physical findings;

c. Laboratory and x-ray reports, where applicable;

d. Diagnosis;

e. Treatment ordered and details of treatment provided;

f. Patient disposition;

g. Record of all referrals;

h. Instructions to the patient or family for those not admitted to the hospital; and

i. Signatures of attending medical staff member, and nurse when applicable.

(9) Outpatient services.

(a) A hospital which has an organized outpatient department shall have written policies and procedures relating to the staff, functions of service, and outpatient medical records.

(b) The outpatient department shall be organized in sections (clinics), the number of which shall depend on the size and degree of departmentalization of the medical staff, the available facilities, and the needs of the patient it serves.

(c) The outpatient department shall have appropriate cooperative arrangements and communications with community agencies such as home health agencies, the local health department, social and welfare agencies, and other outpatient departments.

(d) Services offered by the outpatient department shall be under the direction of a physician who is a member of the medical staff.

1. A registered nurse shall be responsible for the nursing services of the department.

2. The number and type of other personnel employed shall be determined by the volume and type of services provided and type of patient served in the outpatient department.

(e) Necessary laboratory and other diagnostic tests shall be available either through the hospital or a laboratory in another licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder.

(f) Medical records shall be maintained and, where appropriate, coordinated with other hospital medical records.

1. The outpatient medical record shall be filed in a location which insures ready accessibility to the medical staff members, nurses, and other personnel of the outpatient department.

2. Information in the medical record shall be complete and sufficiently detailed relative to the patient's history, physical examination, laboratory and other diagnostic tests, diagnosis, and treatment to facilitate continuity of care.

(10) Surgery services.

(a) Hospitals in which surgery is performed shall have an operating room and a recovery room supervised by a registered nurse qualified by training, experience and ability to direct surgical nursing care.

1. Sufficient surgical equipment including suction facilities and instruments in good repair shall be provided to assure safe and aseptic treatment of all surgical cases.

2. When flammable anesthetics are used, precautions shall be taken to eliminate hazards of explosions, including use of shoes with conductive soles and prohibition of garments or other items of silk, wool, or synthetic fibers which accumulate static electricity.

(b) There shall be effective policies and procedures regarding surgical staff privileges, functions of the service, and evaluation of the

surgical patient.

1. Surgical privileges shall be delineated for all members of the medical staff doing surgery in accordance with the competencies of each, and a roster shall be maintained.

2. Except in emergencies, a surgical operation or other hazardous procedures shall be performed only on written consent of the patient or his legal representative.

3. The operating room register shall be complete and up to date. It shall include the patient's name; hospital room number; preoperative and postoperative diagnosis; complications, if any; names of surgeon, first assistant, anesthesiologist or anesthesiologist, scrub and circulating nurse; operation performed; and type of anesthesia.

4. There shall be a complete history and physical workup in the chart of every patient prior to surgery. If such has been transcribed but not yet recorded in the patient's chart, there shall be a statement to that effect and an admission note by the attending medical staff member in the chart. The chart of the patient shall accompany him to the operating suite and shall be returned to the patient's floor or room after the operation.

5. An operative report describing the techniques and findings shall be written or dictated immediately following surgery and signed by the surgeon.

6. All tissues removed by surgery shall be placed in suitable solutions, properly labeled, and submitted to the pathologist for macroscopic and, if necessary, microscopic examinations.

7. All infections of clean surgical cases shall be recorded and reported to the appropriate committee of the medical staff. A procedure shall exist for the investigation of such cases.

(c) Rules and policies related to the operating rooms shall be available and posted.

(11) Anesthesia services.

(a) The hospital which provides surgical or obstetrical services shall have anesthesia services available, and these services shall be organized under written policies and procedures regarding staff privileges, the administration of anesthetics, and the maintenance of safety controls.

(b) A physician member of the medical staff shall be the medical director of anesthesia services. Whenever possible, the director shall be a physician specializing in anesthesiology.

(c) If anesthetics are not administered by an anesthesiologist, the medical staff shall designate a medical staff anesthesiologist or a registered nurse anesthesiologist qualified to administer anesthetics under the supervision of the operating surgeon.

(d) Every patient requiring anesthesia services shall have a pre-anesthetic physical examination by a medical staff member with findings recorded within forty-eight (48) hours of surgery, an anesthetic record on a special form, a postanesthetic follow-up, with findings recorded by the anesthesiologist, medical staff anesthesiologist, or nurse anesthesiologist.

(e) The postanesthetic follow-up note shall be written upon discharge from the postanesthesia recovery area or within three (3) to twenty-four (24) hours after the procedures which required anesthesia. This note shall include a record of blood pressure, pulse, presence or absence of the swallowing reflex and cyanosis, any postoperative abnormalities or complications, and the general condition of the patient.

(12) Obstetrics service.

(a) Hospitals providing obstetrical care of patients shall have adequate space, necessary equipment and supplies, and a sufficient number of nursing personnel to assure safe and aseptic treatment of mothers and newborns and provide protection from infection and cross-infection.

1. The obstetrics service shall be under the medical direction of a physician and under the supervision of a registered nurse qualified by training, experience, and ability to direct effective obstetrical and newborn nursing care. In hospitals where the obstetrical caseload does not justify a separate nursing staff, obstetrical nurses shall be designated and shall be oriented to the specific needs of obstetrical patients.

2. A registered nurse shall be on duty in the labor and delivery unit whenever any patient is in the unit. Each obstetrics patient shall be kept under close observation by professional personnel during the period of recovery after delivery, whether in the delivery room or in a

recovery area, until she is transferred to the maternity unit.

3. An on-call schedule or other suitable arrangement shall be provided to ensure that a physician who is experienced in obstetrics is readily available for consultation and obstetrical emergencies.

4. Provisions shall be made for the care of patients in labor with adequately equipped labor rooms.

(b) An adequate supply of prophylaxis for the prevention of infant blindness shall be kept on hand and administered within thirty (30) minutes after delivery, in accordance with 902 KAR 4:020.

(c) The hospital shall comply with the provisions of KRS 214.155 and 902 KAR 4:030 in administering tests for inborn errors of metabolism to infants.

(d) There shall be an acceptable method and procedure for the positive associative identification of the mother and infant. This shall be done in the delivery room at the time of birth and shall remain in place during the entire period of hospitalization.

(e) An up-to-date register book of all deliveries shall be maintained containing the following information:

1. Infant's full name, sex, date, time of birth and weight;

2. Mother's full name, including maiden name, address, birthplace and age at time of this birth;

3. Father's full name, birthplace, age at time of this birth; and

4. Full name of attending physician or nurse midwife.

(f) Each hospital providing maternity service shall provide a nursery which shall not be used for any other purpose. Specific routines for daily care of infants and their environment shall be prepared in writing and posted in the nursery workroom.

(g) A policy shall be established for deliveries occurring outside the delivery room and for patients who are infectious.

(h) Written policies and procedures shall be developed to cover alternative use of obstetrical beds.

(i) The hospital shall comply with the provisions of KRS 214.175 in participating in surveys relating to the determination of alcohol or other substance abuse among pregnant women and newborn infants.

(13) Pediatric services.

(a) Hospitals providing pediatric care shall have proper facilities for the care of children apart from the newborn and maternity nursing services. If there is not a separate area permanently designated as the pediatric unit, there shall be an area within an adult care unit for pediatric patient care. There shall be available beds and other equipment which are appropriate in size for pediatric patients.

(b) There shall be proper facilities and procedures for the isolation of children with infectious, contagious or communicable conditions. At least one (1) patient room shall be available for isolation use.

(c) A physician with pediatric experience shall be on call at all times for the care of pediatric patients.

(d) Pediatric nursing care shall be under the supervision of a registered nurse qualified by training, experience and ability to direct effective pediatric nursing. All nursing personnel assigned to pediatric service shall be oriented to the special care of children.

(e) Policies shall be established to cover conditions under which parents may stay with small children or "room-in" with their hospitalized child for moral support and assistance with care.

(14) Psychiatric services. Hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and meet the requirements of psychiatric hospitals operations and services, licensure administrative regulation.

(15) Chemical dependency treatment services. Hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Chemical dependency treatment services and facility specifications, Section 3, Administrative and Operation and Section 4, Provision of Services, and designate location and the number of beds to be used for this purpose.

(16) Medical library.

(a) The hospital shall maintain appropriate medical library services according to the professional and technical needs of hospital personnel.

(b) The medical library shall be in a location accessible to the professional staff, and its contents shall be organized and available at all times to the medical and nursing staffs.

Section 5. Long-term Acute Inpatient Hospital Services. (1) A hospital licensed pursuant to this administrative regulation and seek-

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ing to qualify for available Title XVIII Medicare reimbursement may provide long-term acute inpatient hospital services pursuant to applicable federal law and upon the following conditions:

(a) The area of the hospital designated to provide long-term acute inpatient hospital services shall provide services in compliance with this administrative regulation and shall have:

1. An average length of inpatient stay greater than twenty-five (25) days.

2. A separate governing body.

3. A separate medical staff.

4. A separate chief executive officer.

(b) All services shall be provided through the use of employees or under contracts or other agreements with entities other than the host hospital or a third entity that controls both the hospital and the area designated to provide long-term acute inpatient hospital services, except that food and dietetic services, housekeeping, maintenance and other services necessary to maintain a clean and safe physical environment may be obtained under contracts or other agreements with the host hospital or a third entity that controls both the host hospital and the area designated to provide long-term acute inpatient hospital services or as otherwise permitted by federal law.

(c) Hospitals wishing to provide long-term acute inpatient hospital services may request authorization from the Division of Licensing and Regulation, Office of Inspector General, Cabinet for Health Services. The Division of Licensing and Regulation shall conduct a survey to determine whether the requirements of this section are met and shall notify the hospital of the survey results by letter.

(2) A hospital that establishes its authority to be reimbursed for Title XVIII Medicare for long-term care acute inpatient hospital services pursuant to this section, shall not receive Title XIX Medicaid reimbursement for these services.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 104 licensed acute care hospitals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

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

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR HEALTH SERVICES

Office of Inspector General

Division of Licensing and Regulation

(Amendment)

902 KAR 20:041. Operation and services; family care homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS 216.532, 216B.042, 216B.105, 311.560(4), 314.011(8), 314.042(8), 320.210(2) [320.240(14), EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the licensure requirements for the operation of family care homes. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Ambulatory" means able to walk without assistance.

(2) "Home" means a family care home.

(3) "Impaired capacity for self care" means mental or physical

limitation which decreases the ability to function in a normal adult manner and requires supervision, assistance, or the use of prescription medicines to normalize daily living.

(4) "Licensee" means the operator of the family care home.

(5) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or wheelchair and capable of independent bed-to-chair transfer.

(6) "Protective environment" means an environment in which basic health care needs, personal care needs, nutritional needs and safety are insured for the resident who is not capable of providing these services in an effective manner.

(7) "Resident" means any person who is admitted to a family care home for the purpose of receiving personal care and assistance.

Section 2. Scope of Operations and Services. Family care homes shall ~~[are operated and maintained to]~~ provide twenty-four (24) hour supervision and personal care services in residential accommodations for ~~residents [two (2) or three (3) individuals who are not related within the third degree of consanguinity to the licensee, are at least eighteen (18) years of age, and]~~ who because of impaired capacity for self care, elect to have or require a protective environment but do not have an illness, injury, or disability for which constant medical care or skilled nursing services are required. ~~A resident shall [Residents must]~~ be ambulatory or mobile nonambulatory and able to manage most of the activities of daily living.

Section 3. Operation and Management. (1) The licensee shall be legally responsible for the operation of the home and for compliance with all federal, state and local laws and regulations pertaining to the operation of the home.

(2) The licensee shall provide twenty-four (24) hour supervision and assistance to the residents and shall be a mature literate adult, at least eighteen (18) years of age, who has knowledge and understanding of adults who require supervision and personal care services.

(3) The licensee shall be the person directly responsible for the twenty-four (24) hour daily operation of the home or for delegating that responsibility to another similarly qualified individual when a temporary absence is necessary. The name of that individual to whom the responsibility may be designated shall be in writing and provided to the representative of the Division of Licensing and Regulation [agents of the board] inspecting the home.

(4) An [No] employee of the home contracting an infectious disease shall not appear for work until the infectious disease can no longer be transmitted.

(5) The licensee shall attend at least one (1) training program for family care home operators per year when offered or approved by the Cabinet for Health Services.

(6) The home shall have no more than three (3) residents [persons residing in the home] who are not related to the operator within the third degree of consanguinity.

(7) The licensee shall provide opportunities for the residents to become involved in community activities and activities within the home. Residents in cooperation with the licensee and family shall be allowed to use areas of the home, other than their bedroom, such as living rooms, kitchen, dining areas, and recreation areas for entertainment, recreation, and visitation.

(8) The licensee shall maintain a record, located on the premises and available for inspection which contains the following information typed or in ink about each resident:

- (a) Resident name and sex.
- (b) Marital status.
- (c) Birthdate and age.
- (d) Religion and personal clergyman, if any, with consent of resident.
- (e) Attending physician and dentist, if any; address and phone number for each.
- (f) Next of kin or responsible person or agency, address and telephone number.
- (g) Date of admission and discharge.
- (h) Other relevant information including physician visits ~~[and/or]~~ assessment reports.
- (i) Amount charged per week or month as compensation for care.

(9) The licensee shall make arrangements with other health agencies and facilities for residents who, at some time, may require a transfer to a different level of care.

(10) The licensee shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print if phone service is available in the area.

(11) The licensee shall have a written procedure for providing or obtaining emergency services.

(12) The licensee shall make a written report of any accident involving a resident, any incident involving a resident's health, welfare or safety, and any death of a resident.

(a) The licensee shall keep one (1) copy in the file and make the original available to the Division of Licensing and Regulation [board's agents] within seven (7) days of the incident; and

(b) The original shall be sent to the Cabinet for Health Services, Office of the Inspector General, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(13) The licensee shall provide for patient rights pursuant to KRS 216.510 to 216.525.

(14) All residents shall be at least eighteen (18) years of age.

(15) Representatives of the Division for Licensing and Regulation shall visit the home of the applicant for initial licensure. The Department for Social Services shall visit the home of the applicant upon notification by the Division of Licensing and Regulation and provide the division information relating to its precensure assessment of the applicant.

(16) Initial licenses may be denied and existing licenses may be revoked if the applicant for licensure or the licensee has been convicted of a crime that has a bearing upon the applicant's suitability to operate a family care home, unless the applicant shows that:

- (a) The crime occurred more than five (5) years ago; and
- (b) The applicant has been sufficiently rehabilitated.

(17) Initial licenses may be denied and existing licenses may be revoked if the applicant for licensure or the licensee:

- (a) Has failed to assure that nutrition, medication, or treatment of individuals under their care is in accordance with acceptable professional practice;
- (b) Has aided, abetted, sanctioned, condoned or participated in the commission of an illegal act involving individuals under their care; or

(c) Has had a license to operate any facility or service suspended or revoked during the three (3) years immediately preceding an application for licensure.

(18) The licensee shall comply with KRS 216.532.

(19) The licensee shall report all cases of abuse, neglect, or exploitation of adults or children pursuant to KRS Chapters 209 and 620.

Section 4. Services. (1) Basic health and health related services.

(a) All family care homes shall assure that residents obtain basic health and health-related services through the continuous supervision of and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self-administration of medication, storage and control of medications, and making arrangements for obtaining therapeutic services or physician services as necessary.

(b) A [No] licensee shall not knowingly admit a person suffering from a communicable disease which is reportable to the health department, except a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(c) If ~~[after admission,]~~ a resident is suspected of having a communicable disease that would endanger the health and welfare of other residents, the licensee shall assure that a physician is contacted and that appropriate measures are taken on behalf of that resident and the other residents in the home.

(d) The licensee shall show evidence that the resident has obtained a physical examination by a physician within three (3) months prior to or upon admission to the home. If admitted from another health care facility, a discharge summary or transfer form shall be in the resident's record which includes a medical history, record of physical examination and diagnosis.

(e) ~~[It shall be the responsibility of]~~ The licensee shall [to] obtain the services of a physician in case of accident or acute illness of any resident.

(f) All prescription medications administered to residents shall be noted in writing, with the date, time and dosage, and signed by the person administering the medication.

(g) Medication shall not be administered to any resident except on the written order of a physician or other ordering personnel acting within the limits of their statutory scope of practice [advanced-registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14)]. When medication requires administration by licensed personnel, arrangement shall be made to procure the services of such personnel.

(h) Medications kept in the home shall be kept in a locked cabinet.

(i) Self-administration of prescription medications shall be allowed only upon the written instructions of the attending physician or other ordering personnel acting within the limits of their statutory scope of practice.

(j) Residents admitted or retained for care shall not require because of illness, injury or disease, a degree of care exceeding the skill of the operator to provide.

(2) Personal care services.

(a) Residents in family care homes shall be assisted to achieve and maintain good personal hygiene by providing assistance as required by individual needs with:

1. Washing and bathing of the body to maintain clean skin and freedom from offensive odors with the following items provided for each resident and not used by others: soap, clean towels and wash cloths, brushes and combs and other appropriate toilet articles.

2. Shaving.

3. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All residents shall be provided with toothbrushes, a dentifrice, and denture containers, when applicable.

4. Washing, grooming and cutting of hair.

(b) The home shall provide each resident with a bureau or cupboard for storage of personal belongings.

(c) The home shall provide each resident with a bed equipped with substantial springs, a clean comfortable mattress, two (2) sheets, a pillow, and such bed covering as required for resident's health and comfort.

(d) Residents shall be provided the privilege of rest periods in their own beds if they so desire.

(3) Dietary services.

(a) Food shall be prepared with consideration for any individual dietary requirements and appetites.

(b) Menus shall be planned in writing and rotated to avoid repetition. A written record shall be kept of all foods served, including food offered as snacks.

(c) Nutritional needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council and adjusted for age, sex, and activity in accordance with physician's orders.

(d) Food returned from residents' dishes shall be discarded at the conclusion of the meal and not served again in any form.

(e) Therapeutic diets. Special diets or dietary restrictions shall be medically prescribed.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. Snacks shall be provided if desired or requested by patients except when conflicting with special diets prescribed by a licensed physician.

(g) All food shall be stored above the floor in such a manner as to be protected from dust, flies, vermin, or other forms of contamination.

(h) Refrigerators shall have a complete seal, be clean, free of odors, and kept at a temperature below forty-five (45) degrees Fahrenheit. A thermometer shall be placed in each refrigerator and freezer.

(i) All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(4) Housekeeping and sanitation. Each family care home shall:

(a) Maintain a clean, uncluttered and safe facility with screens on doors and windows;

(b) Eliminate odors at their source by prompt and thorough cleaning of commodes, and other obvious sources;

(c) Maintain the premises in such a manner as to prevent infestation by rodents and insects;

(d) Bed linens shall be changed as often as necessary to provide a clean bed at all times. A mattress pad or other protective covering (excluding paper) shall be used on all residents' mattresses;

(e) Give soiled clothing and linens immediate attention and not allow them to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned;

(f) Have appropriate toilet facilities which dispose of wastes in a sanitary manner into a public system where available, or if none is available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the cabinet; provided however, if a public sewerage system subsequently becomes available, connections shall be made to that system and any other sewerage system shall be discontinued, [into a system which shall meet the requirements of applicable plumbing codes]. Outside toilets shall be allowed only if local county health department approves; and

(g) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and administrative regulations. Garbage containers shall be made of metal or other impervious material and shall be water tight and rodent proof and shall have tight-fitting covers.

Section 5. Accommodations. Each family care home shall:

(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation.

(2) Be adequately lighted by natural or artificial light including each hall, stairway, entryway, patient area, kitchen, and bathroom.

(3) Have a water supply of a safe, sanitary quality approved by the local health department or other qualified laboratory or agency.

(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at any tap used by residents shall not exceed 110 degrees Fahrenheit.

(5) Have appropriate sanitary toilet and bathing facilities conveniently available for resident use with no less than one (1) toilet and lavatory per six (6) persons residing in the home.

(6) Have adequate ventilation in all areas used by residents. Toilet rooms shall be vented to the outside, if there is no window. There shall be an exterior window in each resident room which can be opened.

(7) Beds occupied by residents shall be placed so that no resident may experience discomfort due to proximity to radiators, heat outlets or exposure to drafts.

(8) Not use "bunk" beds.

(9) Have beds that are no less than thirty-three (33) inches wide and six (6) feet long.

(10) Not house residents in rooms or detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not constructed for sleeping quarters. Approved basements shall [must] have an outside door.

(11) Not be located in a house trailer or motor homes.

(12) Provide a heating system which can maintain an even temperature, and is capable of maintaining a minimum temperature of seventy-two (72) degrees Fahrenheit in resident occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions.

(13) Have telephone service, if available in the area, accessible to the residents.

(14) If the home accepts a resident who uses a wheelchair, appropriate measures shall [must] be taken to insure that the resident is able to exit the building without assistance (i.e., ramps, rails, etc.).

(15) Have a three (3) day supply of food on hand at all times.

Section 6. Safety. Each home shall take appropriate precautions to insure the safety of the residents and visitors by:

(1) Having all exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;

(2) Having all the home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;

(3) Having a fire control and evacuation plan;

(4) Having an adequate number of ABC-rated fire extinguishers located throughout the home with a minimum of one (1) per floor or

level of the residence;

(5) Having a person in charge thoroughly oriented in the evacuation of the residents in the event of a fire;

(6) Having all firearms and ammunition locked in a cabinet, drawer, or closet with the key not accessible to residents. Firearms shall not be loaded; and

(7) Having at least two (2) functioning smoke detectors in the home, one of which shall be in each resident bedroom or in a hall adjacent to the resident bedroom.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 312 licensed family care homes.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

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

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

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

902 KAR 20:078. Operations and services; group homes.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 311.560(4), 314.011(8), 314.042(8), 320.210(2) [320.240(14); EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 require [mandate] that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides licensure requirements for the operation of and services to be provided by group homes. [~~Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.~~]

Section 1. Definitions. (1) "Developmental disability" means a severe chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments manifested before the person attains the age of twenty-two (22) and is likely to continue indefinitely. This disability results in substantial limitations in areas of major life activity including self-care, receptive and expressive language, learning, mobility, capacity for independent living and economic sufficiency and requires individually planned and coordinated services of a lifelong or extended duration.

(2) "Mental retardation" means a significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior which is first manifested during the developmental period.

(3) "Normalization principle" is the utilization of means which are as culturally normative as possible in order to establish and maintain personal behavior and characteristics which are as culturally normative as possible.

(4) "Qualified mental retardation or developmental disability professional" means:

(a) A physician with specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(b) A psychologist with a doctoral or master's degree from an accredited program with specialized training or one (1) year of experience in treating persons with mental retardation or developmental

disabilities; or

(c) An educator with at least a bachelor's degree in education and with specialized training or one (1) year of experience in working with persons with mental retardation or developmental disabilities; or

(d) A social worker with at least a bachelor's degree from an accredited program and with specialized training or one (1) year of experience working with persons having mental retardation or developmental disabilities, or a field other than social work and at least three (3) years of social work experience under the supervision of a qualified social worker; or

(e) A licensed physical therapist or an occupational therapist who is a graduate of a program of physical or occupational therapy approved by the Council on Medical Education of the American Medical Association and who has specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(f) A speech pathologist or audiologist who has been granted a certificate of clinical competence by the American Speech and Hearing Association or who has completed the equivalent educational and experimental requirements for such a certificate and has specialized training or one (1) year of experience in training persons with mental retardation or developmental disabilities; or

(g) A registered nurse who has specialized training or one (1) year of experience in treating persons with mental retardation or developmental disabilities; or

(h) A therapeutic recreation specialist who is a graduate of an accredited program and licensed or registered by the state if required; or

(i) A rehabilitation counselor who is certified by the commission on Rehabilitation Counselor Certification.

Section 2. Scope of Operations. A group home shall provide [is a facility providing] a homelike environment and specialized services in accordance with individualized habilitation plans to not less than four (4) nor more than eight (8) persons with mental retardation or developmental disabilities at a location not adjacent to or part of a mental health or mental retardation institution.

Section 3. Administration and Operations. (1) Licensee. The licensee shall be legally responsible for the group home and for compliance with federal, state and local laws and regulations pertaining to the operation of the home.

(2) Manager. The group home shall have a manager who is responsible for the full-time operation of the home and for implementing programs as delineated. The manager shall be at least twenty-one (21) years of age and a high school graduate or equivalent.

(3) In the absence of the manager, responsibility shall be delegated to a similarly qualified staff person, to be on site when residents are present for implementation of the program.

(4) Advisory board. Each group home shall have a specific group of individuals who shall establish policies concerning the operation of the group home and the welfare of the individuals residing in the home. Such group of individuals shall be organized as an advisory board and shall meet at least quarterly. The advisory board shall be composed of at least three (3) members and shall include representatives from each of the following groups:

(a) Mental retardation or developmental disability representative from regional mental health and mental retardation board;

(b) Parents or guardians of an individual with mental retardation or developmental disability or a consumer advocate knowledgeable of the needs of group home residents; and

(c) A qualified mental retardation or developmental disability professional.

(5) Policies. The licensee shall develop with the input of the advisory board:

(a) A written outline of the objectives and goals it is striving to achieve. Such outline shall be available for distribution to staff, consumer groups and the interested public; and

(b) Written policies which include:

1. Current routine operational procedures;

2. Procedures for the protection of resident's rights;

3. Procedures for the protection of the resident's financial interests; and

4. Procedures for the reporting of cases of abuse, neglect or exploitation of adults and children pursuant to KRS Chapters 209 and 620.

(6) The licensee shall incorporate the normalization principle into its objectives and shall implement programs consistent with this principle.

(7) The licensee shall establish job descriptions and qualifications for all group home personnel and shall delegate necessary authority for the daily management of the group home program.

(8) The licensee shall conduct a program evaluation annually.

(9) The way residents are represented to the public shall be appropriate to the purposes and programs of the group home and these terms shall not emphasize mental retardation or deviancy.

(10) The advisory board shall appoint a services committee which shall be responsible for:

(a) All decisions pertaining to resident admissions, transfers and discharges.

(b) Assuring that a comprehensive habilitation plan is established for each resident on an individual basis.

(11) The services committee shall:

(a) Be composed of the manager and two (2) other persons both of whom shall be qualified mental retardation and developmental disability professionals.

(b) Utilize appropriate evaluations in determining eligibility for admission based on areas of comparable need for programming. When [in such instances where] the chronological age span of the program participants exceeds five (5) years for individuals twelve (12) years or younger, ten (10) years for individuals aged thirteen (13) to eighteen (18), and twenty (20) years for individuals eighteen (18) years and older, [adequate] written justification demonstrating the appropriateness of the program shall [must] be a part of the individual habilitation plan.

(12) Upon admission all residents shall [must] be free from communicable disease which is reportable to the health department, except a (noninfectious) tuberculosis patient under continuing medical supervision for his or her tuberculosis disease. Within thirty (30) days prior to or within fourteen (14) days after admission, all residents shall [must] have a physical examination.

(13) For all individuals who are admitted to the group home, the services committee shall assure that the following information is a part of the resident's record:

(a) Persons to contact in case of emergency;

(b) Next of kin;

(c) Legal competency status and presence or absence of committee; and

(d) Financial resources.

Section 4. Personnel. (1) The group home shall employ an adequate number of supervisory and direct care personnel and establish an on-call procedure to assure that the home has staff present when residents are present.

(2) Volunteers may be utilized but not substituted for the employment of full- or part-time staff.

(3) The group home shall provide an orientation program for all employees to include:

(a) History of retardation;

(b) Normalization principle;

(c) Habilitation planning techniques; and

(d) Basic first aid.

(4) A regular in-service program for the entire staff shall be conducted at least four (4) times a year. Volunteers may participate in such program.

Section 5. Services. (1) Within thirty (30) days after admission to the facility the services committee shall establish a comprehensive habilitation plan for each resident. The resident's habilitation plan shall be reviewed at least every ninety (90) days. In all cases, whether children or adults, the resident or resident's representatives shall participate in the development of the comprehensive habilitation plan.

(a) Such plan shall address the following:

1. Sensorimotor needs;

2. Communicative needs;

3. Social needs;

4. Emotional needs;
5. Educational needs; and
6. Vocational training needs.

(b) The individual habilitation plan shall outline the responsible parties for meeting each of the above listed needs.

(c) Each resident's habilitation plan shall be maintained as an integral part of the resident's records.

(2) Availability of services. The licensee shall assure that a comprehensive array of services is available as needed by each resident of the group home. These services shall be obtained from agencies through a written agreement. The following components shall be available:

(a) Medical services, including emergency medical services and an annual physical examination. For women this examination shall include gynecological services.

(b) Dental services to include at least two (2) visits annually.

(c) Psychological and psychiatric services, to be available as needed according to the resident's habilitation plan.

(d) Physical therapy.

(e) Social services, to include individual, group and family counseling as appropriate, according to individual needs.

(f) Occupational rehabilitative services, to include vocational counseling, planning and training as appropriate, according to individual needs.

(g) Speech therapy and audiology services, as needed.

(h) Public education for school age persons in accordance with 20 USC 1400.

(i) Recreational opportunities to provide the resident with adequate physical fitness and constructive leisure time activities.

Section 6. Physical Standards. The ultimate aim of the environment and design for a group home shall be to foster those skills necessary for maximum independence of the resident and enhance the resident's ability to cope with his or her environment. To this end the following shall be required:

(1) Location.

(a) Group homes may [can] be located in urban, suburban or rural settings, but shall not be isolated from the mainstream of their community, and shall [must] be in an area zoned for residential use where applicable. The residence shall have the style and appearance of neighborhood houses.

(b) The group home shall be located within thirty (30) minutes driving time of resident's day program locations, medical and other professional services; and the usual array of essential merchants: groceries, clothing stores, drug stores, etc. The home shall be located within sixty (60) minutes driving time of a hospital.

(c) Group homes shall not be located in house trailers or motor homes.

(2) Resident accommodations.

(a) The residence shall house no less than four (4) nor more than eight (8) residents.

(b) Other than residents, no persons other than the residence's staff and the staff's immediate family may reside in the home.

(c) Bedrooms shall contain no more than two (2) beds with a minimum of sixty (60) square feet in single rooms and eighty (80) square feet in multiple rooms. Beds shall be no less than thirty-three (33) inches wide and six (6) feet long. Bunk beds shall not be used.

(d) Beds occupied by residents shall be placed so that no resident may experience discomfort because of proximity to radiators, heat outlets or exposure to drafts. Each resident shall have his or her own bed equipped with substantial springs, a clean comfortable mattress, two (2) sheets and a pillow, and such bed covering as required for the resident's health and comfort.

(e) Closet space and drawer space shall be provided for personal belongings.

(f) Residents shall not be housed in rooms, detached buildings or other enclosures which have not been previously inspected and approved for resident use, or in basements not constructed for sleeping quarters. Approved basements shall [must] have an outside door.

(g) Appropriate sanitary toilet and bathing facilities shall be conveniently available for resident use with one (1) toilet, lavatory and shower or tub for each six (6) persons residing in the home, including residents and staff.

(h) Adequate ventilation in all resident use areas shall be maintained. Each resident bedroom shall have an exterior screened window which may be opened.

(i) If a private source of water is used the group home shall annually obtain written certification from an appropriate agency that the supply is safe and sanitary. An ample supply of hot and cold running water shall be available at all times.

(j) The group home shall have adequate lighting by natural or artificial means in each hall, stairway, entryway, vestibule, resident area, kitchen, and bathroom.

(k) A heating system which can maintain an even temperature, and is capable of maintaining seventy-two (72) degrees Fahrenheit in resident used areas shall be provided.

(l) Adequate common living areas shall be provided in the group home. This shall include separate living, recreational and eating areas, each large enough to accommodate residents and their visitors.

(m) Adequate laundry facilities shall be available in the home or a conveniently located laundromat may be used.

(n) Telephone service shall be provided to the residents. This service shall be accessible to the residents and shall afford a degree of privacy.

(o) Resident staff living quarters. Resident staff living quarters shall provide privacy. Resident staff includes managers.

(3) General requirements.

(a) The facility shall conform to the National Fire Protection Association 101, Life Safety Code adopted by the Kentucky Department of Housing, Buildings and Construction relative to group homes.

(b) The group home shall conform to requirements for plumbing pursuant to 815 KAR 20:010 to 20:191, as amended.

(c) The group home shall conform to requirements for making buildings and facilities accessible to and usable by persons with disabilities.

(d) The group home shall comply with applicable state and local laws relating to sanitation including insect and rodent control.

Section 7. Resident Care and Safety. (1) Dietary.

(a) The group home shall provide at least three (3) meals per day with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. One (1) or more of these meals may be provided outside the group home depending upon the resident's habilitation plan, but all meals are the financial responsibility of the group home.

(b) Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council and in accordance with resident dietary restrictions.

(c) A written record shall be kept of all foods served.

(d) All food shall be stored off the floor in such a manner as to be protected from dust, insects, rodents, birds, or other forms of contamination. All food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(e) Refrigerators shall have a complete seal, be clean, free of odors, and kept at a temperature of forty-five (45) degrees Fahrenheit or below. A thermometer that is easily readable shall be placed in each refrigerator and freezer.

(2) Housekeeping and sanitation.

(a) The facility shall be kept in good repair, clean, uncluttered and sanitary at all times. Floors, walls, ceilings, lighting fixtures, storage areas and equipment shall be kept clean and in good repair. Windows and doors shall be screened.

(b) The facility shall collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and administrative regulations. Garbage containers shall be made of metal or other impervious material, approved by the fire marshal, that will not emit harmful vapors upon exposure to extreme heat, and shall be water tight and rodent proof and shall have tight-fitting lids.

(3) Emergency procedures.

(a) Each group home shall have a fire control and evacuation plan to be practiced at least quarterly with all staff and residents participating.

(b) An on-duty staff member shall be designated at all times to be in charge of evacuation of residents in the event of a fire or other natural disaster.

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(c) Phone numbers of a hospital, an ambulance service, the fire department, and a physician for emergencies shall be posted by all telephones in large legible print.

(d) A report on all accidents requiring medical treatment of a resident shall be written and one (1) copy kept on file and made available to the advisory board within seven (7) days of the incident. The original shall be sent to the Cabinet for Health Services, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky.

(e) Incident reports for minor accidents shall be written, kept on file and made available upon request.

(4) Medications.

(a) All prescription medications administered to residents shall be noted in writing, with the date, time and dosage, and signed by the person administering the medication. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statement and directions for use.

(b) Medication shall not be administered to any resident except on the written order of a physician or other ordering personnel acting within the limits of their statutory scope of practice [~~advanced-registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist as authorized in KRS 320.240(14)~~]. When medication requires administration by licensed personnel, arrangements shall be made to procure the services of such personnel.

(c) Medications in the home shall be kept in a locked cabinet. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration.

(d) Self-administration of prescription medications shall be allowed only upon the written instructions of the client's attending physician.

(e) Each individual who requires prescription medication shall receive medical supervision which includes regular evaluation of the individual's response to the medication including appropriate monitoring and laboratory assessment.

(f) The group home shall comply with all federal and state laws and regulations relating to the procurement, storage, dispensing, administration and disposal of drugs.

(5) Restraints. Physical and chemical restraints shall not be used.

Section 8. Resident Rights. (1) The residents shall be treated in a manner which preserves their feelings of self-worth and human dignity, have visitation rights, the right of privacy and freedom of worship.

(2) A resident's correspondence shall not be opened, except as authorized by the resident or resident's legal guardian or committee.

(3) Residents shall not be physically punished in any way.

(4) Residents shall be appropriately dressed at all times.

(5) Each resident shall have their individual:

(a) Clean wash cloth and towel;

(b) Toothbrush;

(c) Brush and comb;

(d) Other appropriate toilet articles; and

(e) Bureau or cupboard for storage of personal belongings.

(6) Residents shall not be denied the privilege of rest periods in their beds.

(7) Residents shall be allowed free movement within the group home and shall have access to all common living areas.

(8) Residents shall have access to the community.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend

the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 39 licensed group homes.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

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

1. First year following implementation: No additional reporting requirements imposed.

2. Second and subsequent years: None.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

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

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

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

(c) If detrimental effect would result, explain detrimental effect: None

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

- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions?
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

CABINET FOR FAMILIES AND CHILDREN
Department for Community-Based Services
(Amendment)

905 KAR 2:090. Child care facility licensure.

RELATES TO: KRS 17.165, 199.894 to 199.898

STATUTORY AUTHORITY: KRS 194B.050 [194.050], 199.896(2), EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.896(2) grants authority to the Cabinet for Families and Children [Human Resources] to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

Section 1. Application. Prior to licensure, a complete application shall be submitted to the cabinet. The application for a license to operate a day care center, L&R-204, [herein] incorporated by reference, may be obtained from the Office of Inspector General, 4th Floor [Cabinet for Human Resources Building], 275 East Main Street, Frankfort, Kentucky 40621. If the proposed owner is a corporation, the application shall include a current certificate of existence or authorization from the Secretary of State. If the proposed owner is a partnership, a written statement from the partners that the partnership is current and viable must be included with the application. Corporations identified on the application as owners, shall remain in active status with the Secretary of State. If the status of the corporation or partnership changes, a change of ownership application shall be submitted according to Section 2(8) of this administrative regulation. The application may be denied in accordance with Section 6 of this administrative regulation.

Section 2. License Issuance. (1) An individual, partnership, corporation, or other entity who has had certification, license, registration or permit to operate a human services center denied for reasons set forth in Section 6(1)(b) or (c) of this administrative regulation or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet has initiated denial or revocation action shall not apply for a license to operate a child care facility for a period of five (5) years from the date of revocation. If the applicant is denied or his license has been revoked for reasons set forth in Section 6(1)(a) of this administrative regulation, there shall be a period of two (2) years from the date of denial or revocation before reapplication for a license shall be permitted.

(a) If the applicant is denied or his license has been revoked due to reasons set forth in Section 6(1)(b) or (c) of this administrative regulation, after the expiration of the five (5) year period, he [the person] may apply for a license after establishing that he [the applicant] has the ability to comply with the provisions of this administrative regulation and has demonstrated completion of at least sixty (60) hours of cabinet-approved training in developmentally appropriate child care practice since the time of the prior denial or revocation.

(b) If a license is granted after the five (5) year period, the provider shall serve a two (2) year probationary period during which the child care facility shall be inspected on at least a quarterly basis. Inspections shall be unannounced.

(2) A license shall be issued for:

- (a) A specified physical location;
- (b) Operation by a designated sponsor or owner;
- (c) Age categories;

(d) A specified maximum number of children to be under facility supervision [on-premises] at one (1) time including children related to the licensee. The number of children for which the facility is licensed shall be determined by:

1. Available space as determined by the State Fire Marshall's Office in conjunction with the cabinet;

- 2. Adequacy of program;
- 3. Equipment; and
- 4. Staff.

(e) Nighttime care, if provided; and

(f) Transportation, if provided.

(3) The license shall list the services to be provided by the facility.

(4) To qualify for a license, a child day care facility shall:

(a) Provide written documentation from the Zoning Commission showing compliance [Comply] with local zoning requirements;

(b) Be approved by the Office of the State Fire Marshal or designee;

(c) Have an approved water and sewage system in accordance with local, county and state laws;

(d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;

(e) Provide written documentation from the insurance company showing compliance with current [Have] liability insurance in the amount of \$100,000 per occurrence; and

(f) Comply with provisions of this administrative regulation and 905 KAR 2:001, 905 KAR 2:110, and 905 KAR 2:120 ~~and 905 KAR 2:130~~.

(5)(a) The facility shall:

1. Be in compliance with subsection (4) of this section; or

2. ~~[shall]~~ Have submitted an acceptable plan of correction.

(b) ~~[1-]~~ Compliance shall be ascertained through on-site inspections of the facility.

(c) ~~[2-]~~ Regulatory violations identified during these inspections shall be transmitted in writing to the facility.

(d) ~~[(b)]~~ The facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days of the statement of deficiencies. The plan shall specify the date and the specific actions which have been initiated to correct each deficiency and identify the actions utilized to assure ongoing compliance. ~~[dates by which each of the violations shall be corrected.]~~

(e) ~~[(e)]~~ Following a review of the plan, the facility shall be notified in writing of the acceptability of the plan, unless the cabinet has made a decision to deny the application or revoke the facility's license, pursuant to Section 6 of this administrative regulation.

1. If the plan is unacceptable, the facility shall be notified in writing of the specific reasons the plan is unacceptable.

2. The facility shall:

a. Modify or amend the plan; and

b. Resubmit an acceptable plan within ten (10) days of the notice of the plan's unacceptability. ~~[reasons shall be specified.]~~

2. ~~In these cases, the facility shall modify or amend the plan and resubmit within ten (10) days of notice of the plan's unacceptability.]~~

(6) A license shall be issued when the facility has met the requirements contained in this administrative regulation and KRS 199.896.

(7) A license shall not be transferable.

(8) A change in ownership of a facility shall require a change of ownership [new] application and fee. The fee shall be the same as an initial fee, pursuant to Section 3(1) of this administrative regulation. A change of ownership application shall not be filed prior to the date of the acquisition of the facility by the new owner.

(a) After receipt of the application and fee for the change of ownership, a survey may be conducted by the Office of Inspector General, Division of Licensing and Regulation to determine if the facility is in compliance with applicable licensing requirements of this administrative regulation and 905 KAR 2:001, 905 KAR 2:110, 905 KAR 2:120 and KRS 199.896(12).

(b) The effective date of the license for the change of ownership shall be the date the facility is acquired by the new owner if the facility is determined to meet applicable licensing requirements.

(c) If the acquired facility does not meet applicable licensing requirements, the effective date of the license shall be the date that compliance is achieved.

(d) If the facility changes capacity, the effective date for the change of capacity shall not be prior to the approval date issued by the State Fire Marshall's Office.

(9) A change to the facility, pursuant to 905 KAR 2:110, Section 4(4)(b) through (e) shall:

(a) Be made in writing to the cabinet; and

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(b) Not require a fee.

(c) If more than one (1) owner is identified on the licensing application, any change affecting the licensure status of the center shall require prior written notification signed by all owners and submitted to the Division of Licensing and Regulation, 275 East Main Street, 4 E-A, Frankfort, Kentucky 40621. [If circumstances covered by the license change, as listed in 905 KAR 2:110, Section 4(4)(b) through (e), notification shall be made in writing to the cabinet. These changes shall not require an additional fee.]

(10) [(8)] The license shall be posted in a conspicuous place in the facility.

(11) [(9)] A facility shall not begin operation without a license to operate from the Cabinet for Health Services [Human Resources].

(12) [(10)] A facility operating without having a license shall be subject to legal action.

Section 3. Fees. (1) Licensing fees shall be:

(a) Eighty (80) dollars for initial licensure for a Type I facility;

(b) Forty (40) dollars for initial licensure of a Type II facility; or

(c) Forty (40) dollars for renewal licensure.

(2) A check or money order payable to the Kentucky State Treasurer shall be attached to the initial and renewal licensure application.

(3) Initial application fee and renewal fees shall not be refunded if a survey has been made by the Cabinet for Health Services [Human Resources] or the State Fire Marshall's Office.

Section 4. Inspections. Representatives of the cabinet shall be trained to apply the administrative regulations and have the authority to:

(1) Make unannounced inspections of facility's:

(a) [(1)] Premises;

(b) [(2)] Records required by 905 KAR 2:090, Sections 2(4)(a) and (e) and 6(1)(c), 905 KAR 2:110, 905 KAR 2:120 [through 905 KAR 2:130]; and

(c) [(3)] Programs.

(2) Provide, upon request, public information pursuant to KRS 199.896(6) and (7) and 199.898(2)(d) and (e).

Section 5. Renewal. (1) Licenses shall be renewed annually.

(2) The renewal application, L&R-204A, incorporated by reference, and fee shall be submitted one (1) month prior to the expiration date of the license. If the owner identified on the application is a corporation, the application shall include a certificate of existence or authorization from the Secretary of State. If the owner identified on the application is a partnership, a written statement from the partners stating that the partnership is current and viable must be included with the application. Corporations identified on the application as owners, shall remain active with the Secretary of State's office. If the status of the corporation or partnership changes, a change of ownership application must be submitted according to Section 2(8) of this administrative regulation.

(3) The facility shall comply with the requirements of Sections 2 and 4 of this administrative regulation.

Section 6. Basis for Denial, Suspension or Revocation. (1) The Cabinet for Health Services [Human Resources] may deny, suspend or revoke a license or application:

(a) For failure to meet the standards of this administrative regulation and 905 KAR 2:001, 2:110, and 2:120. Denial, suspension or revocation of a license or application may be initiated under this subsection regardless of whether the licensee has submitted plans for the correction of the facility's failure to meet these regulatory standards;

(b) If the licensee, director of the day care center, any employee of the day care center, an adult living in the facility or person under the supervision of the licensee has been convicted of any sexual offense, or of a crime related to abuse, neglect or exploitation of a child or an adult;

(c) If the licensee, director of the day care center, any employee of the day care center, or an adult living in the facility has been found by the cabinet or any court to have:

1. Ever [Has] abused, neglected, [or] exploited or committed a sexual offense against a child or an adult; or

2. Is listed on the Nurse's Aid Abuse Registry by the Inspector

General's Office.

(d) [(2)] If the licensee has had a human services center or facility registration, certification, permit or license denied for reasons set forth in subsection (1)(a), (b) or (c) of this section or revoked or voluntarily forfeits their certification, license, registration or permit after the cabinet initiates denial for reasons set forth in subsection (1)(a), (b) or (c) of this section or revocation action.

(2) [(3)] If one (1) of the grounds for denial, suspension or revocation set forth in this section exists and the condition creates an immediate danger to the children in care, the cabinet may suspend or revoke the license immediately.

(3) The cabinet shall provide, upon request, information pursuant to KRS 199.896(6) and (7) and 199.898(2)(d) and (e).

Section 7. Right of Appeal. (1) If a license or application has been denied, suspended or revoked, the licensee shall be notified in writing of the right to appeal. The request for a hearing shall be made in writing within fifteen (15) days after receiving the notice of the action of the cabinet.

(2) Upon receipt of the request for a hearing:

(a) The cabinet shall notify the licensee in writing within fifteen (15) days of the time and place of the hearing.

(b) The cabinet shall appoint a hearing officer to review the record, take additional evidence, and make recommendations upon the matter appealed.

(c) The hearing officer shall have the 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.

(3) Based upon the record and upon the information obtained at the hearing, the hearing officer shall make a recommendation to affirm or overturn the initial decision of negative action. The decision shall be made in accordance with subsection (4)(b) of this section [final]. If license denial or revocation is upheld, the cabinet shall:

1. Specify the date by which the facility shall close; and

2. The licensee shall be notified in writing.

(4) If a provider whose license has been suspended or revoked pursuant to Section 6(2) [(3)] of this administrative regulation requests a hearing, the cabinet shall initiate [conduct] a hearing within five (5) working days of receipt of the request for a hearing. The hearing may be continued at the request of the provider.

(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 children in care.

(b) The cabinet shall render a decision in accordance with KRS 13B.110 and 13B.120. [within five (5) working days of the close of the hearing. If a decision is not rendered within five (5) working days of the close of the hearing, the provider 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 children in care, the license of the provider shall be suspended pending action of the cabinet to accept the plan of correction or revoke the license.

Section 8. Incorporated [Incorporation] by Reference. (1) The following material is incorporated by reference:

(a) L&R-204, "Application for a License to Operate a Day Care Center, October, 1997", Cabinet for Health Services;

(b) L&R-204A, "Application for Renewal of a License to Operate a Day Care Center, October, 1997", Cabinet for Health Services. [form necessary for the implementation of the application for license shall be herein incorporated by reference.]

(2) This material [incorporated by reference] may be inspected, [or] copied, or obtained at the Inspector General's Office, CHR Building, 4th Floor, 275 East Main Street, Frankfort, Kentucky, office hours 8 a.m. - 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: November 30, 1998

FILED WITH LRC: December 11, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999 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 January 13, 1999, 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, Director

(1) Type and number of entities affected: There are 1,974 licensed child care facilities as of August 1998. The owners and staff of these facilities will be affected.

(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: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary 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 as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary regulation.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: The administering agency will have an increase in costs in the first year of for the annual salary, fringe, operating costs for an administrative assistant to perform criminal records checks, as well as the cost of a computer. This increase is estimated to be \$25,089.

2. Continuing cost or savings: There is no increase or decrease in costs to the regulated entities. The administering agency will have an increase in costs in the second and subsequent years of the annual salary, fringe, and operating costs for an administrative assistant to perform criminal records checks. This cost increase is estimated to be \$24,248.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative assistant will be performing additional criminal records checks on day care providers and staff.

(4) Assessment of anticipated effect on state and local revenues: There will be an impact on state revenues of approximately 30% of the total costs to the administrative body.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The portion of the total cost to the administrative body is 30% state funds, 70% will be federal CCDF 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. To be determined after the hearing on this ordinary regulation.

(B) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received. To be determined after the hearing on this ordinary regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were not considered because these requirements are mandated by legislation passed by the 1998 General Assembly.

(8) Assessment of expected benefits: The benefits expected from this regulation are broader protection of children, improved public access, and better quality licensed child care.

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not required as these policies will become effective statewide as the cabinet implements the amended child care facility licensure policy pursuant to this administrative regulation.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

907 KAR 1:002. Definitions.

RELATES TO: KRS 205.520, 42 USC 1396a, b, d

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050; 42-UCS-1396a, b, d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health 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] definitions for words and phrases used by the cabinet in administrative regulations pertaining to the provision of Medicaid [medical assistance].

Section 1. Definitions. [Definitions of terms or phrases utilized in administrative regulations relating to the Medical Assistance Program are as follows:] (1) "Actual acquisition cost" means the amount paid by a provider for a medical supply [supplies] minus any amount [amounts] refunded to, or deducted by the provider, [on account of early or timely payment, purchasing in volume, or other normal business practices; and] which reduces [reduce] the actual expense [amount of capital investment required] of the provider due to:

(a) Early or timely payment;

(b) Purchasing in volume; or

(c) Other normal business practices.

(2) "Cabinet" means the Cabinet for Health Services.

(3) ((2)) "Charge" means the requested amount of [payment or] reimbursement [required] by the provider for the medical procedure or service, including any markups or discounts.

((a)) "Prevailing charges" means those charges which fall within the range of charges most frequently and most widely used in a medical area for particular medical procedures or services.

(b) "Reasonable charge" means a charge for a health care service rendered that is consistent with efficiency, economy and quality of the care provided.

(c) "Usual and customary charge" means the uniform amount

which the medical provider charges in the majority of cases for a specific medical procedure or service.]

(4) [(3)] "Comparable service [services]" means a [generally speaking,] medical service [services] provided to the general public which is [are] equivalent in nature, scope and delivery method to a similar medical service [services] provided to a Medicaid recipient [program recipients].

(5) "Coinsurance" means an amount payable by the recipient under the provisions of Medicare, for a covered medical service rendered under the Medicare Program, and becoming due after satisfaction of the deductible liability.

(6) "Deductible" means a specified dollar amount that shall be incurred by and is payable by a Medicare recipient for a covered service.

(7) "Department" means the Department for Medicaid Services or its designee.

(8) "Drug file" means the Kentucky Medicaid Program Drug File listing of drugs that may be eligible for reimbursement under the Kentucky Medicaid Program including drugs requiring and not requiring prior authorization.

(9) "Early and periodic screening and diagnosis and treatment (EPSDT)" means:

(a) Screening and diagnostic services to determine physical or mental defects in a recipient under age twenty-one (21); and

(b) Health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered.

(10) [(4)] "Deductible" means amounts payable by the recipient which fall within an aged beneficiary's deductible liability imposed by Medicare.

(5) "Coinsurance" means amounts payable by the recipient under the provisions of Medicare, for covered medical services rendered under the Medicare Program, and becoming due after satisfaction of the deductible liability.

(6) "Eligible individual" means a person who has applied for medical assistance and has been found to meet all applicable conditions for eligibility pertaining to Kentucky's Medicaid Program.

(11) [(7)] "Excess income" means that portion of the income of the individual or family group which:

(a) Exceeds amounts allowable to the individual or family group as disregarded income or income protected for basic maintenance; and

(b) [which] Results in a determination of ineligibility.

(12) [(8)] "Excess resources" means a [that] portion of the liquid assets or other resources of the individual or family group which:

(a) Is in excess of the amounts which may be retained for the individual or family group's security and personal use;

(b) Is not exempted from consideration or otherwise accounted for by special specified circumstances; and

(c) Results [which result] in a determination of ineligibility.

(13) [(9)] "Flat fee schedule" means a specified rate or grouping of rates at which reimbursement is made for a covered service [or services,] taking into account such factors as:

(a) Cost of providing the service;

(b) The necessity to ensure an adequate supply of providers for utilization by recipients; and

(c) Medicaid's ability to pay.

(14) [(10)] "Flat fee based on cost of service" means a specified rate or grouping of rates at which reimbursement is made for a covered service [or services], which is based more closely on the actual cost of providing the service [or services] with less weighting for other factors.

(15) [(11)] "Follow-up visit [visits]" means a visit [visits] to the provider subsequent to the initial visit, made for the purpose of;

(a) Securing added treatment for the medical problem; or

(b) [for] Evaluation and adjustment of treatment.

(16) [(12)] "Income protected" means income of the individual or family group which the department recognizes as being needed for the basic maintenance of the individual or family group, and which the individual or family group retains for personal use.

(17) [(13)] "Initial visit" means the first or more extensive visit made to a provider for the purpose of securing a covered medical service [or services], and which may include the:

(a) Taking of medical history;

(b) Diagnosis; and

(c) Initial treatment.

(18) [(14)] "Inpatient service [services]" means a service [those services] rendered for an [any] acute or chronic condition, including maternal and mental health care, which cannot be rendered on an outpatient basis.

(19) [(15)] "Interim rate [rates]" means a rate set for a provider for tentative [the initial rates for] reimbursement, based on the [projected] reasonable allowable cost of providing an eligible [the] service, indexed accordingly to generally accepted principles, and which may result in [and applying of accepted cost apportionment principles, most nearly approximating actual allowable costs, determined on a facility by facility basis; and usually, followed by] reimbursement adjustments after a determination of actual cost during an accounting period [provision of the service to account for differences between projected costs and actual costs].

(20) [(16)] "Lock-in" means the system in which [whereby] a recipient found to be overutilizing physician or pharmacy services is assigned and [it is,] restricted to one (1) physician and one (1) pharmacy for those services except on referral or in the event of emergency.

(21) [(17)] "Lock-in provider" means a physician or pharmacy which agrees to be the assigned provider of physician or pharmacy services for a recipient placed in lock-in status.

(22) [(18)] "Medicaid" means the state program of medical assistance as administered by the cabinet in compliance with 42 USC 1396, and which is designed to provide for the medical care needs of Kentucky's medically indigent citizenry.

(23) "Medically necessary" means a health service which is reasonable and necessary to diagnose and provide preventative, palliative, curative or restorative treatment for physical or mental conditions in accordance with professionally recognized standards of health care generally accepted at the time the service is provided, in accordance with 42 CFR 440.230.

(24) "Medical service area" means a designated geographical area within which medical services provision is compared for purposes of planning, reimbursement, etc.

(25) [(19)] "Medicare" means the federal program under 42 USC 1395 which provides the following [providing] medical benefits to persons receiving Social Security retirement payments or who have received Social Security benefits based on disability for a period of twenty-four (24) consecutive months;

(a) Part A, Hospital Insurance Benefits, which provides hospital care, nursing home care and home health visits, subject to deductibles and coinsurance.

(b) Part B, Supplementary Medical Insurance, which provides [additional medical benefits] to [those] persons eligible for Part A or any person sixty-five (65) years of age, [but only] if enrolled in the program and paying the monthly premium, additional medical benefits subject to annual deductible, such as:

1. Physician services;

2. Outpatient hospital services;

3. Durable medical equipment; and

4. Emergency ambulance transportation.

[(20)] "Medical assistance drug list (MADL)" means a listing of drugs, covered under the medical assistance program, which includes the drug code, description, dosage strength, covered unit form, maximum dosage covered, and per unit price. The official title of the list is "Kentucky Medical Assistance Program Outpatient Drug List."

(21) "Medical service area" means a designated geographical area within which medical services provision is compared for purposes of planning, reimbursement, etc.]

(26) [(22)] "Outpatient service [services]" means a service [services] provided, in other than inpatient circumstances, for a [any] condition detrimental to the individual recipient's physical or mental health.

(27) [(23)] "Overutilization" means the use of program benefits in excess of that [actually] required for the treatment of the recipient's medical problem.

(28) [(24)] "Participating" means a provider of medical services taking part in the Medicaid [medical assistance] Program by agreeing to comply with program administrative regulations and providing [provide] services to eligible recipients.

(29) "Prevailing charge" means a charge which falls within the range of charges most frequently and most widely used in a medical

service area for a particular medical procedure or service.

(30) [(25)] "Prior authorization; preauthorization" means the approval which must be given by the Department for Medicaid Services, or other specified authority, to a specified provider for specified services for a specified recipient in order for this service to be covered under Medicaid.

(31) [(26)] "Profile" means an outline of the outstanding characteristics of a vendor practice in rendering health care services and recipient usage in receiving health care services.

(32) [(27)] "Provider" means a person, organization, facility or institution certified to provide health or medical care services authorized under the Medicaid program.

(33) "Reasonable charge" means a provider's fee which is the provider's usual charge for a given service, and is within the range of fees charged by providers of similar training and experience for the same or similar service or supply within the same or similar limited geographical area and does not exceed the fee schedule developed by the Department for Medicaid Services.

(34) [(28)] "Spend-down" means the process by which excess income is utilized for recognized medical expenses, and which, when excess income is depleted, results in a determination of eligibility if all other eligibility factors are met.

(35) "Usual and customary charge" means the uniform amount which the medical provider charges in the majority of cases for a specific medical procedure or service.

(36) [(29)] "Utilization review" means the process of monitoring and controlling, to the extent possible, the quantity and quality of health care services delivered under the Medicaid program.

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Trish Howard

(1) Type and number of entities affected: Approximately 46,000 Medicaid providers and 527,000 recipients.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Failure to adopt this administrative regulation may result in the inappropriate dispensing of prescription medication.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will not affect local government.

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full

year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): \$0
Expenditures (+/-): \$0
Other Explanation: \$0

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
Division of Financial Management and Analysis
(Amendment)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 205.640

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Kentucky Hospital Care Program (KHCP) [program], which is a program of hospital care for the indigent provided by Kentucky acute, psychiatric and rehabilitation hospitals participating in the Kentucky Medicaid Program. The cabinet is responsible for establishing eligibility guidelines for determinations of KHCP eligibility to be made by the hospitals. This administrative regulation sets forth provisions relating to the eligibility requirements and benefits for recipients under KHCP.

Section 1. Definitions. (1) ~~["Family unit" means the parents, step-parents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his parents is included in the family unit along with his child; if the minor parent, his child and the child's other parent, regardless of their marital status, are in the same household, they shall be considered a separate family unit from any other family unit in that household.~~

(2) ~~"Kentucky Hospital Care Program" (KHCP) is a program of [inpatient and outpatient] hospital care, [but excluding nonemergency care rendered in the emergency room,] for Kentucky's indigent citizenry provided by Kentucky hospitals participating in the Kentucky Medicaid Program.~~

(2) [(3)] "Minor child [children]" means an individual:

(a) ~~[(individuals)]~~ Under the age of twenty-one (21) living with a parent; ~~or]~~

(b) ~~Under the age of eighteen (18) living with a legal guardian in the same household; or~~

(c) ~~Meeting one (1) of the criteria established in paragraph (a) or (b) of this subsection [one (1) of the previously described children] attending college or a similar type of higher education facility.~~

(3) [(4)] "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(4) [(5)] "Self-support" means a demonstration by the minor child that he is paying more than fifty (50) percent of his living expenses, for example, [(f.e.,)] proof of wages versus expenditures for living expenses, [-etc.-]

Section 2. [KHCP Eligibility Manual. (1) The KHCP Eligibility Manual, dated July 15, 1994, which describes the processes for determining KHCP eligibility, is incorporated by reference.

(2) ~~The KHCP Eligibility Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

(3) ~~A fee shall be charged for the KHCP Eligibility Manual not to exceed the approximate cost of copying and materials.~~

Section 3. Eligibility Requirements. (1) For the purpose of determining eligibility a family unit is comprised of the following:

(a) Parents, stepparents, their minor children and stepchildren

living in the same household;

(b) Unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household;

(c) A child under age eighteen (18), legal guardian and the legal guardian's family living in the same household;

(d) A minor child who is also a minor parent and who lives with his parents is included in the family unit along with his child;

(e) A minor parent, his child and the child's other parent, regardless of their marital status, living in the same household shall be considered a separate family unit from any other family unit in that household; and

(f) A minor child living with a grandparent comprises a family unit and the grandparent comprises another family unit.

(2) For an individual or family unit to be KHCP eligible the following requirements shall be met:

(a) The individual or family unit shall be a resident[(s)] of Kentucky. A transient individual [Transients (individuals)] traveling through but not residing in the state[-] and non-U.S. citizens in visa status [-e., visitors, students, etc.]) shall not be eligible for KHCP;

(b) The individual's or family unit's income shall not exceed 150 ~~100~~ percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually ~~[except for Medicaid recipients receiving additional days of coverage per hospital stay based on medical necessity determined in accordance with 907 KAR 1:012, inpatient hospital services];~~

(c) The individual or family unit shall be encouraged to apply for Medicaid at the local Department for Social Insurance office if potentially eligible; and

(d) Except for Medicaid recipients receiving additional days of coverage per hospital stay, a potential KHCP recipient receiving services on or after July 15, 1994 shall be required to apply for KHCP benefits by not later than thirty (30) days from the date of service or notification by the hospital of potential KHCP eligibility, whichever is later[-]; and

~~(e) A potential KHCP recipient receiving services on or before June 30, 1994 shall be required to apply for KHCP services by August 15, 1994 or thirty (30) days from date of notification by the hospital of potential KHCP eligibility, whichever is later.]~~

(3) A [(2) Any] Medicaid recipient receiving additional days of coverage per hospital stay, based on medical necessity determined in accordance with 907 KAR 1:012, shall be determined KHCP eligible without further verification; and an application shall not be required.

~~[(3) Individuals or families found eligible prior to July 1, 1993 for the Hospital Indigent Care Assurance Program for a period of time extending past July 1, 1993 shall be determined eligible for KHCP without further verification for that portion of the period of time extending past July 1, 1993.]~~

Section 3. Alien Eligibility Requirements. (1) An alien legally admitted to this country for permanent residence on or before August 22, 1996, is eligible to participate in KHCP.

(2) An alien admitted after August 22, 1996, who is a refugee, asylee, parolee, member of the United States Armed Forces, or a dependent of an active or retired member of the armed forces is eligible to participate in KHCP.

(3) An illegal, undocumented alien is eligible to participate if he has a life-threatening emergency condition.

(4) An alien who is admitted for permanent residence after August 22, 1996, who is not a parolee, refugee, asylee, member of the armed forces, retiree from the armed forces or a dependent of a member (retiree) of the armed forces, is eligible to participate in KHCP if he has a life-threatening emergency condition.

(5) Coverage shall not be provided for an individual specified in subsection (3) or (4) of this section for a transplant or a service related to a transplant.

(6) An alien who is admitted to the United States for a temporary stay, such as a student, tourist, business person or a person on a temporary work permit is not eligible to participate in KHCP.

Section 4. Exclusions from Eligibility. The following shall not be eligible for coverage under KHCP:

(1) An individual [individuals] within a correctional system, includ-

ing an inmate of a jail, prison (i.e., inmates of jails, prisons, etc.);

(2) An individual (individuals) in the custody of a unit of government which is responsible for coverage of the acute care needs of the individual; (individuals);

(3) With the exception of a child specified in 907 KAR 1:012, Section 2, a Medicaid recipient who has (Medicaid recipients who have) been decertified by the peer (utilization) review organization (PRO) for not meeting psychiatric level of care or medical necessity under EPSDT Special Services in accordance with 907 KAR 1:034;

(4) An individual who is covered by health insurance, including Part A Medicare. The hospital is responsible for determining if health insurance coverage exists. Policies which provide for a fixed number of dollars per day of hospitalization are not considered to be health insurance in a KHCP eligibility determination. (Individuals who receive ongoing Medicaid in any category including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI);

Section 5. Eligibility Periods. (The following provisions shall be applicable for eligibility periods:

(1) For inpatient hospital stays, each determination of eligibility shall be for the period of hospitalization;

(2) For major or minor outpatient procedures or services, a determination of eligibility shall be for the date or dates of service. A single determination of eligibility shall be considered sufficient for a period not to exceed six (6) months. (a prescribed course of outpatient treatment (for example, physical therapy) covering several days or weeks;)

(3) A retroactive determination of eligibility shall be completed for inpatient hospital stays, and major or minor outpatient procedures or services for any period of time preceding the month of application. (No retroactive coverage shall be provided for a period of time prior to July 1, 1993;

(4) No retroactive coverage for individuals between the ages of twenty-two (22) through sixty-four (64) residing in a psychiatric facility shall be available for any period prior to July 15, 1994;]

Section 6. Income Considerations. Eligibility shall be determined by comparing the family unit's (or that of the individual not living with other family members) total annual gross income to the poverty income guidelines for the appropriate family size. In comparing the family unit's total annual gross income to 150 (100) percent of the official poverty income guidelines, the following policies shall be applied:

(1) Total annual gross income shall be based on income received during the twelve (12) months preceding the month of application with adjustments for projected changes in income as appropriate;

(2) Hospitals may require submission of tax returns, pay stubs, employer statements, and similar documents to verify income;

(3) Upon verification that income will increase or decrease, the anticipated income shall be used;

(4) The gross income or adjusted gross income for self-employment shall be used; the adjusted gross income shall be determined by allowing work expense deductions that are directly related to producing the goods or services and without which the goods or services could not be produced;

(5) Income of all family unit members, including ineligible members, shall be considered and compared to the appropriate KHCP family size;

(6) Parental income shall not be considered in eligibility determinations for children age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;

(7) A legal guardian's income shall be considered in determining eligibility for children living in the same household as the legal guardian until the child reaches the age of eighteen (18);

(8) A grandparent's income shall not be considered for grandchildren living with the grandparent (but not also living with the minor parent) unless the grandparent is the legal guardian; and

(9) Income from a common law spouse living in the same household shall be considered. (Common law marriages shall be recognized if that marriage was recognized in other states or the couple has held themselves out to that community as married); and

(10) State supplemental payments to individuals in personal care homes shall be excluded from consideration].

Section 7. Resource Considerations. (1) (Resources shall not be considered in determining KHCP eligibility for the period of July 1, 1993, through January 31, 1994;

(2) Effective for determinations of eligibility for the period beginning on February 1, 1994, and ending on April 15, 1994 the following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments, but not including real or personal property including jewelry, household goods, clothing, buildings, land, businesses, and professional practices) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member;

(3) Effective for determinations of eligibility for periods beginning on or after April 16, 1994] The following provisions shall be applicable with regard to the computation of allowable resources:

(a) The following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member;

(b) A homestead, household goods, and personal property including jewelry, clothing, and other items of a personal nature shall be excluded from consideration;

(c) Equity of \$6,000 in income producing nonhomestead real property, business or nonbusiness, essential for self-support shall be excluded from consideration;

(d) Equity of \$4,500 in automobiles shall be excluded from consideration;

(e) Burial reserves of up to \$1,500 per individual, burial spaces including the plot, casket, vault, and items of a similar nature, and irrevocable prepaid burial plans, contracts and burial trusts shall be excluded from consideration;

(f) The value of excludable assets in excess of excluded amounts shall be added to liquid assets for comparison against the liquid asset upper limits; and

(g) Other assets not excluded or within the upper limits shall be added to liquid assets for comparison against the liquid asset upper limits.

(2) [(4)] Resources above the allowable amounts shall result in ineligibility for benefits under KHCP, but only to the extent that liquid resources exceed the allowable upper limits; this means that liquid resources can be reduced by incurred medical expenses (spent down) to establish eligibility. For example, if an otherwise eligible individual with \$2,300 in liquid assets is hospitalized, he shall [would] become eligible for KHCP coverage after receiving \$300 in billable services.

Section 8. Verification Requirements. Except as specified in Section 2 [3] of this administrative regulation, the cabinet shall require verification in accordance with the following in eligibility determinations (although verification of residency may be requested [should be accomplished] in questionable situations):

(1) Income verification for all family unit members shall be required for inpatient hospital admissions and major outpatient procedures or services;

(2) Verification shall be required every six (6) months, or more frequently at the option of the hospital, unless the family unit's income has increased;

(3) If the family unit's income has increased, the hospital [shall not be required but] may require verification of income if the newly reported income exceeds the KHCP income limits;

(4) If the family unit alleges zero income, verification may be [obtained or at the option of the hospital] waived;

(5) Income and resource verification may be waived at the option of the hospital for minor outpatient procedures or services;

(6) Self-support verification for children under age twenty-one (21) not living with parents and who attend college or a similar type of higher education facility shall be required; and

(7) Applicants for KHCP benefits must provide requested information within ten (10) days unless this requirement is waived by the hospital.

Section 9. Medicaid Covered Services. (1) (Dual Eligibility. The individual or family unit may be referred to apply for Medicaid benefits;

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The following provisions shall be applicable for dual eligibility:

(1) An individual may be KHCP eligible and simultaneously determined Medicaid eligible. An individual may apply for ongoing Medicaid and KHCP eligibility concurrently.

(2) An individual may apply for both KHCP and Medicaid spend down eligibility.

(3) For Medicaid spend down eligibility any hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spend down eligibility.

(4) Individuals who are eligible as qualified Medicare beneficiaries (QMBs) only recipients may apply for KHCP eligibility.

(5) An individual may apply for both KHCP and SSI Medicaid benefits.

(6) If an individual or family unit is subsequently approved for Medicaid [or QMB] benefits during a period of KHCP eligibility, the hospital may bill the Medicaid Program in accordance with Medicaid policy established [shown] in 907 KAR 1:013 and 907 KAR 1:015 provided the hospital reports the KHCP adjustment prior to billing the Medicaid Program.

(2) For Medicaid spend down eligibility any hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spend down eligibility.

Section 10. Fair Hearing. (1) An applicant may request a fair hearing on his KHCP eligibility determination within thirty (30) days of the denial or approval date.

(2) Each hospital shall be responsible for conducting hearings to determine if KHCP eligibility was determined correctly and for correcting any errors in KHCP eligibility which have been made.

(3) The hearings shall be conducted by impartial hospital staff not involved in the KHCP eligibility determination.

(a) Hearings shall be conducted within thirty (30) days of the date of the hearing request.

(b) During the hearing:

1. The appellant shall be provided an opportunity to review evidence against him;

2. To cross-examine witnesses against him;

3. To present evidence in his behalf; and

4. To be represented by counsel.

(c) Hospital decisions regarding the hearing shall be rendered within fourteen (14) days of the hearing and a copy of the decision provided to the KHCP applicant and the Department for Medicaid Services.

(d) The hearing process may be terminated at any time a corrected decision of KHCP eligibility is made in favor of the potential KHCP recipient with appropriate notice of KHCP eligibility and termination of the hearing process required.

(e) Further appeal may be to the local court having [competent] jurisdiction.

(2)(a) If a hospital contests medical necessity [whether] before or after the fact for a KHCP eligible person or for a Medicaid recipient with regard to additional days of inpatient coverage, the Medicaid [Peer Review Organization] PRO shall be contacted by the hospital for a determination of the appropriateness of the service using Medicaid standards of medical necessity;

(b) The decision of the PRO shall be binding upon the hospital for KHCP purposes.

(c) It shall be the PRO's responsibility to advise the hospital, the KHCP or Medicaid recipient, and the recipient's physician, in writing, of the PRO's decision.

(d) If the KHCP or Medicaid recipient is dissatisfied with the decision of the PRO, he may appeal the decision in accordance with 907 KAR 1:563, [904-KAR 2:055.]

Section 11. Benefits. Benefits under KHCP shall be as follows:

(1) Medicaid recipients shall receive any necessary days of coverage for hospital stay as specified in KRS 205.640;

(2) [Except for nonemergency care rendered in the emergency room,] KHCP recipients, including individuals with a pending KHCP application, shall not be billed for hospital services provided by Medicaid participating hospitals in accordance with KRS 205.640.

Section 12. Incorporation by Reference. (1) The Kentucky Hospital Care Program (KHCP) Manual, December, 1998 edition is incorpo-

rated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [otherwise specified, the provisions of this administrative regulation shall be applicable for determinations of eligibility made, and services provided, on or after April 16, 1993 except that the Medicaid Program shall also recognize and accept determinations of eligibility made under the previous program guidelines for the period of July 1, 1993 through April 15, 1994.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: approximately 115 hospitals and the indigent citizens they serve.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: Expenditures for this program are limited at the federal and state levels. These limits are likely to be met during FY 1999; therefore, expenditures should not increase due to this amendment.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Expenditures for this change have been examined and they are budget neutral.

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

- (b) Kentucky: No public comments were received.
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment should provide hospital services to an increased number of indigent Kentuckians.
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: Yes
 - (c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Kentucky's indigent population by not providing access to hospital services.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

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

907 KAR 3:005. Physicians' services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 42 CFR 440.50, 415.152, 415.174, 415.184 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically

needy and the medically needy. [~~This administrative regulation is not the same as the administrative regulation 907-KAR-1:009 found deficient and is substantially different since it no longer contains the provision(s) found deficient.~~]

Section 1. Physicians' Services. (1) Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, nursing facility or elsewhere.

(2) An exception to the physician's physical presence requirement shall be made in an instance in which a service is furnished by a resident under the medical direction of a teaching physician in accordance with 42 CFR 415.152, 415.174 and 415.184.

(3) A physician assistant shall be considered the agent of a supervising physician with regard to coverage of a practice-related activity performed within his scope of certification in accordance with 201 KAR 9:175.

(4) For purposes of the Medicaid Program, an oral surgeon [surgeons] shall be treated in the same manner as a physician [physicians] with regard to coverage for services within his [their] scope of licensed practice, and the term "physician" shall be construed to include an oral surgeon [surgeons] unless the context in which it is used is to the contrary.

(5) All services which are medically necessary, appropriate and related to the diagnosis and treatment of illness or injury shall be covered with the exception of those services established in Section IV, F, of the Physician's Manual incorporated by reference in this administrative regulation. [(3) Covered physicians' services and service limitations are shown in the Physician Manual.]

Section 2. [~~Physicians Manual.~~] (1) ~~The Physician Manual specifies the conditions for participation, services covered, and limitations for the physicians' services component of the Medicaid Program. "The Physician Manual", revised December 1995, shall be incorporated by reference in this administrative regulation.~~

(2) ~~The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.~~

(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 time), excluding state holidays.~~

(4) ~~Copies may be obtained from the Department for Medicaid upon payment of an appropriate fee in accordance with KRS 61.872.~~

Section 3. ~~Additional Limitations.~~ (1) A patient placed in "lock-in" status due to over-utilization shall receive services only from his lock-in provider except in the case of emergency or if he receives a referral from his lock-in provider.

(2) Laboratory procedures.

(a) A laboratory procedure [procedures] performed in a [the] physician's office shall be limited to a procedure for which the physician has been certified under the Clinical Laboratory Improvement Amendment (CLIA) in accordance with KRS 205.520. [~~these procedures listed on the Department for Medicaid Services physician laboratory benefit schedule.~~]

(b) The professional component of a physician laboratory procedure [procedures] performed by a board certified pathologist [pathologists] in a hospital setting or an outpatient surgical clinic shall be covered if the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(3) The cost of a preparation [preparations] used in an injection [injections] shall not be considered a covered benefit, except as specified in Section IV.13 of the Physician Manual.

(4) A telephone contact with a patient [Telephone contacts with patients] shall not be considered a covered benefit.

(5) A service [Services] performed or a recipient contact [recipient contacts] made exclusively by a nurse or another physician's employee [physician assistants, nurses, or other physician's employees] shall not be covered under the physicians' services component.

Section 3. Material Incorporated by Reference. (1) The "Physician Manual", December 1998 edition, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the

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Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 406021, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after April 15, 1996.]

DENNIS BOYD, Commissioner
JOHN MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: all Medicaid recipients and physicians enrolled in the Medicaid Program.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: budget neutral

2. Continuing costs or savings: budget neutral

3. Additional factors increasing or decreasing costs: 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. State revenues will come from funds already allocated to the Physicians' Services Program.

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

Promulgation of this regulation will result in an increase in availability of EPSDT services due to the increased reimbursement levels. Access to physician assistants will result in increased availability of Medicaid covered services. Services rendered by primary care physicians to Medicaid recipients will improve through the use of a current and complete physicians' manual.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to promulgate this administrative regulation will result in a continued decrease in availability of EPSDT services. Failure to update the Physicians' manual will result in inadequate health care being provided by primary care physicians.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. It will not affect any part of local government.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

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

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.550

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 42 CFR 440.50, 447 Subpart B, 42 USC 1396a, b, c, d, s [a-d, 1396s, EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method of reimbursement [for establishing reimbursements] for physicians' services. [This administrative regulation is not the same as the administrative regulation 907 KAR 1:010 found deficient and is substantially different since it no longer contains the provisions found deficient.]

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Resource-based relative value scale (RBRVS) unit" means [is] a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service which takes into consideration the physicians' work, practice expenses, liability insurance, and a geographic factor based on the prices of staffing and other resources required to provide the service in an area relative to national average price.

(3) "Usual and customary charge" is [means as] defined in 907 KAR 1:002.

(4) "EPSDT" means early and periodic screening, diagnosis, and treatment.

(5) "Screening" means the review of the health and health-related condition of a recipient by a physician to determine if any further diagnosis or treatment is needed.

Section 2. Reimbursement. (1) Except as specified in Section 3 of this administrative regulation, payment for a covered physician's service [covered physicians' services] shall be based on the physician's [physicians'] usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid Fee Schedule developed from a resource-based relative value scale (RBRVS). If there is not an [no] RBRVS based fee the department shall set a reasonable fixed upper limit for the procedure consistent with the general rate setting methodology. Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation [(if any)] due to consideration of other factors (such as recipient access) shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limit. [(a)] The dollar conversion factors [effective for the period ending June 30, 1996 shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except delivery-related)	\$25.15
All Other Services	\$25.80

[(b)] The dollar conversion factors effective for the period beginning on July 1, 1996 shall be as follows:

Types of Service	Kentucky Conversion Factor
Deliveries	Not Applicable
Anesthesia (except Delivery-related)	\$29.02
All Other Services	\$29.67

Section 3. Reimbursement Exceptions. The following [covered services—which are] reimbursement exceptions are established [shown] in the Physicians Manual [which is incorporated by reference in 907 KAR 3:005].

(1) Physicians may [shall be allowed to] secure drugs for specified immunizations identified in 907 KAR 3:005 as follows:

(a) Free through the Vaccines for Children Program in accordance with the terms, standards, and criteria described in 42 USC 1396(a) (62) and 1396s; or

(b) In the open market. The Department for Medicaid Services shall reimburse the physician the same amount that the Department for Public Health would pay to obtain that drug.

(2)(a) A payment [Payments] for the following specified obstetrical services, shall be reimbursed the lesser of:

1. The actual billed charge; or
2. [at] The standard fixed fee paid by type of procedure.
- (b) The obstetrical services and fixed fees are [shall be]:
 1. Vaginal delivery only, \$870;
 2. Vaginal delivery including postpartum care, \$900;
 3. Cesarean delivery only, \$870; and
 4. Cesarean delivery including postpartum care, \$900.

(3)(a) For delivery-related anesthesia services, a physician shall be reimbursed the lesser of:

1. The actual billed charge; or
2. A standard fixed fee paid by type of procedure.

(b) Delivery-related anesthesia [Those] procedures and standard fixed fees are [shall be]:

1. Vaginal delivery, \$200;
2. Epidural single, \$315;
3. Epidural continuous, \$335; and
4. Cesarean section, \$320.

(4) Payment for an individual [individuals] eligible for coverage under Medicare Part B shall be [is] made in accordance with the individual's Medicare deductible and coinsurance liability.

(5) A family practice physician [physicians] practicing in a geographic area [areas] with no more than one (1) primary care physician per 5,000 population, as reported by the United States Department of Health and Human Services, shall be reimbursed at the physician's usual and customary actual billed charge [charges] up to 125 percent of the fixed upper limit per procedure established by the department.

(6) A physician laboratory service [services] shall be reimbursed based on the Medicare allowable payment rate [rates]. For a laboratory service [services] with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charge [charges].

(7) A procedure [Procedures] specified by Medicare and published annually in the Federal Register [and] which is [are] commonly performed in the physician's office shall be:

(a) Subject to outpatient limits if provided at an alternative site; [sites] and

(b) Shall be paid an adjusted rate [rates] to take into account the change in the usual site of service.

(8) A payment [Payments] for the injection procedure for chemo-nucleolysis of intervertebral disk[(s)], lumbar shall be established by the department as the lesser of:

- (a) The actual billed charge; or
- (b) [at] A fixed upper limit of \$793.50 [as established by the department].

(9) Certain injectable antibiotics and antineoplastics, and contraceptives shall be reimbursed at the lesser of:

- (a) The actual billed charge; or
- (b) [at] The average wholesale price of the medication supply minus ten (10) percent.

(10) Specified family planning procedures performed in the physician office setting shall be reimbursed at the lesser of:

- (a) The actual billed charge; or
- (b) The established RBRVS fee plus actual cost of the supply minus ten (10) percent.

(11) For a practice-related service provided by a physician assistant, the participating physician shall be reimbursed at the usual and customary actual billed charge up to the fixed upper limit per procedure established by the Department for Medicaid Services at seventy-five (75) percent of the physician's fixed upper limit per

procedure.

(12) Reimbursement rates for a screening service provided to a recipient under the age of twenty-one (21) shall be in accordance with the following:

(a) For a complete screening, which shall include all items or procedures listed in 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) dollars per recipient screened;

(b) For a complete screening for the fifth and 12th years, the fee shall be ninety (90) dollars per recipient screened;

(c) For a partial screening, which shall include at least a health history and unclothed physical examination, the fee shall be thirty (30) dollars per recipient screened; and

(d) 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, the fee shall be forty (40) dollars per recipient screened; and

(e) For an interperiodic screen, which shall be 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

(f) The preestablished fees payable shall not exceed the usual and customary charge of the provider for the service.

[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after April 15, 1996 except as otherwise specified.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All physicians enrolled in the Medicaid Program.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: 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. State revenues will come from funds already allocated for the physicians' program.

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: 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: Updating the reimbursement schedule for physicians will increase recipients' access to Medicaid-covered services.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to promulgate this administrative regulation would result in a continued decrease in Medicaid-covered EPSDT services being rendered by primary care physicians due to the physicians feeling that the reimbursement rates were too low.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the

local government or only a part or division of the local government. It will not affect any part of local government.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

CABINET FOR HEALTH SERVICES

Department for Mental Health/Mental Retardation Services Division for Administration (Amendment)

908 KAR 3:050. Per diem rate pursuant to the "Patient Liability Act of 1978".

RELATES TO: KRS 210.700 to 210.760

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194A.210; 210.720 to 210.760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) directs the Secretary of the Cabinet for Health Services to establish [Human Resources to fix] the patient cost per day for board, maintenance and treatment for each facility operated by the cabinet at frequent intervals which shall be the uniform charge for [all] persons receiving such services. KRS 194A.050 empowers the secretary to promulgate administrative regulations. [The function of] This administrative regulation establishes [is to fix] the patient cost per day for board, maintenance and treatment at facilities operated by the cabinet.

Section 1. Facilities with an All-inclusive Per Diem Rate. The following facility shall charge [be on] an all-inclusive per diem rate for room and board and ancillary services. Physician services shall be charged on an individual basis as utilized:

Facility	Rate
Eastern State Hospital	\$450

Section 2. Facilities with a Routine Service Charge Per Diem with Separate Charges for Treatment Services on an Individual Basis.

(1) The following facilities shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided:

Facility	Rate
Central State Hospital	\$400
Central State - ICF/MR	385
Western State Hospital	375
Western State Nursing Facility	155
Outwood ICF/MR	200
Oakwood	200
Hazelwood Center	260
Glasgow State Nursing Facility	160
Del Maria	375
Meadows	325
Windsong	310
Volta House	125

(2) A separate charge shall be imposed if the following [the] treatment services are provided [furnished and/or available] at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section [Facilities shall be]:

- (a) Physicians services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy; [and]

- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia; and
- (n) Electroshock therapy.

Section 3. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be fixed using the last available audited third party cost report increased for inflation. [~~(Medicare and Medicaid) trended and indexed for inflation for subsequent years. The basis for trending and indexing shall be current Data Resources Inc. Index for hospitals and intermediate care facilities.~~] Current rates shall be posted at each facility [and shall be available for public inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services].

ELIZABETH REHM WACHTEL, Commissioner
JOHN H. MORSE, Secretary
JOHN WALKER, Attorney

APPROVED BY AGENCY: November 11, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Thursday, January 21, 1999 at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Wednesday, January 13, 1999, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Hiren Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (FAX).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Littlefield

(1) Type and number of entities affected: 13 state treatment facilities

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Each facility is required to change charge rates in its computer billing system.

(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: 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:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method is permitted by the statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will result in the continuing availability of the current level of services.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administration will result in a reduction of third party revenue.

(c) If detrimental effect would result, explain detrimental effect: A reduction in third party revenue would result reduction of services.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions? There is no conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not appropriate because all facility rates are set based on actual cost.

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, DECEMBER 15, 1998

REVENUE CABINET
Department of Law
Division of Tax Policy
(New Administrative Regulation)

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

RELATES TO: KRS 138.450 through 138.470

STATUTORY AUTHORITY: KRS Chapter 13A, 131.130, 138.460

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 74 enacted by the 1998 Kentucky General Assembly made significant changes in the valuation of motor vehicles for motor vehicle usage tax. KRS 138.460, as amended and effective August 1, 1998, authorizes the Revenue Cabinet to promulgate administrative regulations prescribing documentation necessary to carry out the provisions of HB 74. KRS 131.130(1) authorizes the cabinet to make administrative regulations for the administration of all tax laws. This administrative regulation establishes the form and procedures required for the implementation of House Bill 74 and replaces emergency administrative regulation 103 KAR 44:060E.

Section 1. Definition. "Gift" means the transfer of a motor vehicle from one (1) party to another for no consideration or nominal consideration.

Section 2. The following special valuation procedures are prescribed:

(1) For purposes of establishing retail price for used motor vehicles when a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be the average retail value as listed in the appropriate automotive reference manual prescribed in Section 3 of this administrative regulation.

(2) For purposes of establishing retail price for used motor vehicles whose values do not appear in the automotive reference manuals prescribed by the cabinet, and when a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be determined by the cabinet.

(3) For purposes of establishing retail price for motor vehicles previously registered in another state or country by nonresident military personnel who choose to register a vehicle in Kentucky, retail price shall be the average trade-in value from the appropriate primary automotive reference manual prescribed in Section 3 of this administrative regulation.

(4) For purposes of establishing retail price for used motor vehicles being registered by a new resident for the first time in Kentucky, the prescribed automotive reference manual(s) shall be the primary reference manual(s) prescribed in Section 3 of this administrative regulation.

(5) For purposes of establishing retail price for used vehicles of the current model year for which an average retail value has not been published in one of the reference manuals prescribed by the cabinet, retail price shall be eighty-five (85) percent of the manufacturer's suggested retail price (MSRP), including the MSRP of all equipment and accessories, standard and optional, and destination charges.

Section 3. The following automotive reference manuals are prescribed for the valuation of the motor vehicles contained therein for motor vehicle usage tax, listed in order of prescribed use:

(1) Automobiles and light trucks:

(a) NADA Official Used Car Guide® (Primary Source);

(b) NADA Official Older Used Car Guide (Primary Source);

(c) NADA Classic Collectible and Special Interest Car Appraisal Guide (Secondary Source).

(2) Other trucks: NADA Official Commercial Truck Guide® (Primary Source).

(3) Miscellaneous vehicles:

(a) NADA Recreational Vehicle Appraisal Guide (Primary Source);

(b) NADA Van/Truck Conversion and Limousine Appraisal Guide (Primary Source);

(c) NADA Motorcycle/Snowmobile/ATV/Personal Watercraft Appraisal Guide (Primary Source).

(4) General use: Automotive Invoice Service New Car Cost Guide (Primary Source).

Section 4. When an affidavit of total consideration given is not available and a retail price based on MSRP is prescribed by statute, a copy of the window sticker or other documentation from the manufacturer showing MSRP and listing the base price, all equipment and accessories, standard and optional, and transportation charges shall be provided to the county clerk when a new automobile is presented for registration. An itemized statement showing the MSRP of any additional equipment and accessories installed by the dealer and not reflected on the window sticker shall also be provided to the county clerk. In the event the manufacturer's documentation does not include complete MSRP information, the cabinet shall obtain such information from available sources. In the absence of MSRP information on the manufacturer's invoice to the dealer, the dealer shall provide the county clerk a copy of the manufacturer's invoice and, in addition, provide an itemized list of all equipment and accessories whether installed by the manufacturer or dealer, plus transportation charges. Taxable valuation shall then be determined through the use of MSRP information provided in the price reference manual prescribed in Section 3 of this administrative regulation, or other source available to the cabinet.

Section 5. Incorporation by Reference. (1) Revenue Form 71A100, Affidavit of Total Consideration Given for a Motor Vehicle, October 1998 edition, is incorporated by reference.

(2) Revenue Form 71F001, Kentucky's Taxation of Motor Vehicles for Motor Vehicle Usage Tax, December 1998 edition is incorporated by reference.

(3) This form may be inspected, copied, or obtained at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH JANE SCHAAF, Secretary

ALEX W. ROSE, Commissioner

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this proposed regulation shall be held on January 29, 1999 at 10 a.m. in Training Room A, 200 Fair Oaks Lane, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 1999 of their intent to attend. If no notification of intent to attend the hearing is received by January 22, 1999, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Edward A. Mattingly, Tax Consultant, Division of Tax Policy, Revenue Cabinet, Third Floor, 300 Fair Oaks Lane, Frankfort, Kentucky 40601, (502) 564-6843, extension 4431, FAX (502) 564-9565, EMAIL emattingly@mail.state.ky.us.

REGULATORY IMPACT ANALYSIS

Contact Person: Edward A. Mattingly

(1) Type and number of entities affected: County clerks in all Kentucky counties will be affected by this regulation. All Kentucky sellers and buyers of motor vehicles will be affected by this regulation. There are approximately 3,200 motor vehicle dealers in Ken-

tucky who will be affected by this regulation. Motor vehicle dealers and other sellers outside Kentucky who sell to Kentucky residents will also be affected by this regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Although almost every adult in Kentucky can be affected by the provisions of this regulation, since the purpose of the regulation is to clarify statutory language, prescribe reference manuals and reference a form required by the statute, there should be no impact on the cost of living or employment in the affected area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The statutory change necessitating this regulation will result in a tax reduction of approximately 6 million dollars. 2 million dollars of that amount will benefit purchasers of large trucks. This should benefit businesses across the state and could encourage interstate carriers to relocate in Kentucky. The statute change may also increase automobile sales in Kentucky.

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

1. First year following implementation: County clerks and some motor vehicle dealers will incur slight costs in reprogramming computer print programs to accommodate the new affidavit. Some county clerks and dealers will incur cost if they choose to subscribe to additional reference manuals.

2. Second and subsequent years: Some county clerks and dealers will continue to incur costs if they choose to subscribe to additional reference manuals.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Revenue Cabinet will incur additional printing costs of approximately \$100,000 in the first year. Costs to modify mainframe computer programs are expected to be approximately \$20,000. Training cost to the cabinet will be approximately \$5,000 in the first year. Educational materials will cost the cabinet approximately \$3,000 the first year. There should not be additional cost to the cabinet for reference manuals. Although the regulation prescribes manuals not presently in use, the use of affidavits will enable the cabinet to reduce the number of total subscriptions.

2. Continuing costs or savings: The ongoing printing costs to the cabinet will be approximately \$100,000 per year. Educational materials will cost approximately \$2,000 per year. There should not be additional cost to the cabinet for reference manuals. Although the regulation prescribes manuals not presently in use, the use of affidavits will enable the cabinet to reduce the number of total subscriptions. Additional compliance costs to the cabinet should be approximately \$60,000 per year.

3. Additional factors increasing or decreasing costs: There are no additional factors which would affect costs.

(b) Reporting and paperwork requirements: There are no additional requirements.

(4) Assessment of anticipated effect on state and local revenues: The statutory change will reduce state road fund revenue approximately six million dollars annually. Three percent of that amount would have been retained by the county clerks. A portion of that would have ultimately been received by the county fiscal court. If the new valuation procedure is not adequately complied, these numbers could substantially increase.

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

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

(a) Geographical area in which administrative regulation will be implemented: Some automobile dealers believe that the statutory valuation procedure change will stimulate automobile sales and partially offset lower valuations.

(b) Kentucky: Some automobile dealers believe that the statutory valuation procedure change will stimulate automobile sales and

partially offset lower valuations.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 138.460 requires the cabinet to designate a reference manual value to be used in the event an affidavit of total consideration signed by the buyer and seller is not available. The cabinet chose average retail value. Average trade-in was rejected because the cabinet believes the intent of the General Assembly was for the valuation system to be based on total consideration given. Reference manual values are prescribed only in the event an affidavit is not available. Designation of average retail value will encourage use of affidavits as most vehicles sell for less than average retail value. Generally, vehicles sell for more than average trade-in value. Therefore, designating average trade-in value would undermine the affidavit system by providing a desirable alternative to paying tax on the amount paid for the vehicle. The cabinet believes average trade-in would have been prescribed by statute instead of the affidavit system had that been the intent of the General Assembly.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be no effects on public health or the environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not implementing this regulation would not effect public health or the environmental welfare.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied. The requirements of this regulation apply to every motor vehicle buyer and seller.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect: All county clerk offices will be affected.

3. State the aspect or service of local government to which this administrative regulation relates: County clerks are responsible for titling and registering motor vehicles. Motor vehicle usage tax is collected at the time a vehicle is registered in Kentucky for the first time and when a vehicle previously registered is transferred.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. The clerks receive a three percent commission for providing this service. The statute change is projected to result in a revenue decrease to the road fund of approximately six million dollars annually. Consequently, statewide clerk offices would see a decrease in commission of approximately \$180,000. Although the Revenue Cabinet attempts to provide an adequate supply of prescribed reference manuals to county clerk offices, there may be additional costs to those county clerks who choose to subscribe to additional prescribed reference manuals. County clerks will incur slight one time costs in reprogramming computer print programs to accommodate the new affidavit.

Expenditures (+ \$10,000)

Revenues (- \$180,000)

KENTUCKY REAL ESTATE COMMISSION
(New Administrative Regulation)

201 KAR 11:410. Broker duties pursuant to designated agency.

RELATES TO: KRS 324.160(3)

STATUTORY AUTHORITY: KRS 324.282

NECESSITY, FUNCTION, AND CONFORMITY: To inform and set certain standards for real estate licensees and to protect the consumer public.

Section 1. (1) "Designated agency" means the creation of a fiduciary relationship by a principal broker appointing himself or herself or appointing an affiliated licensee(s) to act as an agent for a seller or buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker. A consumer must consent in writing to the designation of agency and be notified at the time of appointment in order for designated agency to be created.

(2) "Confidential information" means information provided by seller(s) or prospective purchaser(s) of real estate to his or her agent describing or affecting the sellers' or buyers' negotiation or bargaining position or motivation, but does not include information that is required by law to be disclosed or information that if not disclosed or information that if not disclosed would constitute fraud or dishonest dealings.

Section 2. A principal broker who appoints himself or herself or a licensee with whom he or she is associated to act as an agent for a seller or buyer or prospective buyer to the exclusion of all other licensees associated with the principal broker shall:

(1) Require that all documents containing confidential information relating to any client be kept in individual files and maintained by the designated agent and by the principal broker unless the principal broker is acting as a designated agent in the transaction, in which case the non principal-broker designated agent shall maintain the file without access by the principal broker, and such files shall not be accessible to other licensees except as necessitated by KRS 324.160(3) and subsection (8) of this section.

(2) Establish adequate systems and take reasonable care to maintain confidentiality of client information distributed or received.

(3) Prohibit assistants of licensees that have been designated to represent different clients in the same transaction from assisting more than one (1) designated licensee in that transaction.

(4) Prohibit discussions between designated agents and clients concerning confidential information of the client within the office unless the conversation occurs in an environment which allows appropriate privacy.

(5) Notify clients of designated agents immediately if the principal broker becomes aware of any unauthorized or inadvertent disclosure of the clients' confidential information to another.

(6) Require a licensee to disqualify himself from being appointed as a designated agent for a party if the agent has received confidential information concerning the other party to the transaction.

(7) Not designate themselves as designated agent in an in-house transaction unless the principal broker has sufficient personnel and other resources to exercise adequate supervision over the other designated agent and to maintain office files in conformance with the law.

(8) Create reasonably necessary office systems to prevent office personnel and clerical staff's disclosure of client confidential information.

(9) Take other reasonably necessary steps to require designated agents act in the proper fiduciary capacity towards clients.

(10) Take other reasonably necessary steps to require non-licensee office personnel act in the proper manner toward principals of the firm's licensees.

BETTY J. KAISER, Chairperson

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: November 19, 1998

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

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on January 22, at 10 a.m., at the Kentucky Real Estate Commission, Hearing Room, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 1999, 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 the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jeffrey C. Blair, Attorney for the Commission, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Phone; (502) 425-4273, Facsimile; (502) 426-2717.

REGULATORY IMPACT ANALYSIS

Contact person: Jeff Blair

(1) Type and number of entities affected: Affects all licensees utilizing designated agency and consumers in the state of Kentucky.

(2) Direct and in direct costs or savings on the:

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

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

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

1. First year following implementation: No effect.

2. Second and subsequent years: No effect.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No cost reduction.

2. Continuing costs or savings: No cost reduction.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No effect.

(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: Not applicable.

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

(a) Geographical area in which administrative regulation will be implemented: No impact.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect.

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(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: This regulation is implemented as an emergency regulation in order to fully comply with the statutory changes brought about by House Bill 670 and will be replaced by an ordinary administrative regulatory amendment.

(11) TIERING: Tiering is not applicable. No disproportionate impact on any class of regulated entities will result. None of the methods listed in KRS 13A.210(2) are applicable to this regulation. The size and non-size variables listed in KRS 13A.210(3) are also not applicable to this regulation. As no tier modification is utilized in this regulation, the variables to be monitored in KRS 13A.210(4) are not applicable. This regulation does not affect small business concerns mentioned in KRS 13A.210(5).

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(New Administrative Regulation)

301 KAR 2:226. Youth waterfowl hunting season.

RELATES TO: KRS 150.010(40), 150.025(1), 150.305(1), 150.330, 150.340(1), (3), 150.600(1), 150.990, 50 CFR Parts 20, 21
STATUTORY AUTHORITY: KRS 150.025(1)(a)(b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.600(1) authorize the department to establish statewide waterfowl hunting requirements. This administrative regulation establishes a special waterfowl hunting day for young hunters.

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

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

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

Section 2. A youth:

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

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

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

(1) Shall:

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

(b) Not hunt waterfowl;

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

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

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 27, 1999 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 January 20, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm

Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

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

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

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

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

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

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

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no effect on state or local revenues.

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

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

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

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

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect.

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

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

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 50 CFR Parts 20 and 21, Federal Register, Vol. 63, No. 167/Friday, August 28, 1998.
2. State compliance standards. State seasons and bag limits are within the federal frameworks.
3. Minimum or uniform standards contained in the federal mandate. The federal waterfowl frame work allows states to establish one day of youth waterfowl hunting on either a Saturday, Sunday, or holiday.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)**

401 KAR 68:010. General provisions.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.1 to 68.15, 42 USC 7412(r)
 STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.1 to 68.15, 42 USC 7412(r)
 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 the general provisions for the federal program for chemical accident prevention and risk management.

Section 1. Definitions. (1) "Administrator," as used in 40 CFR 68.3, means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. Incorporation by Reference. (1) 40 CFR 68.1 to 68.15 (40 CFR Part 68, Subpart A), "General," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal general provisions, 40 CFR 68.1 to 68.15, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants which are subject to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.1 to 68.15. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.1 to 68.15. The adoption of the federal regulation is necessary for Kentucky to receive delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.1 to 68.15, contains general provisions for major sources of hazardous air pollutants which are subject to the requirements of 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this ad-

ministrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 68:020. Hazard assessment.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.20 to 68.42, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.20 to 68.42, 42 USC 7412(r)

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 the hazard assessment provisions pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Incorporation by Reference. (1) 40 CFR 68.20 to 68.42 (40 CFR Part 68, Subpart B), "Hazard Assessment," as published in the Code of Federal Regulations, 40 CFR Part 63 to 71, 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal hazard assessment provisions, 40 CFR 68.20 to 68.42, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants which are subject to the hazard assessment requirements pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.20 to 68.42. The administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.20 to 68.42. The adoption of the federal regulation is necessary for Kentucky to receive delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.20 to 68.42, provides the criteria for the hazard assessment for major sources of hazardous air pollutants which are subject to 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 68:048. Program 2 prevention program.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.48 to 68.60, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.48 to 68.60, 42 USC 7412(r)

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 the Program 2 process requirements pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Incorporation by Reference. (1) 40 CFR 68.48 to 68.60 (40 CFR Part 68, Subpart C), "Program 2 Prevention Program," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal requirements for the Program 2 Prevention Program, 40 CFR 68.48 to 68.60, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants subject to the requirements of the Program 2 prevention program pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.48 to 68.60. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.48 to 68.60. The adoption of the federal regulation is necessary for Kentucky to receive delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.48 to 68.60, contains the provisions for major sources of hazardous air pollutants which are subject to the requirements of the Program 2 prevention program pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

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.

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

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 68:065. Program 3 prevention program.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.65 to 68.87, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.65 to 68.87, 42 USC 7412(r)

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 the Program 3 prevention program requirements pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Incorporation by Reference. (1) 40 CFR 68.65 to 68.87 (40 CFR Part 68, Subpart D), "Program 3 Prevention Program," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, 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 avail-

VOLUME 25, NUMBER 7 – JANUARY 1, 1999

able 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal requirements for the Program 3 Prevention Program, 40 CFR 68.65 to 68.87, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants subject to the requirements of the Program 3 prevention program pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local reve-

nues:

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 68.65 to 68.87. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.65 to 68.87. The adoption of the federal regulation is necessary for Kentucky to receive delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.65 to 68.87, contains the provisions for major sources of hazardous air pollutants which are subject to the requirements of the Program 3 prevention program pursuant to the federal program for accident prevention and risk assessment as described in 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 68:090. Emergency response.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.90 to 68.95, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.90 to 68.95, 42 USC 7412(r)

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 emergency response requirements pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Incorporation by Reference. (1) 40 CFR 68.90 to 68.95 (40 CFR Part 68, Subpart E), "Emergency Response," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal emergency response requirements, 40 CFR 68.90 to 68.95, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants subject to the emergency response plan requirements pursuant to the federal program for accident prevention and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are

no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.90 to 68.95. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.90 to 68.95. The adoption of the federal regulation is necessary for Kentucky to receive delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.90 to 68.95, contains the provisions and requirements for the development and implementation of the emergency response program for major sources which are subject to the federal program for accident prevention and risk management as described in 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. The administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 68:100. Regulated substances for accidental release prevention.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.100 to 68.130, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.100 to 68.130, 42 USC 7412(r)

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 provides the listing of substances under 42 USC 7412(r)(3), (4), and (5); the identification of threshold quantities for these substances; and the process for amending that list, pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Definitions. "Administrator," as used in 40 CFR 68.120, means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. Incorporation by Reference. (1) 40 CFR 68.100 to 68.130 (40 CFR Part 68, Subpart F), "Regulated Substances for Accidental Release Prevention," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, 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 Fri-

day, 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal requirements for regulated substances for accidental release prevention, 40 CFR 68.100 to 68.130, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants which are subject to the requirements for regulated substances for accidental release prevention pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

(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, includ-

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.100 to 68.130. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.100 to 68.130. The adoption of the federal regulation is necessary for Kentucky to receive the delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.100 to 68.130, contains the listing of substances under 42 USC 7412(r)(3), (4), and (5); the identification of threshold quantities for these substances; and the process for amending that list, pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET**
Department for Environmental Protection
Division for Air Quality
(New Administrative Regulation)

401 KAR 68:150. Risk management plan.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.150 to 68.190, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.150 to 68.190, 42 USC 7412(r)

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

requirements for submission of a risk management plan (RMP) pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Incorporation by Reference. (1) 40 CFR 68.150 to 68.190 (40 CFR Part 68, Subpart G), "Risk Management Plan," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal requirements for the risk management plan, 40 CFR 68.150 to 68.190, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants which are subject to the requirements for the risk management plan pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.150 to 68.190. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.150 to 68.190. The adoption of the federal regulation is necessary for Kentucky to receive the delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.150 to 68.190, contains the requirements for submission of a risk management plan pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 68:200. Recordkeeping.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.200 to 68.220, 42 USC 7412(r)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 68.200 to 68.220, 42 USC 7412(r)

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 the recordkeeping requirements pursuant to the federal program for chemical accident prevention and risk management.

Section 1. Incorporation by Reference. (1) 40 CFR 68.200 to 68.220 (40 CFR Part 68, Subpart H), "Recordkeeping," as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997, is incorporated by reference.

(2) This material incorporated by reference 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

APPROVED BY AGENCY: November 19, 1998

FILED WITH LRC: November 20, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on January 22, 1999, 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 working 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 administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the administrative regulation to the contact person.

CONTACT PERSON: 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

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal recordkeeping requirements, 40 CFR 68.200 to 68.220, as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997. The provisions of the federal regulation apply to major sources of hazardous air pollutants which are subject to the recordkeeping requirements pursuant to the federal program for chemical accident prevention

and risk management as described in 40 CFR Part 68.

(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: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal 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 68.200 to 68.220. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal chemical accident prevention and risk management program mandated under 42 USC 7412(r).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(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 administrative regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet has no additional information or comments.

(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 68.200 to 68.220. The adoption of the federal regulation is necessary for Kentucky to receive the delegation of authority to enforce the federal program for chemical accident prevention and risk management.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, 40 CFR 68.200 to 68.220, contains the recordkeeping requirements pursuant to the federal program for chemical accident prevention and risk management as described in 40 CFR Part 68.

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? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect any unit, part, or division of local government which uses or stores a substance listed in 401 KAR 68:100, Regulated substances for accidental release prevention, in an amount that is above the specified threshold quantity.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation is most likely to apply to municipal utilities which use or store chlorine or propane. These entities 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.

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

Revenues (+/-): There is no effect on current revenues beyond those specified in the federal rulemaking.

Expenditures (+/-): There is no effect on current expenditures beyond those specified in the federal rulemaking.

Other Explanation: There is no further explanation.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Natural Resources Division of Forestry (New Administrative Regulation)

402 KAR 3:020. Master Logger Program.

RELATES TO: KRS 149.330, 149.332, 149.334, 149.342, 149.344, 149.346, 149.348, 149.350, 149.355, 224.10-100

STATUTORY AUTHORITY: KRS 149.334, 149.342

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.334 authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act. KRS 149.342 requires that after two (2) years from the Act's effective date, no person shall conduct timber harvesting operations within the Commonwealth unless there is on the site at least one (1) logger in charge of the harvest who has completed the Master Logger Program. This administrative regulation is necessary to establish the education and training requirements for the Master Logger Program.

Section 1. Master Logger Program Training Course. (1) The Master Logger Program training course shall consist of three (3) one (1) day sessions covering the following topics:

(a) First aid and adult cardiopulmonary resuscitation (CPR) which shall be taught by certified American Red Cross instructors;

(b) Information on the environmental impacts of timber harvesting operations and the use of best management practices to reduce or eliminate potential adverse effects of timber harvesting operations on water quality; and

(c) Professional logger safety education.

(2) A person who successfully completes the first aid and adult CPR portions of the course shall be certified in first aid and CPR.

(3) A person who holds current first aid and adult CPR certifications is not required to attend the first aid and CPR portions of the course, and shall present copies of current certifications with the registration form required in Section 2 of this administrative regulation.

Section 2. Registration Form and Fee. A person wishing to attend the master logging program training course shall complete and file a registration form accompanied by a fee of fifty (50) dollars.

Section 3. Designation as Master Logger. A person who successfully completes the Master Logger Program training course shall be designated a master logger. This designation shall be for a period of three (3) years from the date of completion of the course.

Section 4. Designation Card. (1) The Division of Forestry shall issue a wallet-sized master logger designation card to a person who successfully completes the Master Logger Program training course.

(2) The division shall issue a designation card to a person who has previously completed the Master Logger Program in accordance with KRS 149.342(5).

(3) The master logger in charge of a timber harvesting operation shall maintain a current master logger designation card, along with a photo identification card such as a driver's license, on his person at all times when he is on the timber harvesting operation site.

Section 5. Reciprocity. A person who has successfully completed a program in another state which is equivalent to the Master Logger Program training course under Section 1 of this administrative regulation may apply for the issuance of a designation card under Section 4 of this administrative regulation by filing an application and paying a fee of fifty (50) dollars. The division shall determine that the program is equivalent and that the person successfully completed the program prior to issuing a designation card under Section 4 of this administrative regulation.

Section 6. Continuing Education Requirements. (1) A person who has successfully completed the Master Logger Program training course and who wishes to renew his master logger designation card, shall complete six (6) hours of continuing master logger education every three (3) years. Continuing master logger education shall consist of one (1) or more of the following subjects: forest management, silviculture, forest health, ecosystem management, timber harvesting, laws and regulations relating to timber harvesting and water quality, logging safety, or advanced best management practices.

(2) A person who meets the requirements of KRS 149.342(5) shall satisfy the continuing education requirements of subsection (1) of this section by July 15, 2003.

(3) Application for renewal and fee. A person wishing to renew a

master logger designation and receive a current card shall complete the continuing education requirements in subsections (1) or (2) of this section, file an application, and pay a fee of fifty (50) dollars prior to expiration of his designation card.

Section 7. Revocation of Designation as Master Logger. The cabinet shall revoke the designation card of a master logger who fails to timely apply for renewal, or to comply with the continuing education requirements in Section 6 of this administrative regulation. The cabinet shall remove the name of the master logger from the list maintained by the division pursuant to KRS 149.342(4).

Section 8. Reinstatement of Designation. A person whose master logger designation has been revoked shall be required to attend and successfully complete the master logger training course under Sections 1 and 2 of this administrative regulation in order to have his designation as a master logger reinstated.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Master Logger Registration Form (November 1998)";

(b) "Kentucky Master Logger Reciprocity Application Form (November 1998)"; and

(c) "Kentucky Master Logger Renewal Form (November 1998)."

(2) This material may be inspected, copied or obtained at the Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 24, 1998

FILED WITH LRC: November 25, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed new administrative regulation has been scheduled for January 26, 1999, at 10 a.m. (EST) in the Conference Room at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by January 19, 1999. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request, in which case the person requesting the recording or transcript shall pay for it. 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. Written comments must be received by adjournment of the scheduled public hearing, or by 4:30 p.m. (EST) on January 26, 1999, if the public hearing is not held.

CONTACT PERSON: Larry Lowe, FRU Forestry Program Coordinator, Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Telephone: (502) 564-4496; fax: (502) 564-6553.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry Lowe

(1) Type and number of entities affected: This administrative regulation will affect all logging operations which engage in commercial timber harvesting. The number of companies is estimated at 1500 to 2000.

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

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on this subject. The administrative regulation is

not expected to have an effect on the cost of living or employment.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on this subject. The administrative regulation is not expected to affect the cost of doing business in the geographical area.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received:

1. First year following implementation: No comments were received on this subject. The logging operator will incur the following costs of doing business: \$50 registration fee, \$50 renewal fee per master logger, and possible registration fees for the continuing education courses. There will also be a \$50 reciprocity application fee for out-of-state loggers who have received similar training from other states, who also conduct operations in Kentucky. Indirectly, logging operators may also lose 3 work days to complete the requirements of the master logger training course requirements of this administrative regulation and 1 day of work every 3 years thereafter, to meet the continuing education requirements of this administrative regulation. A 1 page form must be completed to attend the Master Logger Program, to apply for reciprocity, or to apply for renewal of a master logger designation.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year. There will be costs associated with the administrative regulation. It will be necessary for the Division of Forestry (DOF) to train 12 CPR/First Aid instructors at the rate of \$75 per person plus hotel rooms and per diem. The DOF will also need to train 12 instructors in Best Management Practices (BMPs). The costs associated with these trainings are likely to be hotel rooms and per diem. There will also be costs associated with the establishment of regional BMP demonstration sites, which will include instructional equipment, materials, and labor. There will also be costs associated with maintaining these regional sites.

2. Continuing costs or savings: It will be necessary for the DOF to train personnel as CPR/First Aid and BMP instructors as replacements are needed.

3. Additional factors increasing or decreasing costs: The University of Kentucky is currently the primary facilitator of the Master Logger Program and operates this program with registration fees and grant funds. If the program costs were to exceed the University of Kentucky's funding, then the DOF would absorb these costs.

(b) Reporting and paperwork requirements: The DOF will need to maintain a master logger database. From this database it is the intention of the DOF to make a listing of current master loggers in good standing available to the public on hardcopy and electronically. The DOF will also be required to handle renewal applications, reciprocity applications, and continuing education requirements of the administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is provided.

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

(a) Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact is expected.

(b) Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is not a feasible alternative to the adoption of this regulation, since the cabinet's administrative regulation must be consistent with the Kentucky Forest Conservation Act, KRS 149.342.

(8) Assessment of expected benefits of the administrative regulation: The expected benefit of this administrative regulation is the

reduction of sedimentation and pollutants in the waters of the Commonwealth. The requirements of this administrative regulation will ensure that every commercial timber harvesting operation will have a logger in charge that has been trained in harvesting techniques that reduce sedimentation through the Master Logger Program or an equivalent program in another state.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented, and Kentucky: There will be a positive effect on public health and the environment with improved water quality.

(b) State whether a detrimental effect on the environment and public health would result if not implemented: It is possible that if this administrative regulation were not implemented there could be detrimental effects on public health and the environment.

(c) If detrimental effect would result, explain detrimental effect: The Kentucky Master Logger Program and equivalent programs in other states ensure that loggers can identify where BMPs are necessary, and how to properly utilize BMPs to reduce sedimentation. Without the implementation of this administrative regulation, there could be an increase in sedimentation due to the lack of BMPs or BMPs improperly utilized.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: There is no conflict, overlap, or duplication.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering was not used because it is necessary for these requirements to apply equally to all entities with commercial timber harvesting operations.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Natural Resources
Division of Forestry
(New Administrative Regulation)**

402 KAR 3:030. Best management practices for timber harvesting operations.

RELATES TO: KRS 149.330, 149.332, 149.334, 149.344, 149.346, 149.348, 149.350, 149.355, 224.10-100

STATUTORY AUTHORITY: KRS 149.330, 149.334, 149.344

NECESSITY, FUNCTION, AND CONFORMITY: KRS 149.334 authorizes the cabinet to promulgate administrative regulations relating to the Kentucky Forest Conservation Act. KRS 149.344 requires that after two (2) years from the Act's effective date, any logger or operator engaged in the conduct of any timber harvesting operations shall use appropriate best management practices. KRS 149.330(1) defines best management practices as those practices developed by the Division of Forestry and approved by the Agriculture Water Quality Authority. This administrative regulation is necessary in order to set forth by administrative regulations the best management practices as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority.

Section 1. Commencing July 15, 2000, a logger or operator engaged in timber harvesting operations shall comply with the provisions of The Kentucky Agriculture Water Quality Plan, Best Management Practices, Section 1, Silviculture, pages 12-39 (October 23, 1996), incorporated by reference in Section 2 of this administrative regulation.

Section 2. Incorporation by Reference. (1) "The Kentucky Agriculture Water Quality Plan, Best Management Practices, Section 1, Silviculture, pages 12-39 (October 23, 1996)," is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

JAMES E. BICKFORD, Secretary
BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: November 24, 1998

FILED WITH LRC: November 25, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed new administrative regulation has been scheduled for January 26, 1999, at 10 a.m. (EST) in the Conference Room at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by January 19, 1999. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. If the hearing is held, it will be open to the public. Any person in attendance who wishes to testify on the proposed amendment will be given a fair and reasonable opportunity to do so, regardless of whether the person has given the cabinet prior written notice of his intent to testify. To assure an accurate record, the cabinet requests each person testifying at the hearing to provide the cabinet with a written copy of his testimony. The cabinet is not required to make a recording or transcript of the hearing unless someone makes a written request, in which case the person requesting the recording or transcript shall pay for it. 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. Written comments must be received by adjournment of the scheduled public hearing, or by 4:30 p.m. (EST) on January 26, 1999, if the public hearing is not held.

CONTACT PERSON: Larry Lowe, FRU Forestry Program Coordinator, Division of Forestry, 627 Comanche Trail, Frankfort, Kentucky 40601, Telephone: (502) 564-4496; fax: (502) 564-6553.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry Lowe

(1) Type and number of entities affected: This administrative regulation will affect all logging operations which engage in commercial timber harvesting. The number of companies is estimated at 1500 to 2000.

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

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received on this subject. The administrative regulation is not expected to have an effect on the cost of living.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments were received. The cost of doing business in the geographical area is not expected to be affected by this administrative regulation.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received:

1. First year following implementation: No comments were received on this subject. There are not any reporting or paperwork requirements on the regulated entities required by this administrative regulation. The cost of compliance with Best Management Practices (BMPs) requirements will vary based on geographical location and size of operation. Using a study conducted in Virginia the median per acre cost of BMP implementation was \$8.11 for the coastal plain, \$25.75 for the piedmont, and \$29.29 for the mountains. The study also found that the cost ranged from as low as \$3.17 per acre for a large harvest site in the coastal plain to a high of \$94.41 for a small tract in the mountains. From this study it appears that the cost of compliance will increase more substantially in the Cumberland Plateau region of the state as compared to the western portions of the state, though the actual cost is unknown.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year. There will be costs associated with the administrative regulation. It will be necessary for the Division of Forestry (DOF)

to train the majority of its personnel as timber compliance inspectors in order to reach the goals of the Forest Conservation Act. The costs associated with the training will be instructors, materials, hotel rooms, and per diem. Given the number of inspections that will take place, there will be a dramatic increase in the mileage put on DOF vehicles with the associated costs of maintenance and gas. It will be necessary for the DOF to upgrade its computers and acquire more computers to maintain a tracking database for inspection sites. The field inspectors will also need additional equipment such as GPS units and cameras. Mailing costs will also increase since many inspection and enforcement documents and forms will be sent certified mail. It will be necessary for the DOF to print informational material for public dissemination, and forms associated with the inspection and enforcement procedures will increase printing costs. There is also a potential increase in overtime.

2. Continuing costs or savings: There will be a reduction in costs since the majority of training and equipment purchases will be incurred in the first year. It will be necessary for the DOF to continue to train personnel and replace equipment as needed. The other costs (vehicles' gas and maintenance, printing, and overtime) will remain similar to the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: It will be necessary for individual files to be created for each site inspected that will include all subsequent follow-up inspection documentation (up to 5 forms) associated with inspection procedure. This file will also contain any enforcement activities that may have taken place (up to 5 forms). Each file will also be placed in a database to be used for tracking each case, and past history for enforcement actions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is provided.

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

(a) Geographical area in which administrative regulation will be implemented: No comments on economic impact were received. No economic impact is expected.

(b) Kentucky: No comments on economic impact were received. No statewide economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is not a feasible alternative to the adoption of this regulation, since the cabinet's administrative regulation must be consistent with the Kentucky Forest Conservation Act, KRS 149.330, et seq.

(8) Assessment of expected benefits of the administrative regulation: The expected benefit of this administrative regulation is the reduction of sedimentation and pollutants in the waters of the Commonwealth.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented, and Kentucky: There will be a positive effect on public health and the environment with improved water quality.

(b) State whether a detrimental effect on the environment and public health would result if not implemented: It is likely that if this administrative regulation were not implemented there could be detrimental effects on public health and the environment.

(c) If detrimental effect would result, explain detrimental effect: Without the implementation of this regulation, there would likely be an increase in sedimentation and a reduction in water quality due to the lack of BMPs or BMPs improperly implemented.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: The administrative regulation might be viewed as overlapping with the Kentucky Agriculture Water Quality Act (KRS 224.71-100 – 224.71-140), which requires landowners to have a written agricultural water quality plan that specifies the use of BMPs for any timber harvesting operation. Landowners must implement the BMPs stated in their agricultural water quality plan if they harvest timber. This administrative regulation (402 KAR 3:030) requires that loggers use BMPs on any commercial timber harvesting operation where an

agricultural water quality plan is likely to already be in place.

(a) Necessity of proposed regulation if in conflict: No conflict.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? No. Tiering was not used because it is necessary for these requirements to apply equally to all commercial timber harvesting operations.

**TRANSPORTATION CABINET
Department of Fiscal Management
Division of Audit Review
(New Administrative Regulation)**

601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 138.655 through 138.7291, 186.650, 49 CFR Part 390.21, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 138.725, 281.600, 49 USC Chapter 317

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with 49 USC 317.05 and KRS 138.227, Kentucky is in conformance with the provisions of the International Fuel Tax Agreement (IFTA). If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes, which are subject to the provisions of IFTA, are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through 138.7291. This administrative regulation sets forth the recordkeeping and audit requirements of IFTA and KRS 138.655 through 138.7291 and provides for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IRP" means the International Registration Plan.

(5) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA "Procedures Manual."

(6) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(7) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to intrastate motor carriers subject to the taxes imposed by KRS 138.660(1) and (2).

(8) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to motor carriers subject to the tax imposed by KRS 138.660(3).

(9) "Motor carrier" means as defined in KRS 138.655(5).

(10) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(11)(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, when the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not include the following:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(12) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

(13) "Recreational vehicle" means a motor vehicle such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.

(14) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

(15) "Taxpayer" means a Motor Carrier operating upon the roads of the Commonwealth subject to those taxes in KRS 138.660.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association shall govern Kentucky's recordkeeping requirements and audit provisions of the taxes imposed by KRS 138.660(1) and (2):

(1) Articles of Agreement as revised July 1998;

(2) Procedures Manual as revised July 1998; and

(3) Audit Procedures Manual as revised July 1998.

Section 3. Tax Recordkeeping. (1) Each taxpayer shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain at least the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person from whom purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel as set forth in subsection (15) of this section.

(2) Except as set forth in subsection (14) of this section, each taxpayer shall maintain detailed distance records that show operations on an individual-vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use; and

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) In order for a taxpayer to obtain credit for tax-paid fuel purchases a receipt or invoice, a credit card receipt or automated vendor-generated invoice or transaction listing shall be maintained by the taxpayer. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person from whom purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. (In the case of a lessee/lessor agree-

ment, receipts are acceptable in either name, provided the records firmly indicate the legal connection to the reporting party.)

(4) A taxpayer may only apply for credit in the case of withdrawals from licensee-owned, tax-paid bulk fuel storage if the following detailed records are kept:

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number of the motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) A taxpayer shall account separately for tax-paid fuel purchased as storage or bulk from fuel purchased over the road;

(b) The licensee shall retain a copy of each delivery ticket and receipt for storage or bulk fuel;

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in qualified motor vehicles from other uses;

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing; and

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number, because only vehicles identified with the fuel tax licensee's operation may be reported or mileage or fuel consumption.

(6) Separate totals shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;

(c) Kerosene;

(d) Gasohol;

(e) Liquid petroleum gas;

(f) Compressed natural gas; and

(g) Other.

(7) Each taxpayer shall retain the information required by subsections (1) through (6) of this section for a period of four (4) years from the date of filing the tax report based on these records, except when a "Consent of Extension of Statutory Limitation of Time for Assessment" has been filed with the Division of Audit Review to extend the four (4) year statutory period limitation.

(8) Each taxpayer subject to a KYU license shall maintain the following records on operations within Kentucky of each motor vehicle that is subject to the tax imposed by KRS 138.660(3):

(a) Type of motor vehicle;

(b) Declared gross weight of the motor vehicle;

(c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (14) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs that shall include the following:

1. Beginning and ending odometer readings of each trip;

2. Each route driven;

3. Beginning and ending date of each trip;

4. Trip origin and destination;

5. Total trip miles;

(e) Bills of lading; and

(f) Off-highway mileage which includes periodical logs showing entering and leaving of public highways; and

(g) Manual or computer-generated mileage recaps for Kentucky.

(9)(a) Each taxpayer subject to a KYU license shall retain the information required by subsection (8) of this section for a period of five (5) years from the date of filing the tax report based on these records, except when a "Consent of Extension of Statutory Limitation of Time for Assessment" has been filed for the Division of Audit Review to extend the five (5) year statutory period limitation.

(b) If the records required to be maintained in subsection (8) of this section are insufficient, incomplete, or unavailable for the auditor to complete an audit, the auditor may examine any other records of the taxpayer which might assist in establishing the tax liability of the taxpayer.

(10) Both the lessor and lessee involved in the short or long-term lease of motor vehicles shall maintain sufficient records, in-

cluding copies of the leases and any supplemental agreements, to allow determination at any time of the entity responsible for reporting or payment of the taxes.

(11) Records may be retained on microfilm, microfiche, or other computerized or condensed record storage system if the system has been preapproved by the Transportation Cabinet's Division of Audit Review.

(12) If a taxpayer chooses to use an on-board electronic data recording system in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and taxpayer responsibility shall be as set forth in Section P600 of the IFTA Procedures Manual.

(13)(a) A taxpayer subject to an IFTA or KIT license who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (2) of this section.

(b) A taxpayer subject to a KYU license who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (8)(d) of this section.

(14) A taxpayer subject to an IFTA or a KIT license applying for a refund pursuant to Section 11 of 601 KAR 1:200 shall, in addition to the other requirements of this section, maintain the following records:

- (a) Proof of power-take-off exemption percentage including how the percentage was calculated;
- (b) Listing of bulk fuel storage which includes:
 1. Location of bulk fuel storage;
 2. Capacity of bulk fuel storage; and
 3. Whether tanks are designated for "on" or "non" highway use;
- (c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable;
- (d) Equipment listing for each motor vehicle on which the refund is being requested including:
 1. Vehicle type;
 2. Use of power-take-off;
 3. Vehicle unit number;
 4. Vehicle identification number; and
 5. Type of fuel used in each vehicle.

Section 4. Auditing. (1) For all audits, the taxpayer shall have available the following information if requested by the auditor:

- (a) Records of all motor fuel purchased, received or used as identified in Section 3(1) of this administrative regulation;
- (b) Detailed distance records that show operations on an individual vehicle basis as identified in Section 3(2) of this administrative regulation;
- (c) For credit for tax-paid fuel purchases the records as identified in Section 3(3) of this administrative regulation;
- (d) For credit for tax-paid bulk fuel storage the records as identified in Section 3(4) of this administrative regulation;
- (e) Copies of Kentucky income tax returns for the periods under audit;
- (f) Copies of IFTA or KIT returns, KYU returns, and IRP returns that represents Kentucky operations, or the documentation of another responsibility party for the payment of the related taxes.
- (g) General ledger relating to each period under audit; and
- (h) The related books of original entry.

(2)(a) The fuel tax audit of a taxpayer subject to an IFTA or a KIT license shall be performed in accordance with the provisions of the "IFTA Audit Procedures Manual" which is incorporated by reference in Section 5 of this administrative regulation.

(b) An audit of a taxpayer subject to a KYU license shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;
2. Odometer correctness;
3. Reports of each trip that adequately identifies the truck, trip mileage, and route driven;
4. Weight reports;

5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the taxpayer in writing advising of the approximate date that the audit is to be conducted and the time period the audit will cover.

(4) The auditor shall conduct and document a preaudit conference with the taxpayer (or designated representative) outlining the carrier's operation, the audit procedures, the records to be examined, the sample period, and the sampling procedures. The taxpayer and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the closeout conference.

(5) The auditor shall conduct and document a close-out conference with the taxpayer (or designated representative) outlining preliminary findings to include proposed assessment, recommendations resulting from the review of the records and internal control, rights of appeal, and to whom the audit report should be addressed.

(6) The Transportation Cabinet shall furnish the taxpayer a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the taxpayer.

(7) Taxpayers shall be notified of additional tax assessments by mail. Payment, including interest from the original due date, in the absence of protest, must be made within forty-five (45) days from the date of the notice of tax due.

(8) Penalties assessed under KRS 138.715 will be applied to audit assessments based upon the percentage of the underpayment of the tax liability prior to the deduction of fuel tax purchase credits (if applicable) by the licensee.

Section 5. Protest of Assessments. (1) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, and must include a supporting statement and documents which identify the specific adjustments requested or the portions of the audit being protested and setting forth the reasons the protest is being made (KRS 131.110 (1)). The protest shall be filed with the Transportation Cabinet, Division of Audit Review within forty-five (45) days from the date of the notice of tax due.

(2) If an IFTA license taxpayer elects to exercise the right under Section 1450.200 of the IFTA Articles of Agreement for Further Requests for Appeal, the cabinet shall consider this a protest of the assessment by the taxpayer, and place the taxpayer into protest status.

(3) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the IFTA Articles of Agreement to reaudit the taxpayer, the cabinet shall consider this a protest of the assessment by the taxpayer.

(4) If the supporting statements and documentation are not sufficient to change the assessment results, the taxpayer may request an information gathering or protest conference with the Division of Audit Review.

(5) Within a reasonable period after the information gathering or protest conference is held, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(6) If the taxpayer does not request a conference, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(7) Within thirty (30) days from the date of the final ruling by the cabinet, a written protest may be filed by the taxpayer, or other persons representing the taxpayer, with the Kentucky Board of Tax Appeals (KRS 131.110).

Section 6. Incorporation by Reference. (1) The International Fuel Tax Agreement which includes the following documents are incorporated by reference in this administrative regulation:

- (a) IFTA "Articles of Agreement", July 1998 edition;
- (b) IFTA "Procedures Manual", July 1998 edition;

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(c) IFTA "Audit Procedures Manual", July 1998 edition; and

(d) Transportation Cabinet Form TC 95-214 "Fuel Tax Refund for Power Takeoff", June, 1996 edition.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Division of Audit Review.

JAMES C. CODELL, III, Secretary

PATRICIA K. FOLEY, Deputy General Counsel

APPROVED BY AGENCY: November 18, 1998

FILED WITH LRC: November 18, 1998 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 26, 1999 at 10:30 a.m. local prevailing time in the Transportation Cabinet, Tenth Floor General Counsel Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by January 19, 1999. 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 requirements by January 19, 1999. 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 January 26, 1999. 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, Staff Assistant

(1) Type and number of entities affected: 50,000 motor carriers who operate trucks on the public highways 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 change is expected in the cost of living or employment in Kentucky as a result of amending this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No change is expected in the cost of doing business in Kentucky as a result of amending this regulation.

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

1. First year following implementation: Defines audit process for carriers and records required to be maintained. Defines informal tax mediation process by Division of Audit Review.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will benefit by having its audit process and tax mediation process defined in regulation.

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

3. Additional factors increasing or decreasing costs: Credit card payments will decrease costs by eliminating the handling of non-sufficient funds checks.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Additional taxpayer compliance should increase revenues because of the cabinet's auditing program.

(5) Source of revenue to be used for implementation and en-

forcement of administrative regulation. State Road Funds were appropriated for the Department of Fiscal Management in the 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: A public comment hearing was held on May 22, 1998, and the administrative regulation will be implemented on a statewide basis.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None identified.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. There are different requirements for those carriers subject to the weight distance tax (KRS 138.660(3)).

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 USC Chapter 317.

2. State compliance standards. Kentucky adopted the provisions of the International Fuel Tax Agreement but expanded them to include those motor carriers operating exclusively in intrastate commerce.

3. Minimum or uniform standards contained in the federal mandate. By December 31, 1996, each state, except Hawaii, must have required the reporting and collection of fuel taxes from interstate motor carriers in accordance with the requirements of the International Fuel Tax Agreement. Therefore, the provisions of the International Fuel Tax Agreement become the federal mandate standards. This regulation conforms to the auditing and appeals requirements.

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 address the auditing and appeals of motor fuel taxes for motor carriers which operate exclusively in interstate commerce. This administrative regulation addresses those motor carriers as well as the motor carriers, which operate in interstate commerce.

5. Justification for the imposition of the stricter standard, additional or different responsibilities or requirements. The Equal Protection Clause of the Constitution requires that entities which are essentially the same be treated the same. Therefore, the motor carriers operating in intrastate and interstate commerce must be treated the same.

TRANSPORTATION CABINET
Department of Highways
Division of Traffic
(New Administrative Regulation)

603 KAR 4:050. Limited supplemental guide signs.

RELATES TO: KRS 177.076, 177.077, 177.078, 177.079, 177.0734, 177.0736, 1998 Ky. Acts ch. 526

STATUTORY AUTHORITY: KRS 177.077

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.077 requires the Transportation Cabinet to prescribe by administrative regulations standards and procedures relating to limited supple-

mental guide signs. This administrative regulation sets forth the standards to be used in the erection and maintenance of limited supplemental guide signs.

Section 1. Definitions. (1) "Activity" means either an historical site or a tourist area or attraction.

(2) "Cabinet" means the Transportation Cabinet.

(3) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road a certain distance from the edge of the traveled way as specified by the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide (current edition).

(4) "Department" means the Kentucky Department of Highways.

(5) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the activity.

(6) "Interagency Committee" means the Transportation and Tourism Interagency Committee established by KRS 177.107.

(7) "MUTCD" means the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" incorporated by reference in 603 KAR 5:050.

(8) "Ramp" means the on- or off-access road from an interstate highway or parkway to or from the first public road.

(9) "Spacing" means the distance between the limited supplemental sign and all other traffic control devices or signs located within the right of way. This spacing will be controlled by the MUTCD.

(10) "TODS" means Tourist Oriented Directional Signing as used in the MUTCD.

Section 2. General Provisions. The Transportation Cabinet shall control the erection and maintenance of Limited Supplemental Guide Signs in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation.

Section 3. Application for Limited Supplemental Guide Signs. (1) An application from an historical site or tourist area or attraction for the erection of a limited supplemental guide sign shall be made to the Transportation Cabinet. The cabinet shall process the application through the Division of Traffic and the Interagency Committee. The Division of Traffic will review proposed signing for compliance and review the proposed location to determine if there is an appropriate location for the erection of the sign. The Interagency Committee shall place the request on the agenda for the next committee meeting, if the application is received at least five (5) working days before the next scheduled meeting.

(2) Upon receipt of an application, the Transportation Cabinet shall, within thirty (30) days, notify the applicant in writing of the date and time for any hearings or discussion of the application by the Interagency Committee. The cabinet will consider the recommendations of the Division of Traffic and the Interagency Committee and approve or disapprove the erection of the limited supplemental guide sign within ninety (90) days after the receipt of an application, and shall provide written notification to the applicant of the decision.

(3) Upon approval of the application the applicant shall enter into a contractual agreement with the cabinet.

(4) Any fees shall be paid by check made payable to the Kentucky State Treasurer.

(5) If multiple applications are received for the same location, the following priority will be used to determine the eligibility for the erection of a limited supplemental guide sign:

(a) State parks and recreation areas.

(b) Federal parks and recreation areas.

(c) Historical sites.

(d) Activities between one (1) mile and fifteen (15) miles from the interchange with consideration given to number of visitors.

(e) Activities between sixteen (16) miles and fifty (50) miles from the interchange with consideration given to number of visitors.

(f) Local support.

Section 4. Limited Supplemental Guide Signs. (1) General requirements for limited supplemental guide signs:

(a) The limited supplemental guide signs shall be located to:

1. Take advantage of natural terrain;

2. Have the least impact on the scenic environment; and

3. Avoid visual conflict with the other signs within the highway right of way.

(b) Limited supplemental guide signs shall not be erected where there is insufficient space to locate both traffic control devices and the limited supplemental guide sign.

(c) Unprotected limited supplemental guide sign supports located within the clear zone shall be of a breakaway design.

(d) A limited supplemental guide sign may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right of way as long as the spacing requirements of the MUTCD are met.

(e) The location of any other traffic control device shall at all times take precedence over the location of a limited supplemental guide sign.

(2) Before a limited supplemental guide sign can be erected for an activity that is not visible from the interchange ramp, legal trail-blazing signs must be erected at each location where a turn is required to arrive at the activity site. This can be in the form of TODS, cultural or recreational signing or billboard advertising.

Section 5. Limited Supplemental Guide Signs Eligibility. An historical site or a tourist area or attraction shall meet the following requirements to qualify for limited supplemental signing. A limited supplemental guide sign shall not be erected until the activity or site has been approved in accordance with this administrative regulation.

(1) All tourist areas or attractions shall be of significant interest to the traveling public with at least one-third (1/3) of the income or one-third (1/3) of the visitors at the activity derived during the normal business season from visitors not residing within twenty (20) miles of the activity.

(2) Each activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(3) Each activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin.

(4) Each activity identified on a limited supplemental sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations and have necessary and proper licenses.

(5) If an activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed.

(6) The activity shall be conducted in an appropriate building or area.

(7) The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate, and well-marked entrance. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(8) Any activity which operates on a seasonal basis shall make provisions with the cabinet for the removal of the activity's sign during the off season. The activity shall, in writing, notify the cabinet at least thirty (30) days before the opening or closing occurs.

(9) The cabinet shall have no responsibility for business lost due to signs or limited supplemental panels becoming temporarily out of service.

(10) The display of the activity sign on the limited supplemental structure shall not be considered an endorsement or recommendation by the Commonwealth of Kentucky on behalf of the activity.

Section 6. Measurements. Measurements taken to determine the qualifications of activities shall be from the juncture of the center line of the highway, measured between the center edges of the main traveled way of the route or routes on which travel is necessary to locate the activity.

Section 7. Material Incorporated by Reference. The following material is incorporated by reference as part of the administrative

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regulation: Transportation Cabinet form TC 99-200, "Limited Supplemental Guide Signs Application", November 1998 edition.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: November 24, 1998

FILED WITH LRC: November 24, 1998 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 26, 1999 at 2 p.m. local prevailing time in the Transportation Cabinet, Tenth Floor General Counsel Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by January 19, 1999. 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 requirements by January 26, 1999. 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 January 26, 1999. 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, Staff Assistant

(1) Type and number of entities affected: All travelers using Kentucky's noninterstate highway system, as well as businesses which are eligible and choose to participate in the Limited Supplemental Guide Signs 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: Nonpublic comments were received, and the cabinet believes that the cost of living will not be affected as a result of this administrative regulation. Any employment impact would be a slight increase in employment in those areas where signs may increase tourist travel to hard to locate attractions.

(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 increased cost of doing business will be limited to those businesses that choose to participate in the program.

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

1. First year following implementation: An application process will be used to determine eligible participants.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(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: Road Fund

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of no regulation was discarded in the interest of clarity to the tourism industry.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied by setting criteria for eligibility in the program. Priority was also given to certain activities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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

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

TRANSPORTATION CABINET Department of Highways Division of Transportation Planning (New Administrative Regulation)

603 KAR 4:055. Scenic highways and byways.

RELATES TO: 177.571, 177.572, 177.573, 177.574, 177.575, 177.576, 1998 Ky. Acts ch. 566

STATUTORY AUTHORITY: 177.573

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.573 requires the Transportation Cabinet to prescribe by administrative regulation, criteria for scenic highways and byways designation and a process for the nomination, review, designation and removal of a road as a scenic highway and byway.

Section 1. "Kentucky Scenic Highways and Byways Guidelines and Application" shall govern the Transportation Cabinet's Scenic Highways and Byways Program.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference in this administrative regulation: "Scenic Highways and Byways Guidelines and Application," October 17, 1994.

(2) Copies of "Scenic Highways and Byways Guidelines and Application" may be viewed or copied at the Transportation Cabinet, Department of Highways, Division of Transportation Planning, 501 High Street, Frankfort, Kentucky 40622.

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J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: November 24, 1998

FILED WITH LRC: November 24, 1998 at 3 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on January 26, 1999 at 2 p.m. local prevailing time in the Transportation Cabinet, Tenth Floor General Counsel Conference Room, Corner of High, Clinton and Holmes Streets, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by January 19, 1999. 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 requirements by January 26, 1999. 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 January 26, 1999. 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, Staff Assistant

(1) Type and number of entities affected: The Transportation Cabinet currently has 433 miles of scenic highways and byways. We do not anticipate a significant increase in applications or interest.

(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 Transportation Cabinet does not anticipate any changes in the cost of living or employment as a result of this new regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The Transportation Cabinet does not anticipate any changes in the cost of doing business as a result of this new regulation.

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

1. First year following implementation: An application process will be implemented as a result of this regulation. Competition is not a contributing factor.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The application and signing process will result in a slight cost increase to the Transportation Cabinet.

2. Continuing costs or savings: Same.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The application process will be administered by the Division of Transportation Planning.

(4) Assessment of anticipated effect on state and local revenues: Possible increase in tourism to local communities.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Road 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 Scenic Highways and Byways program will pro-

mote travel to areas of the Commonwealth with natural beauty. The increased travel should result in an increase in tourist spending.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is an expansion of a successful existing program. There is significant public support for the Scenic Highways and Byways 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: Scenic Highways and Byways have to meet strict criteria to be eligible for the program. The criteria is established in KRS 177.572.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All applicants are required to go through the same application process.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of School and Community Nutrition
(New Administrative Regulation)**

702 KAR 6:100, Appeal procedures for school and community nutrition programs.

RELATES TO: KRS 156.070, 156.160, 7 CFR 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k), 42 USC 1761, 1766(e), 1772

STATUTORY AUTHORITY: KRS 156.029, 156.070

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is promulgated pursuant to the Kentucky Board of Education's statutory mandate to develop and adopt administrative regulations governing the operation of programs within the Department of Education. This administrative regulation is needed to establish appeals procedures for sponsors of the various federal nutrition programs.

Section 1. Actions Which May be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the following adverse actions:

(a) Denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity; or

(b) Withholding payment arising from administrative or follow-up review activity.

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, may appeal the following adverse actions:

(a) Denial of an institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Termination of participation on an institution or facility or site;

(d) Suspension of an institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement except for late claims;

(h) Demand for the remittance of an overpayment; or

(i) Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Chil-

dren may appeal the following adverse actions:

- (a) Denial of an application for participation;
- (b) Denial of a sponsor's request for an advance payment;
- (c) Denial of a sponsor's claim for reimbursement, except for late claims under 7 CFR 225.9(d)(5);
- (d) Refusal of a state agency to forward to the Division of School and Community Nutrition an exception request for payment of a late claim or a request for an upward adjustment to a claim;
- (e) A claim against a sponsor for remittance of a claim;
- (f) Termination of the sponsor or a site;
- (g) Denial of a sponsor's application for a site; or
- (h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.

Section 2. (1) Appeal Procedures.

(a) A program sponsor aggrieved by an adverse action of the Division of School and Community Nutrition (the "division") may appeal the action by filing a timely request for a review. The request shall be filed with the Director, Division of School and Community Nutrition, Department of Education, 1024 Capital Center Drive, Frankfort, Kentucky, 40601.

(b) The request shall be in writing and shall state the name and address of the program sponsor and the name and title of the person who signed the request.

(c) The request shall be postmarked or received by the division prior to midnight of the fifteenth calendar day (tenth working day in the case of the Summer Food Service Program) after receipt of the notice of adverse action. If the 15th day (tenth working day in the case of the Summer Food Service Program) falls on Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not Saturday, Sunday, or federal legal holiday.

(d) A program sponsor which has filed an appeal and request for review may examine and copy the information in the division files upon which the adverse action was based.

(e) A program sponsor may represent itself during the review process, be represented by legal counsel, or be represented by another person.

(2)(a) A request for appeal shall clearly identify the adverse action being appealed, the basis of the appeal, and the relief or remedy sought. It shall also include the date of the letter or other written communication from the division notifying the program sponsor of the proposed adverse action, and the name and title of the division official who signed the letter or communication. If a hearing before a hearing officer is desired, that shall be clearly stated.

(b) An appellant program sponsor may submit written information in support of its position at the time it files its appeal and request for review with a hearing officer. It may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action.

(3)(a) The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the division.

(b) The administrative hearing procedures of KRS Chapter 13B shall apply. Pursuant to 7 CFR 210.18(q)(9), 220.13(f)(2), 225.13(b)(12) and 226.6(k)(10) the decision of the hearing officer shall be the final administrative determination.

(c) In case of a denial of an application to participate in the program, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

(d) In case of a denial of all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(e) In the case of the termination of an appellant's participation in the program, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this new administrative regulation will be held on January 29, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 1999, 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 new administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the new administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 13A.100 requires this to be accomplished by administrative regulation.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school and community nutrition programs choosing to file an appeal.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Office of Learning Programs Development
(New Administrative Regulation)

704 KAR 3:480. Early reading incentive grants.

RELATES TO: 1998 Ky. Acts ch. 580

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

NECESSITY, FUNCTION, and CONFORMITY: KRS 156.160 authorizes the Kentucky Board of Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance. 1998 Ky. Acts ch. 580 establishes the Early Reading Incentive Grant Program and requires that administrative regulations be promulgated to establish the grant application process and selection criteria. This administrative regulation implements that state board duty.

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

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

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

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

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

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

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

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

(6) A grant application shall indicate the fiscal agent as a local board of education or other entity eligible to enter into a memorandum of agreement to receive state education funds. The fiscal agent for the Kentucky Schools for the Blind or Deaf shall be the Kentucky Department of Education.

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

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

(9) A grant application shall be subject to approval by the principal and superintendent to ensure that the grant application includes

adequate resources to implement the model. The use of categorical funds for matching funds shall be subject to approval by the local board of education.

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

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

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

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

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

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

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

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

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

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

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

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

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

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this new administrative regulation will be held on January 29, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 1999, 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 new administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may

submit written comments on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the new administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Debbie Schumacher

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

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

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

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

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

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

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

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

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

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

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

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

(b) Kentucky: Same

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

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. The regulation applies equally to all public schools choosing to apply for the grants.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Division of Exceptional Children Services
(New Administrative Regulation)

707 KAR 1:270. Kentucky Special Education Mentor Program.

RELATES TO: KRS 157.224, 1998 Ky. Acts ch. 519

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.220, 157.260, 1998 Ky. Acts ch. 519

NECESSITY, CONFORMITY, AND FUNCTION: 1998 Ky. Acts ch. 519, sec. 3, requires the Kentucky Board of Education to promulgate an administrative regulation to establish the criteria for the Kentucky Special Education Mentor Program. The criteria are established in this administrative regulation.

Section 1. Definitions. "Special education mentor" means an individual with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in 1998 Ky. Acts ch. 519.

Section 2. Assignment of Special Education Mentors. The Kentucky Department of Education shall assign a special education mentor to assist a local school district in remedying deficiencies and to obtain voluntary compliance before imposing sanctions established in 707 KAR 1:015. The special education mentor may be assigned to a school or schools if the deficiencies are school specific. This assignment shall be completed when the Division of Exceptional Children Services verifies compliance.

Section 3. Special Education Mentor Criteria. (1) An individual wishing to become a special education mentor shall submit a letter of request and curriculum vitae to the Special Education Mentor Selection Committee. An eligible individual shall be certified in an area of special education.

(2) A Special Education Mentor Selection Committee appointed by the Commissioner of Education shall be involved in development of the selection process for the special education mentors and review of the applicants. The Director, Division of Exceptional Children Services, shall serve as committee chairperson. Members of the Special Education Mentor Selection Committee shall serve for a period of three (3) years and shall include:

(a) One (1) representative of the State Advisory Panel for Exceptional Children;

(b) One (1) superintendent and one (1) principal representing the Kentucky Association of School Administrators;

(c) One (1) special education teacher and one (1) regular education teacher representing the Kentucky Education Association;

(d) One (1) special education administrator representing the Council of Special Education Administrators;

(e) Two (2) parents from Kentucky's parent project funded under the Individuals with Disabilities in Education Act (IDEA), 20 USC Sections 1400-1487; and

(f) One (1) representative from a parent advocacy organization.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this new administrative regulation will be held on January 29, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by January 22, 1999, 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 new administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on the new administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the new administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
- (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
- (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
- (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
 1. First year following implementation: None
 2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings:
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
 - (a) Geographical area in which administrative regulation will be implemented: None
 - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 Ky. Acts, ch. 519 requires this to be done by regulation.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
 - (c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
 - (a) Necessity of proposed regulation, if in conflict:
 - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (New Administrative Regulation)

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

RELATES TO: KRS 304.15-020, 304.15-700 through 304.15-725

STATUTORY AUTHORITY: KRS 304.15-700(2), 304.15-720
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.15-

700(2) and 304.15-720 provide that the commissioner shall promulgate administrative regulations to provide for the licensing of viatical settlement providers and brokers, the termination or revocation of the license, and the implementation of KRS 304.15-700 through 304.15-720.

Section 1. Definitions. (1) "Insured" means the person covered under the policy being considered for viatication.

(2) "Insurer" means the entity or insurance company issuing the life insurance policy of the insured, or its assign.

(3) "License," as used in the Act and this administrative regulation, means a license issued to a viatical settlement provider or viatical settlement broker, and shall be a limited license that allows solicitation or provision of viatical settlements only.

(4) "Patient-identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, Social Security number, or other information that is likely to lead to the identification of the insured.

(5) "Viatical settlement broker" is defined in KRS 304.15-020(4).

(6) "Viatical settlement contract" is defined in KRS 304.15-020(5).

(7) "Viatical settlement provider" is defined in KRS 304.15-020(6).

(8) "Viator" is defined in KRS 304.15-020(7).

Section 2. Viatical Settlement Contract and Form Approval. (1) Any person using a viatical settlement contract in this state shall submit the contract to the commissioner for approval or disapproval.

(2) Each contract submitted to the commissioner for approval shall:

(a) Be written in nontechnical, readily understandable language, utilizing words of common usage;

(b) Specifically state the identity of the parties;

(c) Clearly provide space for including the amount of the proceeds payable to the viator;

(d) Provide that the contract is to be governed under the laws of the Commonwealth of Kentucky, and that the courts of the Commonwealth of Kentucky shall be the exclusive forum for any judicial remedies sought by either party; and

(3) The commissioner may review any previously approved viatical settlement contract for compliance with the Act and this administrative regulation.

(4) If the commissioner disapproves any proposed viatical settlement contract, or withdraws approval of any viatical settlement contract, the person submitting the contract for approval may request a hearing pursuant to KRS 304.2-310(2)(b). If the hearing is requested and held, the burden of proof shall be upon the proponent of the proposed contract.

Section 3. Viatical Settlement Broker License. (1) On or after July 15, 1998, any individual, partnership, corporation, or other entity acting as a viatical settlement broker shall obtain a viatical settlement broker license from the commissioner.

(2) Each viatical settlement broker license shall be in effect for a period of two (2) years and renewable upon submission to the commissioner of a new application and the nonrefundable fee established by this administrative regulation.

(3) Each viatical settlement broker license issued on or before December 31, 2000, shall be renewed on or before March 31, 2001, and each odd year thereafter.

(4) Each individual applicant for licensure as a viatical settlement broker shall:

(a) Be at least twenty-one (21) years of age;

(b) Have successfully attained a general educational level equivalent to that required for graduation from an accredited high school in this state; and

(c) Provide a statement as to whether or not any disciplinary action has resulted in the suspension or revocation of a federal or state professional license.

(5) A firm or corporation applying for licensure as a viatical settlement broker shall meet the following requirements:

(a) If a firm or other unincorporated entity, each general partner

or other individual to act as a viatical settlement broker for the firm under the firm's license shall:

1. Meet the requirements for individual licensure as specified in subsection (4) of this section; and

2. Be licensed as an individual viatical settlement broker.

(b) If a corporation, each individual authorized by the corporation to act as a viatical settlement broker for the corporation under the corporation's license shall:

1. Be listed by the corporation in its application;

2. Meet the requirements for individual licensure as specified in subsection (4) of this section; and

3. Be licensed as an individual viatical settlement broker.

(6) A firm, partnership, or corporation applying for licensure as a viatical settlement broker shall attach to the application for licensure the following documentation, if applicable:

(a) Articles of Incorporation;

(b) Partnership agreement; and

(c) Certificate of authority from the Kentucky Secretary of State.

(7) Each application for initial licensure or renewal shall be made on Form VSB which is incorporated by reference into this administrative regulation.

(8) Each application for licensure and renewal of license shall be accompanied by a nonrefundable fee in the appropriate amount as follows:

(a) \$250 if the applicant is an individual; or

(b) \$750 if the applicant is a corporation or firm.

Section 4. Viatical Settlement Provider License. (1) On or after July 15, 1998, any individual, partnership, corporation, or other entity acting as a viatical settlement provider shall obtain a license from the commissioner.

(2) Each viatical settlement provider license shall be in effect for a period of two (2) years and renewable upon submission to the commissioner of a new application and the nonrefundable fee established by this administrative regulation.

(3) Each viatical settlement provider license issued on or before December 31, 2000, shall be renewed on or before March 31, 2001, and each odd year thereafter.

(4) Each individual applicant for licensure as a viatical settlement provider shall:

(a) Be at least twenty-one (21) years of age;

(b) Have successfully attained a general education level equivalent to that required for graduation from an accredited high school in this state;

(c) Provide a statement as to whether or not any disciplinary action has resulted in the suspension or revocation of a federal or state professional license.

(5) A firm or corporation, applying for licensure as a viatical settlement provider shall meet the following requirements:

(a) If a firm or other unincorporated entity, each general partner or other individual to act for the firm under the license shall meet the requirements for individual licensure as specified in subsection (4) of this section; and

(b) If a corporation, each individual authorized by the corporation to act for it under the license shall:

1. Be listed by the corporation in its application;

2. Meet the requirements for individual licensure as specified in subsection (4) of this section.

(6) A firm, partnership, or corporation applying for licensure as a viatical settlement provider shall attach to the application for licensure the following documentation, if applicable:

(a) Articles of Incorporation;

(b) Partnership agreement; and

(c) Certificate of authority from the Kentucky Secretary of State.

(7) A viatical settlement provider shall acquire and maintain an errors and omissions policy in an amount commensurate with the provider's exposure.

(8) Each application for initial licensure or renewal shall be made on Form VSP which is incorporated by reference into this administrative regulation.

(9) Each application for licensure and renewal of license shall be accompanied by a nonrefundable fee in the appropriate amount as follows:

(a) \$500 if the applicant is an individual; or

(b) \$1500 if the applicant is a corporation or firm.

Section 5. Denial, Suspension, or Revocation of License. The commissioner may deny any application for a license or may suspend or revoke a license, or may refuse to renew a viatical settlement provider or broker license if the commissioner finds that the applicant or licensee:

(1) Has made any material misrepresentation on the application;

(2) Has been adjudicated guilty, either by verdict or plea agreement, to a felony or misdemeanor offense involving breach of trust, fraud, or theft;

(3) Has been guilty of fraudulent, deceptive, or dishonest practices, as defined in KRS Chapter 304, Subtitle 12;

(4) Has had a similar license suspended or revoked in any other jurisdiction;

(5) Has shown to be untrustworthy or incompetent to act as a viatical settlement broker or provider; or

(6) Has violated any provision of the Kentucky Insurance Code, KRS Chapter 304, or this administrative regulation.

Section 6. Other Licenses and Disciplinary Actions. (1) A licensee, whether an individual, corporation, or firm, shall notify the Department of Insurance, in writing, of any disciplinary action taken by any governmental agency, either in this state or in another jurisdiction, against any other license held by the individual, corporation, or firm, within thirty (30) days of the initiation of such disciplinary action.

(2) Failure to report such disciplinary action shall be grounds for suspension, revocation, or other disciplinary action within the discretion of the commissioner.

Section 7. Prohibited Practices. (1) A viatical settlement provider or broker shall not provide patient-identifying information to any person or entity except as required to effect a viatical settlement.

(2) If a viatical settlement provider or broker is served with a subpoena compelling the provider or broker to produce records containing patient-identifying information, the viatical settlement provider or broker shall notify the viator and the insured within five (5) business days after receiving notice of the subpoena. Notice shall be sufficient if delivered to the last known address of the viator and the insured.

(3) A viatical settlement provider shall not act also as a broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement contract.

(4) A viatical settlement provider or broker shall not pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee.

Section 8. Designation of Process Agent. A viatical settlement provider or broker that is licensed pursuant to KRS Chapter 304, Subtitle 15 and this administrative regulation and whose domicile and place of business is outside Kentucky shall designate the Secretary of State of the Commonwealth of Kentucky as the agent for the service of process.

Section 9. Disclosure. (1) Each viatical settlement provider shall provide a written disclosure form to the viator on or before the date that the viatical settlement contract is signed by each party to the contract.

(2) The disclosure form required by subsection (1) of this section shall:

(a) Contain the name of the viatical settlement provider;

(b) Clearly state that the document is a disclosure form;

(c) Contain all disclosure information required by KRS 304.15-710;

(d) Be signed and dated by the applicant; and

(e) Be signed by an authorized representative of the viatical settlement provider.

Section 10. Reporting Requirement. (1) On or before March 1 of each calendar year, each viatical settlement provider licensed in the state of Kentucky shall submit a report to the commissioner regard-

ing the provider's viatical business in Kentucky for the previous calendar year. The report shall contain the following information:

- (a) Aggregate number of viatical applications received;
- (b) Aggregate number of viatical applications accepted;
- (c) Aggregate number of viatical applications rejected;
- (d) Aggregate number of policies viaticated; and
- (e) Aggregate face amount of viaticated policies.

(2) On or before March 1 of each calendar year, a viatical settlement provider licensed in the state of Kentucky shall submit a report to the commissioner containing the total aggregate face amount of all policies viaticated during the previous calendar year in each state that the provider is authorized to engage in the viatical business.

Section 11. Notice to Investors. A viatical settlement provider shall provide each investor with written notification that shall state the following: "The Commonwealth of Kentucky does not guaranty any rate of return on investment for any investor to a viatical settlement provider."

Section 12. General Rules. (1) Any additional payment on an insurance policy with a double or additional indemnity for accidental death shall be payable to the following:

- (a) The beneficiary last named by the viator prior to entering into the viatical settlement contract;
- (b) To any other beneficiary, other than the viatical settlement provider, as the viator may designate; or
- (c) To the estate of the viator in the absence of a beneficiary.

(2) A viatical settlement provider shall not discriminate in making viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation.

(3) A viatical settlement provider shall not discriminate between a viator with a dependent and a viator with no dependent.

(4) A viatical settlement provider shall not solicit investors who may influence the treatment of the illness of the insured whose coverage would be the subject of the investment.

Section 14. Material Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) Form VSB, "Application for License as a Viatical Settlement Broker (11/1998 Edition)"; and
- (b) Form VSP, "Application for License as a Viatical Settlement Provider (11/1998 Edition)."

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, Division of Licensing, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner
LAURA M. DOUGLAS, Secretary
GALE PEARCE, General Counsel

APPROVED BY AGENCY: December 11, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by January 14, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-

1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects persons and entities engaged in the solicitation or sale of a viatical settlement contract to insured individuals. Since the department has not previously licensed or kept statistics regarding viatical settlement providers or brokers, the number of entities affected is unknown at this time.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

1. First year following implementation: This administrative regulation will require individuals and entities that intend to engage in the viatical settlement business to be licensed with the Department of Insurance and to file an annual report regarding the provider's viatical business. Persons seeking a license as a viatical settlement provider or broker will be required to pay a licensing fee specified in this administrative regulation

2. Second and subsequent years: This administrative regulation will require viatical settlement providers and brokers to renew their license every two years and pay a renewal licensing fee. In addition, viatical settlement providers and brokers will be required to report information to the department on an annual basis.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department personnel will be required to review proposed viatical settlement contract forms, review and issue broker and provider licenses, and review consumer complaints and inquiries. The department anticipates that licensing fees imposed by this administrative regulation will absorb the increase costs associated with processing the licensing applications and the reports.

2. Continuing costs or savings: The costs associated with processing licensing applications for viatical settlement providers and brokers will continue for the second and subsequent years as new and renewal licenses will be issued. The department anticipates that the initial licensing and renewal fees imposed by this administrative regulation will absorb the increase costs associated with processing the licensing applications and the reports.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will require the department to process license applications and review annual reports. However, it is anticipated that there will be a minimal number of licenses and reports due to the limited size of the viatical industry.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alterna-

tives were rejected: KRS 304.15-700(2) and 304.15-720 require the Commissioner of Insurance to promulgate administrative regulations necessary to provide for the licensing of viatical settlement providers and brokers. Since this administrative regulation is required by statute, no other alternative methods were considered.

(8) Assessment of expected benefits.

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement could result in unfair competition and financial loss to insured persons.

(c) If detrimental effect would result, explain detrimental effect: Nonregulation would permit nondisclosure of the rights and alternatives of the insured public and unfair competition within the industry.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all individuals and entities engaged in the solicitation or sale of viatical settlement contracts.

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(New Administrative Regulation)

806 KAR 17:170. Genetic testing.

RELATES TO: KRS 304.12-085(2), (3), (4), 304.17A-200(1)(f), 304.17A-220(3)(a)2, 304.17A-230(3)

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. In order to enforce the provisions of KRS 17A-200(1)(f), 304.17A-220(3)(a)2, 304.17A-230(3), 304.12-085(2), (3), and (4), it is necessary for the Commissioner of Insurance to define "genetic test," "genetic information," and "genetic services." This administrative regulation establishes the definitions for those terms.

Section 1. Definitions. (1) "Genetic information" means information derived from a genetic test.

(2) "Genetic services" mean medical services employed to gather genetic information.

(3) "Genetic test" means a laboratory test of human DNA or RNA used to identify the presence or absence of inherited alterations in the DNA or RNA which cause predisposition to disease or illness.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: November 18, 1998

FILED WITH LRC: November 25, 1998 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 10 a.m. (ET) at the Kentucky Department of Insurance. Individuals interested in being heard at this hearing shall notify this agency in writing by January 13, 1999, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

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

1. First year following implementation: This administrative regulation does not contain any reporting or paperwork requirements. This administrative regulation is informative in that it defines and clarifies terms used in KRS 17A-200(1)(f), 304.17A-220(3)(a)2, 304.17A-230(3), 304.12-085(2), (3), and (4).

2. Second and subsequent years: This administrative regulation does not contain any reporting or paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Since the enactment of KRS 17A-200(1)(f), 304.17A-220(3)(a)2, 304.17A-230(3), 304.12-085(2), (3), and (4), the Department of Insurance has received numerous inquiries regarding the department's interpretation of genetic test, genetic information, and genetic services. The department considered issuing an informal opinion to clarify the department's position with respect to these terms. This alternative was rejected due to the department's inability to enforce an advisory opinion. Therefore, the department chose to promulgate an administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Provides specific instruction to insurers regarding their treatment of genetic information, genetic tests, and genetic services. By defining these terms, an insurer may better determine whether a preexisting condition is present; whether the insurer may deny, cancel, or refuse to renew benefits or coverage on the basis of a test or service; or whether disclosure of a test is permitted.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented, persons who have had a genetic test or who have requested or received genetic services may be wrongfully denied or refused health insurance coverage. In addition, certain genetic information might be treated as a pre-existing condition absent this administrative regulation.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers and health maintenance organizations issuing health benefit plans in Kentucky.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Financial Management and Analysis
(New Administrative Regulation)**

907 KAR 1:755. Preadmission Screening and Resident Review Program.

RELATES TO: 42 CFR 483.100-483.138, 42 USC 1396r

STATUTORY AUTHORITY: KRS 194A.050, 205.520

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the program requirements and payment provisions for preadmission screening and resident review (PASRR).

Section 1. Definitions. (1) "Appropriate placement" means the admission to a nursing facility of an individual with mental illness, mental retardation, or a related condition only if:

(a) The individual's needs are such that he meets the level of care standards for nursing facility admission as established in 907 KAR 1:022; and

(b) The individual's needs for treatment can be met by the level of services delivered in the nursing facility alone or, when necessary, through nursing facility services supplemented by specialized services provided by or arranged through the Department for Mental Health and Mental Retardation Services as established in Section 5 of this administrative regulation.

(2) "Department for Mental Health and Mental Retardation Services" (DMHMRS) means the state agency or its designee with the responsibility for both the evaluation and determination functions for individuals with serious mental illness, mental retardation, or a related condition as defined in 42 CFR 483.106(d) and (e).

(3) "Exempted hospital discharge" is defined in 42 CFR 483.106 as an individual:

(a) Who is admitted to any nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(b) Who requires nursing facility services for the condition for which he received care in the hospital; and

(c) Whose attending physician has certified, prior to admission to the nursing facility, that the individual is likely to require less than thirty (30) days nursing facility services.

(4) "Interfacility transfer" means an individual who is transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay.

(5) "Level of care of nursing facility services" means those standards as defined in 907 KAR 1:022, Section 4 and in 907 KAR 1:025.

(6) "Mental retardation" means an individual's condition which has been determined to have a level of retardation (mild, moderate, severe or profound) as defined in 42 CFR 483.102.

(7) "New admission" means an individual who is admitted to a nursing facility (NF) for the first time or who is not a readmission or an exempted hospital discharge.

(8) "Nursing facility" (NF) means a facility meeting the requirements established in 907 KAR 1:022.

(9) "Preadmission screening and resident review" (PASRR) means the process which:

(a) Screens and identifies an individual with a serious mental illness, mental retardation, or a related condition prior to admission to an NF;

(b) Results in a determination, based on a physical and mental evaluation of each individual with mental illness, mental retardation, or a related condition of the appropriateness of the individual's admission to an NF; and

(c) Identifies appropriate services if the individual is admitted to an NF.

(10) "PRO" means a peer review organization which is under contract with the department.

(11) "Provisional admission" means an individual is admitted to an NF for fourteen (14) days or less before a PASRR level II is required; and:

(a) Meets the NF's level of care as established in 907 KAR 1:022; and

(b) Who has been diagnosed with delirium, as defined in 42 CFR 483.130, which precludes an accurate diagnosis and assessment until the delirium clears; or

(c) Who is in need of respite for in-home care givers and to whom the individual with serious mental illness, mental retardation, or a related condition is expected to return after fourteen (14) days.

(12) "Readmission" means an individual who is readmitted to an NF from a hospital to which he was transferred for the purpose of receiving acute inpatient care.

(13) "Related condition" is defined in 42 CFR 435.1009 as a severe, chronic disability that shall meet the following conditions:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to mental retardation because it results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons; and

(c) Is manifested before the person reaches age twenty-two (22);

(d) Is likely to continue indefinitely; and

(e) Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

1. Self-care;

2. Understanding and use of language;

3. Learning;

4. Mobility;

5. Self-direction; and

6. Capacity for independent living.

(14) "Serious mental illness" means an individual's condition which meets the definition in 42 CFR 483.102.

(15) "Significant change" means that the individual's condition has immediate treatment needs requiring a comprehensive reassessment and material change in plan of care established by the Long Term Care Resident Assessment Instrument User's Manual, incorporated by reference in this administrative regulation.

(16) "Specialized services for mental illness" is defined in 42 CFR 483.120 as the implementation of an individualized plan of care:

(a) Developed and supervised by a physician;

(b) Provided by an interdisciplinary team of qualified mental health professionals;

(c) Prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of serious mental illness which necessitates continuous supervision by trained mental health personnel; and

(d) Requires the level of intensity provided in a psychiatric inpa-

tient hospital.

(17) "Specialized services for mental retardation or a related condition" is defined in 42 CFR 483.120 and 483.440(a)(1) as the continuous, aggressive and consistent implementation of a program of specialized and generic training, treatment, health and related services, which are comparable to services an individual receives in an intermediate care facility for the mentally retarded-developmentally disabled (ICFMR), or in a community based waiver program which provides services to persons with the mental retardation or a related condition in which twenty-four (24) hour supervision is available that is directed toward:

- (a) The acquisition of the skills necessary for the person to function with as much self-determination and independence as possible;
- (b) The prevention or deceleration of regression or loss of current optimal functional status; and
- (c) The coordination and interaction, at all times and in all settings, of all staff and the individual served, in the implementation of the specified individual program plan (IPP) objectives for the individual.

Section 2. General Applicability. (1) The provisions of this administrative regulation shall be applicable to an individual applying for admission to, or continued stay in, a nursing facility (NF) participating in the Kentucky Medicaid Program.

(2) Pursuant to 42 CFR 483.106(d) and (e), DMHMRS shall be responsible for PASRR determination and evaluation functions.

(a) The Division of Mental Retardation of DMHMRS shall be responsible for determining and evaluating whether an individual applying for admission to an NF needs NF services and specialized services for mental retardation.

(b) The Division of Mental Health of DMHMRS shall be responsible for determining whether an individual applying for admission to an NF needs NF services and specialized services for mental illness.

(c) The department may delegate the authority to evaluate whether an individual who is applying for admission to an NF needs NF services and specialized services for mental illness to the Division of Mental Health.

(d) The Division of Mental Health may delegate the evaluation and determination functions for which they are responsible except that the designee shall not be an NF or an entity that has a direct relationship or indirect affiliation or relationship with an NF.

(3) For nursing facility reimbursement of services by the Medicaid Program, an individual shall be Medicaid eligible and meet the usual patient care criteria specified in 907 KAR 1:022 and 907 KAR 1:025.

Section 3. Deemed Consent for PASRR. An individual applying for admission to, or requesting a continued stay in, a nursing facility participating in Medicaid shall be deemed to have given consent for the department to make the determination of appropriateness for the individual to enter or remain in the facility using the standards specified 42 USC 1396r.

Section 4. Responsibility for Performing the Level I PASRR. (1) A nursing facility, prior to admitting an individual, except a readmission or an interfacility transfer, shall conduct a Level I PASRR. The Level I PASRR is an identification function. The Level I PASRR process shall comply with the requirements of 42 CFR 483.128.

(2) If a positive response is noted in the Level I PASRR, a Level II PASRR shall be performed prior to the individual's admission to an NF unless the individual is a provisional admission, readmission, interfacility transfer or exempt hospital discharge.

(a) The Level II PASRR is the evaluation and determination if an individual needs NF and specialized services.

(b) The individual or legal guardian of an individual who is identified in the Level I PASRR as suspected of having a mental illness, mental retardation, or a related condition shall be notified by the NF of a referral to DMHMRS for Level II PASRR.

(3) If a Level II PASRR is required, it shall be the responsibility of the nursing facility to contact DMHMRS to perform the Level II PASRR as follows:

- (a) For a new admission, an NF shall first conduct a Level I

PASRR prior to admission, notify DMHMRS if a Level II PASRR is necessary, and complete the Level II PASRR prior to admission.

(b) For an exempt hospital discharge, an NF shall first conduct a Level I PASRR prior to admission and shall notify DMHMRS prior to the end of the exempt thirty (30) days if the individual is found to require more than thirty (30) days of NF care. DMHMRS shall conduct a Level II PASRR evaluation and complete the determination within forty (40) calendar days of the date of admission to the NF.

(c) For a provisional admission pending clearing of delirium, DMHMRS shall conduct a Level II PASRR and make an evaluation and determination of the need for specialized services within nine (9) working days of the referral to DMHMRS and the referral to DMHMRS shall be made within the fourteen (14) day provisional admission.

(d) If a significant change in the individual's condition occurs, the NF shall notify DMHMRS within twenty-one (21) days and DMHMRS shall complete the Level II PASRR within nine (9) working days.

(e) The Level II PASRR process shall comply with the requirements of 42 CFR 483.128 through 483.136.

(4) An NF shall transmit to the PRO a completed copy of an individual's PASRR prior to or simultaneously with a request for certification of level of care for an individual's admission to an NF.

Section 5. Responsibility for Performing the Level II PASRR. DMHMRS shall be responsible for:

(1) Determining whether an individual entering or remaining in an NF is mentally ill, mentally retarded or has a related condition;

(2) Determining whether the individual requires the level of services provided by an NF in accordance with 42 CFR 483.132;

(3) If the nursing facility level of service is required, determining if the individual requires specialized services or services of a lesser intensity than specialized services for mental illness, mental retardation, or a related condition in accordance with 42 CFR 483.134 and 483.136;

(4) Contracting with mental health-mental retardation centers for evaluations and determinations if the individual is mentally ill, mentally retarded, has a related condition or requires specialized services;

(5) Contracting with other agencies, organizations or entities, if necessary, to fulfill DMHMRS' requirements with regard to the PASRR function so long as it retains ultimate control and responsibility for the performance of its obligations under 42 CFR 483.100 - 138 and this administrative regulation; and

(6) Notifying the individual or his legal guardian of the written findings of the Level II report and explaining the meaning of the report.

Section 6. Payments for PASRR Evaluations and Determinations. (1) The department shall reimburse DMHMRS for the cost of providing PASRR services under this administrative regulation.

(2) The department's reimbursement to DMHMRS for this purpose shall not exceed the actual cost to DMHMRS, including contract costs, of implementing and operating the PASRR program.

(3) The department shall reimburse an NF only if:

(a) The Level I and, if required, Level II PASRR are completed prior to a new admission and in a timely fashion as established in Sections 4 and 5 of this administrative regulation; or

(b) A review is required because of a significant change in the individual's condition, and it is performed timely in accordance with Sections 4 and 5 of this administrative regulation.

(c) When a Level I and, if required, a Level II PASRR is not timely completed prior to admission or a subsequent review is required but not timely performed in accordance with Section 8 of this administrative regulation, but the required PASRR is performed at a later date, reimbursement shall be made for NF services provided after the PASRR is completed if the individual is determined to need NF level of care.

(4) The department shall not reimburse an NF for specialized services provided to an individual who is mentally ill, mentally retarded, or has a related condition and is in an NF. However, services of a lesser intensity than specialized services shall be provided by an NF to an individual so identified in a Level II PASRR.

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Section 7. Admissions Criteria Under PASRR. (1) An admission to an NF shall be in accordance with 42 USC 1396r.

(2) An individual who is mentally ill, mentally retarded, or has a related condition may be admitted to an NF when:

(a) The PASRR determines that he requires NF level of care; and

(b) A determination of the need for specialized services for mental illness, mental retardation, or a related condition is made.

(3) An individual who is mentally ill, mentally retarded, or has a related condition and who does not require NF level of care shall not be admitted to an NF regardless of whether he requires specialized services for mental illness or mental retardation.

Section 8. Criteria for Subsequent Reviews. (1) An individual in an NF shall not be subject to mandatory annual resident review in accordance with 42 USC 1396r. However, if an individual experiences a significant change in condition, a PASRR is required as established in Sections 4 and 5 of this administrative regulation.

(2) An individual who is determined not to be mentally ill, mentally retarded, or have a related condition shall not be subject to further PASRR activity.

(3) An individual who is determined to be mentally ill, mentally retarded, or has a related condition but who requires the level of care provided by an NF may remain in the facility. A determination as specified in Section 5 of this administrative regulation, shall be made as to whether specialized services for mental illness, mental retardation, or a related condition are required.

(4) An individual who is mentally ill, mentally retarded, or has a related condition but who is determined not to require the level of care provided by an NF may remain in the facility if he has continuously resided in an NF for thirty (30) months or more before the date of the determination. If he requires specialized services for mental illness, mental retardation, or a related condition, DMHMRS shall be responsible for the cost of such services.

(5) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by an NF but does require specialized services and who has resided in an NF for less than thirty (30) consecutive months shall be discharged from the NF in accordance with 42 CFR 483.12 to an appropriate setting where specialized services shall be provided or arranged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.260 and 483.12.

(6) An individual who is mentally ill, mentally retarded, or has a related condition and who is determined not to require the level of care provided by an NF and does not require specialized services, regardless of length of stay, shall be discharged. The individual shall be advised by DMHMRS of his discharge rights in accordance with 42 CFR 431.200 through 431.250 and 483.12.

Section 9. Responsibility of the Department for Inappropriately Placed Persons. (1) The department shall be responsible for the orderly discharge of an individual determined through the PASRR process established in this administrative regulation to be inappropriately placed.

(2) DMHMRS shall be responsible for providing, or arranging for the provision of, specialized services to an individual for whom such a need has been determined.

Section 10. Appeals. An individual who is determined not to require NF services or specialized services as a result of a PASRR determination by DMHMRS may appeal the denial in accordance with 907 KAR 1:563.

Section 11. Incorporation by Reference. (1) The Manual, Long Term Care Resident Assessment Instrument User's Manual Version 2.0 for use with version 2.0 of the Health Care Financing Administration's Minimum Data Set, Resident Assessment Protocols and Utilization Guidelines, October 1995, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on January 21, 1999, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by January 13, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 17,000 Medicaid recipients residing in nursing facilities.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Any savings obtained from removal of annual reviews are expected to be utilized in the other required reviews:

1. First year: Budget neutral.

2. Continuing costs or savings: Budget neutral.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local 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: The implementation of this administrative regulation should improve availability and access of medically needy Medicaid recipients.

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

(c) If detrimental effect would result, explain detrimental effect: Failure to implement this regulation could possibly result in denial of Medicaid payments to nursing facilities for failure to comply with preadmission screening and resident review program requirements.

Loss of payments for medical care could place the health and welfare of an individual in jeopardy.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation sets minimum or uniform standards in accordance with federal requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of December 8, 1998

The December meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, December 8, 1998 at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the November 10, 1998 meeting were approved.

Present were:

Members: John Arnold, Chairman; Senators Nick Kafoglis and Dick Roeding; Representatives Jimmy Lee, James Bruce and Woody Allen.

LRC Staff: Greg Karambellas, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Edna Lowery, Ellen Benzing, Don Hines.

Guests: Jill LeMaster, Donna G. Dutton, Executive Branch Ethics Commission; Pam Polly, Janice Ernst, Richard Casey, KHEAA; Jennifer Fetter, Mack Bushart, State Board of Elections; Rosemary F. Center, Kentucky Registry of Election Finance; Susan Stinnett, Wanda R. Delaplane, Office of Attorney General; Don Speer, Angela Robinson, Finance and Administration Cabinet; Nancy L. Black, Division of Occupations and Professions; Debra Finneran, Board of Licensure for Nursing Home Administrators; Bob Bates, John Wilson, Sgt. Mike Fields, Department of Fish and Wildlife Resources; John Hornback, Carl Millanti, Millie Ellis, Kenneth Hines, Daniel J. Gray, Bruce Williams, Natural Resources and Environmental Protection Cabinet; Tamela Biggs, Daniel Ball, Stephen P. Durham, Herb Bowling, Greg Howard, Stephanie C. Bingham, Justice Cabinet; Mark Ryles, Kevin Noland, Thomas H. Peterson, Department of Education; June Forbes, Rita Osborne, Janet Banta, Education Professional Standards Board; Dana Parker, Kentucky Commission on the Deaf and Hard of Hearing; Tim Chancellor, William Ralston, Labor Cabinet; Sharron S. Burton, Department of Insurance; Deborah T. Eversole, Wayne Bates, Public Service Commission; Colleen Keefe, Rick Jones, Financial Institutions; Don Smith, Department of Housing, Buildings and Construction; Donna Long, Rosanne Barkley, Kevin Lightle, David Crane, Robert Calhoun, Danna Droz, Cookie Whitehouse, Trish Howard, Marty Mason, Clarkson T. Palmer, John Hafendorfer, Cliff Jennings, Neville Wise, Duane Dringenburg, Gene Simmons, Joyce Metts, Thelma Cornett, Carol Williams, Karen Doyle, Cabinets for Health Services and Families and Children; Mike Helton, KPMA; Jan Gould, Kentucky Retail Federation; John Brazel, Kentucky Chamber of Commerce; Jim Carlross; David J. Murphy, Terry Shumate, Sandra F. Keene (Tilford, Dobbins, Alexander, Buckaway & Black) Tritel Communications, Inc.; Brett Buggeln, Spectrasite Communications; Judy Allgood-Hodge, All County Wheelchair Transport Service, Inc.; Beverly Allen, Karen S. Osborne, East Kentucky Transportation, Inc.; Rev. William L. Curry, Mainstream Transportation Authority, Inc.; Janet P. Howard, Don Hoard, Quicksilver Taxi; Ruth Greoghegan, LifeLine Transit; John Binkley, Crown Communication Inc.; Joe P. Wellner, Central Transport Service Inc.; Donovan Fornwalt, Council For Retarded Citizens; F.W. White, Union Cab Company; Donnie F. Story, Sidney Allen, RTA; Gilbert and Hilda Hache, Clinton Transport Taxi; Jim Bahn, Kiely Hines & Associates; Connie Godgrey, NR Medical Transport; Jimmy C. Jeffers, Cumberland Cab; Joe P. Wellner, Central Transport Service Inc.; John Cooper, KMA/KBA/BellSouth; Curtis Wiggins, Sunny Transportation Services; Terry L. Curry, Donimo Cab and RTA; Lonzo Smith, Smith's Taxi; Richard A. Wallace, Wayne County Taxi; Michael C. Schier, Yellow Checker Cab Company of Kentucky, Inc.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Executive Branch Ethics Commission: Ethics Commission

9 KAR 1:015. Preadministrative proceedings. In response to a question by Senator Roeding, Ms. Dutton stated that if there was a request by an attorney or an unrepresented individual, the Commission had always met with that person.

This administrative regulation was amended as follows: (1) Section 3 was amended to correct statutory citations; and (2) Sections 3, 4, and 5, were amended to comply with the drafting requirements

of KRS 13A.222(4).

9 KAR 1:030. Administrative proceedings. In response to a question by Senator Roeding, Subcommittee staff stated that issues relating to the comments in the Initial Staff Review were addressed in the amendment to this administrative regulation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1(1) was amended to provide a cross-reference to KRS 13B.050(3); and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, 5, 6, 7, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4).

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. In response to questions by Senator Roeding, Subcommittee staff stated that: (1) issues raised in the Initial Staff Review: (a) were considered; and (b) unless Subcommittee staff disagreed, the appropriate amendment was made to the administrative regulation; and (2) the \$1,000 fine was removed because it was established by statute.

This administrative regulation was amended as follows: (1) the TITLE was amended, pursuant to KRS 13A.222(4); and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

9 KAR 1:050. Approval of outside employment of a public servant. In response to a question by Chairman Arnold, Ms. Lemaster stated that: (1) this administrative regulation addressed executive branch employees who were defined as public servants; and (2) if a public servant sought outside employment with someone who had a regulatory or business relationship with his agency, he would be required to seek approval from his appointing authority.

Section 1 of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

Department Of State: Registry of Election Finance: Practice and Procedure

32 KAR 2:050. Conciliation. Rosemary Center, General Counsel, represented the Registry.

Subcommittee staff stated that this was an amendment to an existing administrative regulation that provided: (1) training sessions for political candidates; and (2) an incentive for a candidate to attend a training session.

Ms. Center stated that: (1) this administrative regulation required the Registry to take into consideration the fact that a candidate or his treasurer had attended a training session; (2) if there was a violation, training: (a) attendance would constitute mitigation; and (b) reduce a proposed fine; (3) the main purpose of this administrative regulation was to: (a) provide an incentive for a candidate to attend the training session; and (b) eliminate violations of the finance laws.

In response to a question by Representative Bruce, Ms. Center stated that: (1) staff: (a) traveled across the state; and (b) tried to schedule the sessions in various locations around the state; (2) most sessions were scheduled at state parks.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (1) Section 1 was amended to provide the criteria for work release; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); (3) Section 1(2) to comply with drafting requirements of KRS 13A.222(4); and (4) Section 2(5) was deleted, as required by KRS 13A.120(2)(g), due to exceeding statutory authority.

Department Of Law: Office of the Attorney General: Division of Consumer Protection

40 KAR 2:070 & E. Procedure for registration of telephone solicitation merchants. Wanda Delaplain, Assistant Attorney General, represented the Division.

Jan Gould, Kentucky Retail Federation, appeared to speak on this administrative regulation.

Ms. Delaplain stated that: (1) this administrative regulation addressed the registration process; (2) the Office of the Attorney General had existing administrative regulations governing the subject matter; (3) the proposed amendment brought this administrative regulation into conformity with KRS Chapter 13B; (4) there were no substantive changes; and (5) a registration process was required before operation in Kentucky as a telemarketer.

In response to questions by Chairman Arnold, Ms. Delaplain stated that: (1) while she wished that she could promise that this administrative regulation would end problems consumers had with telemarketers, she was unable to make that statement; (2)(a) the practice of telephone "slamming" was governed by the Public Service Commission, rather than the Office of the Attorney General; and (b) the Attorney General's office did not have authority to address the practice of companies who switched consumer's long distance telephone service; and (3) this administrative regulation addressed telemarketing, the sale of goods or services by telephone.

In response to questions by Senator Roeding, Ms. Delaplain stated that: (1) she did not feel that there was a particularly large amount of paperwork required of a telemarketer; (2) when this administrative regulation was filed, copies of the forms were attached to it; (3) the fee was charged only to individuals who were required to register; (4) to date, there were a total of fourteen companies that were required to register; (5) if a company or individual was exempt, there was no charge for registration; (6) the fee was \$300, plus the cost of a surety bond; (7) a surety bond was also required by this administrative regulation; (8) it was common for states to have a telemarketing registration procedure; (9) there were a number of states that: (a) did not have a telemarketing registration procedure; (b) were studying the issue; and (c) had proposed legislation on the topic; (10) compared to other states, the fee of \$300 was a median amount; (11) the Office of the Attorney General had never had a company indicate that this fee was prohibitive; (12) when the legislation for the "no call" list went into effect on July 15, the Office of the Attorney General anticipated that there would be some interest; (13) the Office was not prepared for the overwhelming response to this legislation; (14) it had expected to have approximately 20,000 people enrolled at the end of two years; (15) as of December 8, over 41,000 people had enrolled; (16) on the day that the list went into effect, the Office's telephone lines broke; (17) the overwhelming response literally fried its telephone system; (18) the Office had to hire additional staff people; (19) calls were coming in at the rate of every three seconds; (20) this rate had continued for over three weeks; (21) a number of other states, and some Canadian authorities had: (a) expressed interest in the program; and (b) contacted the Office to find out its experience with the program; (21) across the nation, there was a strong interest in the concept of people being able to put their name on a list and prevent the telemarketing telephone calls.

Subcommittee staff stated that: (1) these administrative regulations authorized a copy of the list to be provided to telemarketers who: (a) were exempt; and (b) did not want to contact people on the list; (2) telemarketers who were exempt may: (a) obtain a list; and (b) decide not to contact people on the list.

In response to a question by Senator Kafoglis, Subcommittee staff stated that exempt telemarketers were not required to obtain the list.

Senator Kafoglis stated that: (1) he thought that the response clearly indicated that the public wanted protection from telemarketers; and (2) he would not mind if the registration fee were a little higher.

Mr. Gould stated that: (1) the Kentucky Retail Federation had raised the issue of the definition of "telemarketer"; (2) telemarketer was defined in Section 1 as: (a) a merchant; (b) a telemarketer; and (c) a telemarketing company; (3) the Federation was concerned that telemarketer had a different, more restrictive meaning in the statute;

(3) a danger existed that by including "merchant" in the definition of telemarketing, it would include anyone who sold goods or services, regardless of whether the seller used a telephone; (4) because the definition in the statute was very unclear and the Federation had agreed with Subcommittee staff and the Attorney General's recommendation to request LRC to refer the issue raised by the statutory definition and this administrative regulation to an interim joint committee for review and recommendation.

In response to a question by Representative Bruce, Ms. Delaplain stated that: (1) political pollsters were included in the exemptions to telemarketers; and (2) political polls were not considered telephone solicitation.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; (2) Section 2 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

40 KAR 2:075 & E. Commonwealth of Kentucky, no telephone solicitation calls list. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; (2) Section 7 was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Sections 1, 2, and 7 were amended to comply with drafting requirements of KRS 13A.222(4).

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). Subcommittee staff stated that: (1) an issue was raised relating to the definitions established by this administrative regulation; and (2) this issue had been discussed with the Kentucky Retail Federation.

The Subcommittee approved a motion to request LRC to refer the issue raised by statutory and administrative regulation definitions to the appropriate interim joint committee for a determination of whether applicable statutes needed to be clarified.

This administrative regulation was amended as follows: (1) the TITLE was amended as follows: (1) the TITLE was amended to comply with the drafting requirements of KRS 13A.222(4); and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations.

Kentucky Board of Licensure for Nursing Home Administrators

201 KAR 6:020. Other requirements for licensure. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and RELATES TO paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 6:030. Temporary permits. In response to questions by Chairman Arnold, Ms. Finneran stated that: (1) these were licensure regulations for nursing home administrators; (2) the requirements: (a) addressed people that would operate the nursing home; and (b) did not address the home itself; (3) this administrative regulation established the criteria for a person to apply for temporary status; (4) temporary meant that person had to complete: (a) a six month training process; and (b) licensure boards; (5) temporary permit could not exceed six months; (6) a person could run a nursing home with a temporary permit; (7) to obtain a temporary permit, the person: (a) had to have a college degree; and (b) could not have been convicted of: 1. a felony; or 2. crime involving moral turpitude.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY and RELATES TO paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 6:040. Renewal of license. In response to questions by Senator Roeding, Ms. Finneran stated that: (1) if a hospital system had a nursing home unit, someone in the management structure had to have a nursing home administrator's license; (2)

otherwise, this administrative regulation would not apply to a hospital administrator; (3) the fee structure for regular license renewal and application for temporary license was not changed; (4) the cost of: (a) an initial application for licensure had been raised from \$100 to \$150 to sit for boards; and (b) licensure by endorsement had been raised from \$100 to \$250; (5) the board of licensure was required to perform an extensive background check for reciprocity licensure; (6) the background check was the reason for the fee increase; (7) research indicated that Kentucky's fee structure was in the lower 50% of all states; (7) the fee covered a two year period; (8) the initial application fee covered the cost of an individual's licensure for a two year period; and (9) the licensure for endorsement fee was a one-time fee.

In response to questions by Representative Lee, Ms. Black stated that: (1) the initial application fee and regular renewal fee were not increased; (2) the fee increases were for: (a) late renewals; (b) reinstatement of licenses; and (c) duplicate licenses; and (3) they had notified the public of the proposed fee increases.

In response to questions by Representative Lee, Ms. Finneran stated that: (1) one way that they notified the general membership of the proposed amendments was through the trade associations; (2) the trade associations sent copies of the amendments to their membership; (3) they notified the hospital association who had licensed long-term care administrators within their membership; (4) an advisory committee assisted the board in developing the proposed administrative regulations; (5) the board consisted of a cross-section of individuals from membership; (6) they attempted to notify the membership of the proposed fee increases; (7) they received no comments regarding the fee increases, because the changes effected few potential applicants; and (8) most people were concerned with the regular renewal fee.

In response to a question by Senator Roeding, Ms. Finneran stated that: (1) the board was not operating at a deficit; (2) their administrative costs had increased; and (3) the fees in these administrative regulations had not changed since 1978.

This administrative regulation was amended as follows: (1) Section 1 was amended to provide that a licensee had a 60 day grace period in which to renew his license, pursuant to KRS 13A.222(4)(a); (2) A new Section 2 was created to incorporate by reference necessary forms; and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 6:050. Licensure by endorsement. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); and (3) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 6:060. Fees. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); and (3) the TITLE, and Sections 3 and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 6:070. Continuing education requirements. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to alphabetize the definitions, as required by KRS 13A.222(4)(e); and (3) Sections 1, 3, 6, 7, 8, 9, and 10 were amended to comply with the drafting amendments of KRS 13A.222(4).

201 KAR 6:080. Code of ethics. This administrative regulation was amended as follows: (1) Section 1 was amended to alphabetize the definitions, as required by KRS 13A.222(4)(e); (2) Section 2 was amended to correct statutory citations; (3) Section 3 was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2 was amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 6:090. Complaint management process. This administrative regulation was amended as follows: (1) a new Section 7 was created to establish the Standards of practice committee; (2) a new Section 8 was created to incorporate by reference necessary forms; and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 4, 5 and 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

Justice Cabinet: Department of State Police: Sex Offender Registration System

502 KAR 31:020 & E. Sex offender registration system. Tamela Biggs, Staff Attorney, Steve Durham, Staff Attorney, and Lieutenant Danny Ball, Kentucky State Police, represented the Department.

Subcommittee staff stated that this was a new administrative regulation that established a sex offender registration system, as required by KRS 17.510.

In response to a question by Senator Roeding, Mr. Durham stated that the forms incorporated by reference had to be filled out by: (1) the sex offender; or (2) a person who was: (a) reading the form to the offender; and (b) filling in the necessary information.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 2, 3, and 4, were amended to correct statutory citations; and (2) Section 1 was amended to alphabetize the definitions, as required by KRS 13A.222(4)(e).

With regard to another issue relating to the Cabinet, Representative Allen stated that: (1) Kentucky had a speed limit; (2) most people exceeded that limit by about five miles per hour; (3) during the times that he had driven between Frankfort and his home on the interstates, he had seen state vehicles being driven as fast as 90 miles per hour; (4) he thought that it set a very poor example when the taxpayer was trying to abide by the speed limit; (5) if a citizen exceeded the speed limit too much, he would get a speeding ticket; (6) County sheriff's and other officials did the very same thing; (7) while he realized that it was frequently necessary for the Kentucky State Police to exceed the speed limit while patrolling, it was not necessary for other state vehicles to exceed the speed limit; (8) he wished that the Kentucky State Police would: (a) look into this; (b) make them obey the speed limit like normal citizens; (c) give them a speeding ticket if they did not; and (9) he thought it set a bad example for the State Police to permit some people to speed excessively.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 2, 3, and 4 were amended to correct statutory citations; and (2) Section 1 was amended to alphabetize the definitions, as required by KRS 13A.222(4)(e).

Department of Criminal Justice Training: General Training Provisions

503 KAR 3:010. Basic law enforcement training course recruit conduct requirements; procedures and penalties. Subcommittee staff stated that this was an existing administrative regulation that was being amended to clearly establish: (1) conduct requirements for recruits in training; and (2) procedures for disciplinary action if the conduct requirements were violated.

Ms. Bingham stated that: (1) the penalty provision established in Section 6(7)(b) should be retained; and (2) Section 6(7)(b) should therefore not be deleted in its entirety.

Subcommittee staff stated that the penalty provision could be included in the new language of the amendment.

This administrative regulation was amended as follows: (1) Section 6(3) and 8(3) were amended to delete vague language, as required by KRS 13A.222(4); (2) Section 6(7) was amended to clearly prohibit certain conduct by a recruit; (3) Section 13(2) was amended to clearly establish the duties of the legal officer and rights of the recruit at an initial appearance; and (4) Section 6 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department of Education: Office of District Support Services: School Terms, Attendance and Operation

702 KAR 7:125 & E. Pupil attendance. In response to questions by Senator Roeding, Mr. Noland stated that: (1) during its

1998 Regular Session, the General Assembly had enacted five House Bills relating to: (a) student attendance; and (b) how school districts were credited with attendance for funding purposes; (2) this administrative regulation was amended to conform to the House Bills; (3) House Bill 900 deleted the sixty day waiting period prior to student withdrawal from school; (4) in order not to establish a disincentive for suspension and expulsion, House Bill 92 provided funding for a school district, even during a period of suspension and expulsion; (5) House Bill 92 permitted deduction of the five lowest days of average daily attendance from the prior year when calculating the funding that the school district was awarded; (6) House Bill 519 developed a student dropout questionnaire; (7) the reports required by this administrative regulation were: (a) submitted through the central office of software; and (b) not written hardcopy reports; and (8) student attendance was reported through this method.

Sections 7, 11, and 16 of this administrative regulation were amended to comply with drafting requirements of KRS 13A.222(4).

Education Professional Standards Board: Board

704 KAR 20:460. Examination prerequisites for principal certification. Rita Osborne, Director of Testing and Internship, and Janet Banta, Director of Teacher Certification, represented the Board.

Sections 4 and 5 of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

704 KAR 20:720 & E. Professional certificate for exceptional work experience, limited to secondary education. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Financial Institutions: Mortgage Loan Companies and Mortgage Loan Brokers

808 KAR 12:020. Claims of exemption. In response to a question by Senator Roeding, Ms. Keefe stated that: (1) the application fee had been increased from \$50 to \$150; (2) the annual renewal fee of \$25 had been eliminated; (3) if a credit union was in business for more than three years, a decrease in the total fees would occur; (4) an amendment by the General Assembly to the statute eliminated the number of companies that had to claim an exemption; and (5) a reduction in the number of applications was expected.

In response to a question by Representative Bruce, Ms. Keefe stated that the agency regulated and examined finance companies.

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) a new Section 3 was created to incorporate by reference a necessary form; and (3) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Local Fire Departments

815 KAR 45:025. Commission meetings and proceedings. Don Smith represented the Department.

Sections 1 and 3 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

815 KAR 45:035. Education incentive. Representative Lee stated that: (1) Mr. Smith had requested the Subcommittee consider an additional amendment that had not been filed; (2) if proper, he wanted Subcommittee staff to review the amendment to determine if it should be approved; and (3) if it was determined to be proper, he would make a motion to accept the amendment.

Mr. Smith stated that: (1) in performing audits, the Department discovered that some fire departments with paid people were receiving funding from their office that they were not entitled to receive; and (2) there was nothing in the statutes or administrative regulations that permitted them to get that money returned.

Subcommittee staff read the requested amendment: "If the Commission finds upon audit or any other means that a local government has received funds in violation of the provisions of this administrative regulation or applicable statute, the Commission shall

require reimbursement for all payments, erroneously or falsely made or it may refuse to grant future eligible incentive pay awards until the amount owed is recovered by the Commission."

In response to a question by Chairman Arnold, Mr. Smith stated that: (1) the Commission had provided money for claimed education expenses; (2) upon performing an audit, the Commission the Department could not provide proof that the firefighter had the educational requirements that were claimed; and (3) when the Commission had requested that funding be returned, they were asked upon what authority the Commission made the request.

Additionally, Sections 1 and 2 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

815 KAR 45:050. Requirements for obtaining firefighter's training facility grants. Sections 1 and 2 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

815 KAR 45:060. Survivor benefits for death of a firefighter. Section 1 of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

815 KAR 45:080. Volunteer fire department aid. Sections 1 and 2 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

815 KAR 45:090. Certification and qualifications of fire protection instructors. Section 1 of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

815 KAR 45:100. Volunteer fire department loan fund. Sections 1 and 6 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

Cabinet for Health Services: Department for Public Health: Division of Epidemiology and Health Planning: Communicable Diseases

902 KAR 2:090. Tuberculosis detection, prevention, and control. Gene Simmons, represented the Department.

In response to a question by Senator Roeding, Subcommittee staff stated that the amendment to this administrative regulation addressed the issues raised in the Initial Staff Review.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(4)(f); (3) Section 1 was amended to alphabetize the definitions, as required by KRS 13A.222(4)(e); (4) to clearly establish the duties, obligations, and requirements, as required by KRS 13A.222(4); (5) Section 10 was amended to comply with the formatting requirements of incorporation by reference; and (6) Sections 1, 2, 3, 4, 6, 7, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

Emergency Medical Services and Ambulance Service Providers

902 KAR 14:080. Class I ground ambulance providers. Robert Calhoun, Emergency Medical Services Branch, represented the Cabinet.

Sections 2 and 4 of this administrative regulation were amended to exempt an ambulance service licensed in an adjoining state from the requirements of this administrative regulation.

Division of Adult and Child Health: Controlled Substances

902 KAR 55:010. Licensing of manufacturers and wholesalers. Danna Droz, Department of Public Health, represented the Division.

Subcommittee staff stated that: (1) KRS 13A provided that, if another administrative body or agency was required to review, consider, or approve an administrative regulation, there had to be a statement filed with the administrative regulation that the review, consideration, or approval had occurred; (2) in the future, if the Regulations Compiler was notified that a statement was required and it not submitted, an administrative regulation would be rejected for filing; (3) although statements of review or approval for some of the administrative regulations on the agenda had not been filed,

the agency had since submitted them; and (4) in the future, the Regulations Compiler could not permit correction after filing.

In response to questions by Senator Roeding, Ms. Droz stated that: (1) the fees in this administrative regulation had not been changed; (2) although required forms had not originally been incorporated by reference, the amendment to this administrative regulation incorporated the forms; and (3) the amendments to this administrative regulation was a re-drafting of the administrative regulation to bring it into compliance with KRS Chapter 13A.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 8 was amended to comply with the formatting requirements of incorporation by reference; (3) Sections 1, 4, and 5 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1, 2, 3, 4, 5, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 55:030. Schedule IV substances. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 55:045. Exempt prescription products. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4).

Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Public Assistance

904 KAR 2:001. Definitions. Steve Vino, Division Director of the Division of Child Support enforcement, and Gerald Gilken, Assistant Director, represented the Cabinet.

Subcommittee staff stated that this was an existing administrative regulation that was amended to include new definitions to comply with the child support provisions of the federal social security act.

In response to questions by Senator Roeding, Mr. Vino stated that: (1) there were passport surrenders and driver's license suspension in the other administrative regulations; (2) this administrative regulation contained only definitions; and (3) the State was moving toward the privatization of child support in part.

In response to a question by Representative Bruce, Mr. Vino stated that these administrative regulations did not relate to the WIC program.

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) Section 1 was amended to comply with the drafting requirements of KRS 13A.222(4).

904 KAR 2:018 & E. Transportation services for Kentucky Works. The following persons spoke in favor of this administrative regulation: Ron Bingham, Power Kentucky; Neville Wise, Medicaid Services; Karen Doyle, Medicaid Services; Roseanne Barkley, Cabinet for Families and Children.

The following persons spoke against this administrative regulation: Terry Curry, Rural Transportation Association; Sidney Allen, Rural Transportation Association; Connie Godfrey, NR Medical Transport.

Ms. Doyle stated that: (1) this was a new administrative regulation that permitted the Department for Community Based Services to implement the human services transportation delivery program for out clients; (2) it would allow K-TAP recipients doing Kentucky Works activities to be referred to a regional capitated transportation network; (3) this administrative regulation was needed: (a) in conjunction with related administrative regulations promulgated by the Transportation Cabinet; (b) to provide sufficient and safe transportation to K-TAP recipients who are required to participate in the Kentucky Works program; (c) to allow these individuals to obtain the skills they need to become economically self-sufficient before reaching the five year federal Tannif limit; and (d) to enable the Cab-

net to better comply with mandated work requirements established by federal law.

Mr. Bingham stated that: (1) four cabinets' transportation services had been combined; (2) this procedure would: (a) serve as an enabler; and (b) be more efficient in the delivery of transportation services and save significant funds in the future; (3) this was part of an Empower Kentucky initiative that had been reviewed with the General Assembly, in which: (a) the transportation services of the Department of Children and Families, Health Services, Workforce Development were into a department in Transportation; (4) transportation services were administered in sixteen different regions made up of Area Development districts; (5) the Medicaid waiver allowed the blending of funds on a transactional basis; (6) about eight of delivery areas have established services; (7) another four or five will be operational in the next several months; (8) the program was: (a) working; and (b) was a much more efficient way to deliver services.

Mr. Curry stated that: (1) the Rural Transportation Association was opposed to these administrative regulations; (1) it felt that the Statement of Emergency justifying these administrative regulations was not valid; (2) there had been no documented evidence of the fact that Association vehicles had been operated in an unsafe manner; (3) as an association and group of providers; the members of the Association had never been questioned on safety or availability; (4) everyone in the Association that was here today would gladly provide 24 hour service if there was a need in his area; (5) the Association had to question the emergency order that created these administrative regulations; (6) with regard to savings, on the documented waiver request, while the state claimed that it would save \$1,000,000, administrative costs were increased by the same amount; (7) while it cut five percent off of the top for potential fraud and overcharging, the state could have done that anyway and saved \$1,000,000 if it had left the program as it was; and (8) while the Association members did not know if they could succeed in action could be taken at this time, since these administrative regulations were already in effect, the members wanted to state their opposition to the administrative regulations relating to the transportation services.

Mr. Allen stated that: (1) when the legislation was going through the legislative process, providers were under the impression that the actual provider-broker would not be a transportation provider; (2) it appeared that the person who brokered the region would also provide the transportation, which was like the fox guarding the henhouse; (3) the broker would get all of the transportation; (4) while he was in an area and provided transportation for the same amount of money as the broker, he had to shut down; (4) while he had averaged twelve runs per day, he was now doing two runs; (5) while he had taken people from welfare and put them into positions working for him, now they had to go back to welfare because the State had implemented this program; (6) while the state had created new positions and new jobs, it had put others out of work; (7) while he had run 24 hours per day, 7 days per week, now after 7:00 p.m., Monday through Friday, you could not get in contact with anyone; (8) people were having to call an ambulance to come in and he was taking them back home as a one way trip because he could not go get them; (9) some regions were working better than others; (10) on the issue of safety, he had documented photographs of what was being used for transportation; (11) the vehicles had no ties for wheelchair straps and people were rolling around in the vans; (12) in his opinion, they had not proven anything; (13) while all of his vans were inspected by the Department of Transportation for straps, lifts, and restraints, the brokers were running without these safety features; (14) he was regulated and had to go through the Department of Transportation; (15) if he wanted to add a vehicle, he had to apply for it and go through a lot of trouble; (16) if the brokers wanted to add a vehicle, they just had to call the administrator of the program.

Ms. Godfrey stated that: (1) she was opposed to both administrative regulations; (2) she understood that the waiver program could not be implemented until freedom of choice had been taken away from the recipients who received the services; (3) after a broker was appointed for each region, the broker would decide what mode of transportation would be used; (4) she did not think

that the complete program implemented by these administrative regulations had been studied in whole; (5) this was a free country and we were able to make choices; (6) we were singling out medical transportation and telling recipients who they had to use, when they should have freedom of choice; (7) she did not think that a feasibility study had been performed to show that this program would save money if freedom of choice was taken away.

Chairman Arnold stated that this program sounded like managed care and Health Maintenance Organizations, which required the patient to go where the insurance company instructs.

In response to a question by Representative Bruce, Mr. Curry stated that: (1) the current DMS had set mileages and prices per mile; (2) normally, doctors made these determinations; (3) the doctors had been excluded from the process; (4) if you were a dialysis patient and the doctor said that you needed to be transported to your appointment and directly from your appointment, the doctor should be able to give this instruction; (5) under the waiver setup, the doctor could not mandate what happened to the patient; (6) the broker-provider could tell the doctor that rather than follow the doctor's order, he would operate under the prescribed service; (7) providers did not have a problem with the implementation of various safety features; (8) their charges were based differently than Medicaid; (9) they received a per mile charge that was negotiated under the new system and what ever they allowed providers to charge; (10) one dollar or \$1.25 per mile was the maximum they were paid; (11) while the transit companies made a bid of fifty cents per mile: (a) they were federally subsidized; and (b) their equipment was paid for; (12) while there may be a discrepancy in the initial charge, they were cheaper when the per mile charge and the federal subsidy were combined; and (13) they could not charge a fee above the fee that Medicaid would pay for a patient.

Mr. Allen stated that they were the same price as the provider-broker in the areas for disabled wheelchair transportation.

In response to questions, Subcommittee staff stated that: (1) these two administrative regulations were companions to 603 KAR 7:080, which was deferred until the January, 1999, meeting of the Subcommittee; (2) this administrative regulation was filed as an emergency and would expire prior to the next Subcommittee meeting if it were deferred; (3) since the Subcommittee had the authority to take up an existing administrative regulation, the Subcommittee could: (a) approve this administrative regulation; and (b) reschedule a hearing on these two regulations again, along with 603 KAR 7:080; (4) in the meantime, the witnesses could: (a) leave their names and telephone numbers; and (b) submit in writing anything they would like the Subcommittee to consider; and (c) appear before the Subcommittee next month; (5) if the Subcommittee determined that these two administrative regulations were deficient, it could make a finding that they were deficient as existing regulations, just as it could have found them deficient today; (6) other issues that had to be considered were whether this: (a) was a policy issue that the agency had the discretion to make; or (b) whether there was a violation of an applicable federal or state statute; (7) this would give Subcommittee staff enough time to research the issues and report to the Subcommittee; (8) Subcommittee staff would call the witnesses to discuss the issues; and (9) all three administrative regulations would be reconsidered by the Subcommittee.

In response to questions related to the promulgation of an emergency administrative regulation, Subcommittee staff stated that: (1) the Subcommittee could not instruct an agency not to file an emergency administrative regulation; and (2) once an emergency administrative regulation is filed with LRC, an agency can implement it.

Mr. Allen stated that that was why they had questioned the need for the emergency administrative regulation.

Subcommittee staff stated that: (1) if the Subcommittee determined that any of these administrative regulations was deficient when it reconsidered them, the administrative regulations would expire July, 2000, unless the General Assembly authorized them.

Mr. Allen stated that: (1) it appeared that they were stuck with this program until 2000, no matter what; and (2) this would be the death of the Medicaid patients.

Rep. Bruce stated that: (1) this was one of the reasons that the General Assembly would like to meet yearly; (2) while legislators

could solve a lot more problems, if the General Assembly met annually, it was clear the public did not want annual sessions.

In response to questions, Subcommittee staff stated that: (1) because of the Constitutional requirements, as established by Legislative Research Commission v. Brown, a legislative subcommittee could not delay implementation of an administrative regulation it found deficient; (2) the Subcommittee did have the opportunity to find the administrative regulation deficient, which meant that at the next Regular Session, beginning January, 2000, the agency would have to obtain explicit authorization from the General Assembly; (3) if it did not, the administrative regulation would expire upon adjournment of the General Assembly.

Mr. Allen stated that by the year 2000, they would not see a single cab operator who was in the room today.

In response to questions by Senator Roeding, it was stated that: (1) the initiative was to combine the efforts of four different cabinets into one and to place that under the Transportation Cabinet, so that it could broker those services and obtain the efficiency of combining efforts, whether for vocational rehabilitation, indigence, or welfare to work; (2) a view of all of the transportation needs would enable the state to more efficiently plan for transportation needs; (3) instead of looking to a single broker, the state looked at running routes that had multiple-clients in order to cut expenses; (4) in some people who were against combining the broker and provider because it would create a captive audience; (5) this was why the legislation provided that any willing provider had to be accommodated.

Mr. Allen stated that: (1) although it was stated that any willing provider would be considered, that did not mean that they would be utilized; (2) what was happening in the other regions was that providers were the last out; (3) the broker providers would operate from 8:00 a.m. to 5:00 p.m. and want Association members to take runs that they did not want to do after 5:00 p.m.; (4) they would not take a telephone call after 3:00 p.m. to schedule a run; (5) a lot of trips fell between emergency and non-emergency; (6) if a person sprained his ankle, after 3:00 p.m. and called a non-profit carrier to take him to a doctor, he would be told that he had to give 24 hour notification and if he did not call before 2:00 or 3:00 p.m., they could not pick them up; (7) instead of waiting for the second day, the person would call the ambulance service and the state was charged \$500 for a run to let a doctor look at a sprained ankle; (8) while the implementation of this program and the combination of services was a good idea, a broker this thing should not be able to provide services, because it could not be fair; (9) they are the scoundrels and fraudulent ones of the industry, the ones that overcharge; (10) the state set standards composed of times and fees; (11) all of the sudden, Association vehicles were unsafe; (12) he had not seen any photographs substantiating these allegations; (13) the Empower Kentucky study group presented all of the information; (14) the information may be accurate in the attempts to access the problems, but Empower Kentucky never came to the existing providers to ask them to address the situation; (15) they simply implemented this program as an emergency; (16) the sixteen areas were politically controlled; (17) the areas were tied to a non-profit agency; (18) there was an issue before the courts regarding Bluegrass Ultratransit and Life First; (19) Bluegrass Ultratransit was attempting to lease their exempt authority to Life First to help it work in areas in which they did not have authority; (20) an existing provider had to: (a) go through the Transportation Cabinet; (b) prove that: 1. there was a physical need in that area; and 2. they were able to carry out that need; (21) Bluegrass Ultratransit was circumventing the whole system; and (22) there were no checks and balances in the program.

Senator Roeding stated that: (1) in the attempt to save money on emergency and non-emergency transportation, the providers had not really been involved in this process; (2) since these administrative regulations will be reconsidered at the next Subcommittee meeting, he would urge them to work the problems out with the providers before that time; (3) while someone mentioned a \$1,000,000 savings, there was no mention in 904 KAR 2:018 of this; (4) there was mention of budgeted amounts of 6.2 million dollars for 1998, 12.6 million dollars of 1999, and 12.6 million dollars for 2000; (5) the state was spending a lot of money on this

transportation.

Senator Roeding stated that the administrative regulation: (1) did not mention anything about Kentucky Works; and (2) simply stated that \$52 million was budgeted.

Mr. Allen stated that the direct cost and savings had been listed in the Regulatory Impact Analysis filed with 907 KAR 3:065.

In response to a question by Senator Roeding, Mr. Curry stated that: (1) the Regulation Impact Analysis listed a first year savings of \$1,346,135 in the geographic areas where it would be implemented; and (2) while the second year savings was supposed to be \$2,000,000, when it had been implemented in all sixteen regions: (a) they took 5 percent off of spending and added a \$1,000,000 administrative package to cover the program; and (b) it only \$346,000 in the first year not save \$1,000,000.

Senator Roeding stated that: (1) his concern with the savings listed in the administrative regulations was that while the Subcommittee heard about the savings, it was never documented; (2) anytime that there was a savings, he had wanted to ask that it be documented and a reported made to the Subcommittee, every three months and the end of the year; (3) nobody had ever held an agency's feet to the fire on the issue of whether there would be a savings, as an administrative regulation was supposed to provide; and (4) he felt that this was wrong.

Mr. Casey stated that: (1) this administrative regulation did not document savings; (2) they were seeking cost avoidance which was not counted; (3) they looked at the growth from year to year of transportation cost and determined that there was a 20 percent growth each year; (4) they had to do something to contain the increase in cost; (5) they were not coming back to give a check for savings as they did in administration and purchasing; and (6) in the Budget Bill they actually subtracted these savings from each cabinet at the bottom of each of their budget items.

Subcommittee staff stated that: (1) among the other issues that the Subcommittee would have staff look into was: (a) whether or not filling this administrative regulation as an emergency was proper; (b) the consultation with the providers; (c) the question of savings; and (d) whether what was recommended by Empower Kentucky was contained within an administrative regulation; and (2) Subcommittee staff would look over these issues and contact the parties.

Senator Roeding: (1) stated that: (a) in reviewing the administrative regulations, a lot of times it appeared that was not the provider, but the recipient, that was at fault; and (2) requested that the recipient be checked out to determine whether the inappropriate use of transportation was not all due to the providers, but included improper utilization by recipients.

Representative Bruce stated that: (1) he agreed; (2) bills from some individuals were \$6,000-\$7,000; (3) he thought that there was a lot of competition for the recipient; (4) they had to put a stop to it somewhere; and (5) the charges, amount, and the number may need to be worked on.

Chairman Arnold stated that: (1) he understood that these two administrative regulations would be approved; (2) the third administrative regulation was deferred until the next monthly meeting; (3) the parties were going to try to work together to come up with a workable solution; (4) after considering these administrative regulations as a group, the Subcommittee could find these administrative regulations deficient, if it determined they did not comply with statutory authority.

Subcommittee staff stated that: (1) the third administrative regulation, 603 KAR 7:080E, was an emergency administrative regulation; (2) the ordinary administrative regulation was tentatively scheduled for review next month; (3) if a public hearing was held, there was a chance that the ordinary administrative regulation would not be on the agenda for next month's Subcommittee meeting.

Mr. Curry stated that: (1) the way that this program was saving money was by grouping people in rider positions; (2) a lot of the companies in the disabled persons transportation business were already grouping people under the Medicaid mandate; (3) the provider got his initial longest miles and then four dollars per head; (4) they were not looking at a major change in implementing the program; and (5) there were issues of safety that could be addressed through the provider.

Representative Bruce stated that: (1) consideration should be

given to lowering prices; (2) if the groups affected by these administrative regulations wanted to work together, both would have to give a little, or both would come back unhappy.

Mr. Curry stated that: (1) since 1989, they had operated under the Department of Medicaid; (2) they could not charge any more or less, unless regulated as in Lexington or Louisville; (3) if they were regulated, they could charge whatever the city said was correct; (4) they would be happy to lower their rates if the others would give up their federal subsidies and run their own equipment; (5) for the \$1.25 per mile that they received, they paid for their labor, vehicles, and insurance; (6) the fifty cents per mile that they charge is found money, because their overhead was covered; (7) their vehicles are subsidized and paid for; (8) they have a fuel bond that they operate under; (9) at \$1.25 per mile, they were not making a ton of money; and (10) they were providing a service that was needed.

Subcommittee staff stated that: (1) if a public hearing on 603 KAR 7:080 was held, it would: (a) automatically come off of the January Subcommittee agenda; and (b) not be considered until February, because a Statement of Consideration would be due; (2) this administrative regulation would be on the February agenda; (3) the Transportation Cabinet had notified the Regulations Compiler that they had already received requests and were holding the public hearing; (4) the Statement of Consideration had to be submitted at least ten working days prior to the Subcommittee meeting, which would not be possible because of the holiday; (5) it was 95 percent certain that it would be on the February agenda; and (6) the parties would be notified if it was placed on the January or February agenda.

The RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs of this administrative regulation were amended to correct statutory citations.

904 KAR 2:020. Child Support Program. The RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs of this administrative regulation were amended to correct statutory citations.

904 KAR 2:380 & E. Child Support Program application process. Subcommittee staff stated that this was an existing administrative regulation that was amended to change the process by which an individual applied for child support services.

In response to questions by Senator Roeding, Mr. Vito stated that: (1) the \$250,000 cost of this administrative regulation related to necessary computer programming; and (2) there were seventeen new and amended forms incorporated by reference.

Subcommittee staff stated that: (1) because of the questions raised, the agency should take note and ensure that the Regulatory Impact Analysis statements were more comprehensive than they had been in the past; and (2) it would be better to err on the side of greater detail, rather than less detail.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, 3, 6, 7, and 8 were amended to correct statutory citations; (2) Section 9 was amended to incorporate by reference necessary forms; and (3) Sections 2, 3, 5, 6, and 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

904 KAR 2:390. Child Support Program paternity establishment. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 2 were amended to correct statutory citations; (2) Section 3 was amended to incorporate by reference necessary forms; and (3) Section 2 was amended to comply with the drafting requirements of KRS 13A.222(4).

904 KAR 2:400. Establishment, review, and modification of child support and medical support orders. In response to questions by Senator Roeding, Mr. Vito stated that: (1) anyone could request a review of his case at anytime; and (2) the Cabinet was required to notify him of this right at least every 36 months.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1, 2, and 3 were amended to correct statutory citations; and (2) Sections 1, 2, 3, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

904 KAR 2:410. Child support collection and distribution. Subcommittee staff stated that this was an amendment to an existing

administrative regulation that established child support collection and distribution procedures required by recent amendment to the Kentucky Revised Statutes by House Bill 161 and the United States Code.

In response to questions raised by implementation dates and format, Subcommittee staff stated that: (1) when an agency promulgated an administrative regulation, they needed to consider the fact that the procedure was lengthy; (2) an agency should not assume that it could immediately implement a program by guessing that the administrative regulation would complete the regulatory review procedure established by KRS Chapter 13A by a date certain; (3) if an agency implemented a program before the regulatory review procedure established by KRS Chapter 13A was completed, it would be operating illegally; (4) many of the amendments that had been received by the Subcommittee were not in the form or format required by KRS Chapter 13A; and (5) agencies should have their staff pay close attention to the manual and statutes.

In response to questions by Senator Roeding, Mr. Vito stated that: (1) for a married couple, an income tax return was held for six months to give a spouse the opportunity to file an amended form; (2) if the amended form was filed, the agency refunded the non-parent spouse's money and applied the remainder to the child support arrearages; (3) interest was not paid on the refund held by the State; (4) Section 8: (a) addressed interstate case payment distribution; and (b) established that if child support was payable to another state, the agency would forward the money to the other state for distribution to the proper party; (5) the only insurance authority that the Cabinet had for children was through a parent's employer; (6) a majority of the costs involved with this administrative regulation were systems cost; (7) the automated state registry was a registry of all child support orders; (8) the registry went into effect in October, 1998; (9) a support order in Kentucky had to go into the registry; and (10) the registry was uploaded to a federal registry of state child support orders.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to add enforcement duties; (3) parts of Sections 1, 3, and 4 were deleted due to repetition of the statute; (4) Section 11(1)(a)2. was amended to establish a clear standard for determination of a fraudulent transfer; (5) Section 11(3) was amended to clarify that the Cabinet would request denial, revocation, or suspension of a license or certificate from the proper administrative body, rather than the Cabinet making that determination on its own; (6) Section 13 was amended to incorporate by reference updated forms; (7) Sections 1 through 10 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Child Welfare

905 KAR 1:320. Fair hearing. Cliff Jennings, Department for Community Based Services, John Hafendorfer, Quality Assurance, and Patti Stockard, Department of Community Based Services, represented the Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 9 relating to Juvenile Justice appeals was deleted, due to exceeding agency authority; and (3) Sections 4 and 10 were amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 4, 9, and 10 were amended to comply with the drafting requirements of KRS 13A.222(4).

905 KAR 1:330. Child protective services. Sections 5 and 15 were amended to comply with the drafting requirements of KRS 13A.222(4).

Day Care

905 KAR 2:100. Certification of family child care homes. Subcommittee staff stated that: (1) the initial staff review indicated that this administrative regulation violated KRS 17.165; (2) KRS 17.165: (a) permitted the hiring of people with sex related convictions; and (b) related to daycare facilities; (3) this administrative regulation: (a) related to family child care homes; and (b) complied with the statutes.

In response to a question by Senator Roeding, Mr. Jennings stated that this amendment should not raise the cost of day care.

This administrative regulation was amended as follows: (1) Section 2 was amended to comply with the formatting requirements of KRS 13A.220(4); and (2) Sections 2 and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

Cabinet For Health Services: Department for Medicaid Services: Medicaid Services

907 KAR 1:038. Hearing and Vision Program services. Neville Wise, Karen Doyle, and Duane Dingenburg, represented the Cabinet.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to comply with the drafting requirements of KRS 13A.222(4).

907 KAR 1:039. Payments for hearing services. In response to questions by Senator Roeding, Mr. Wise stated that: (1) the standard fee for dispensing one hearing aid was \$75; and (2) the agency added an extra \$25 to dispense a second hearing aid during the same visit.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the RELATES TO was amended to comply with the drafting requirements of KRS 13A.222(4).

907 KAR 1:360. Preventive and remedial public health services provided through interagency agreement. In response to a question by Senator Roeding, Mr. Wise stated that the manual that was incorporated by reference included policy and procedures.

In response to issues raised by incorporation by reference, Subcommittee staff stated that: (1) the practice had been to incorporate by reference as much as an agency could; (2) proposals to restrict such incorporation had been made; (3) duties, requirements, and obligations should be established in the body of an administrative regulation; (4) the Subcommittee realized that it would take some time to correct this; (5) Senator Roeding would send a packet of issues and questions relating to the pharmacy manuals incorporated by reference to each member under separate cover for the January, 1999, meeting; and (6) the Subcommittee would review the issues raised by incorporation by reference and determine whether incorporation had been abused and what measures should be taken.

In response to questions by Senator Roeding, Ms. Doyle stated that unrestricted medical services was a federal requirement under Early Periodic Screening, Diagnosis, and Treatment.

The STATUTORY AUTHORITY paragraph of this administrative regulation was amended to correct statutory citations.

Payment and Services

907 KAR 3:065 & E. Nonemergency medical transportation waiver services and payments. See review of 904 KAR 2:018

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; and (2) Section 4 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department for Mental Health and Mental Retardation Services: Division of Mental Retardation: Mental Health

908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program services. In response to a question by Senator Roeding, Mr. Lightle stated that a sliding fee schedule was: (1) based upon a poverty level; and (2) developed as a percentage.

Section 5 of this administrative regulation was amended to comply with the: (1) formatting requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Executive Branch Ethics Commission

9 KAR 1:010. Statement of financial disclosure. Donna Dutton, General Counsel, and Jill Lemaster, Executive Director, repre-

sented the Commission.

Ms. Lemaster stated that this administrative regulation: (1) described the financial disclosure form that was required to be filed by: (a) people defined as officers; (b) public servants listed in KRS 11A.010; and (c) certain candidates for public office; and (2) incorporated by reference the necessary form.

9 KAR 1:036. Repeal of 9 KAR 1:035, Posthearing procedure.

Kentucky Higher Education Assistance Authority: Division of Student Services: Teacher Scholarship Loan Program

11 KAR 8:030. Teacher scholarships. Richard Casey, General Counsel, and Janice Ernst, represented the Authority.

Mr. Casey stated that: (1) this administrative regulation addressed the teachers scholarship program; and (2) the amendment to this administrative regulation was required to reduce the maximum annual amount of the scholarship for freshmen and sophomores to conform to an aggregate limit of \$12,000 for the entire college career.

In response to a question by Chairman Arnold, Mr. Casey stated that these scholarships were: (1) for a student who was going to be a teacher; and (2) not for someone who already was a teacher.

In response to a question by Senator Roeding, Mr. Casey stated that: (1) this program: (a) had operated since the mid-1980's; and (b) was a need-based program designed to encourage students to enter the teaching profession; (2) the scholarship amounted to: (a) \$5,000 per year, for a Junior or Senior; and (b) an aggregate of \$12,000, for the entire college career; (3) a student in the program signed a promissory note providing that the student would teach in Kentucky after he was certified; (4) if the student taught, the repayment obligation was cancelled; (5) the student was obligated to repay the scholarship if he: (a) dropped out of the college program; or (b) failed to teach after graduation.

Ms. Ernst stated that: (1) a teacher scholarship application was distributed: (a) each fall, to the high schools; and (b) through the higher education institutions; and (2) awards were made based upon: (a) financial need; and (b) the category in which the student was being certified.

In response to questions by Senator Roeding, Ms. Ernst stated that: (1) the award: (a) was \$1,250 per year, for a Freshman or Sophomore; (b) \$5,000 per year, for a Junior or Senior; and (c) was limited to a maximum of \$12,000; and (2) student need was based upon a sliding scale.

State Board Of Elections: Forms and Procedures

31 KAR 4:120 & E. Additional precinct officers. (Emergency expired November 18, 1998) Mack Bushart, Principal Assistant, and Jennifer Fetter, Assistant Attorney General, represented the Board.

Subcommittee staff stated that this was a new administrative regulation that established the procedures for appointment of additional election precinct officers, pursuant to House Bill 62.

In response to a question by Chairman Arnold, Mr. Bushart stated that the: (1) purpose of House Bill 62 was to permit county clerks to appoint additional precinct officers to assist in managing the crowd at larger precincts; and (2) additional precinct workers would be paid for their work.

In response to questions by Senator Roeding, Mr. Bushart stated that: (1) a statute prescribed the method by which a voter identified himself at an election precinct; (2) the voter was required to show: (a) a driver's license; (b) a social security card; or (c) other form of valid identification; (3) if the voter did not have identification with him, the motor-voter registration system permitted the voter to sign an "Oath of Voter"; (4) in the oath, the voter stated his name and address; (5) if the voter's name was on the precinct roster, he was permitted to vote; (6) this procedure applied to the entire state; and (7) the "Oath of Voter" statement was, by law, reviewed by the Commonwealth Attorney and a Grand Jury after the election to insure that the statement was proper.

In response to questions by Rep. Allen, Mr. Bushart stated that: (1) he did not think that there was more fraud in Kentucky now than before the motor-voter bill was passed; (2) the motor-voter bill made it easier to register and vote, because a person registered: (a) when he renewed his driver's license; or (b) at a social service agency; (3) the Kentucky voter registration system was in one computer file; (4)

if a person registered in more than one county, the system would transfer his registration from one county to the other; (5) using the same social security number, it would be impossible to register in more than one area at the same time; and (6) he did not know how people registered more than once in other states.

In response to a question by Rep. Bruce, Mr. Bushart stated: (1) the Board felt that the biggest problem with the motor-voter bill was when a person: (a) lived in one county; and (b) worked in an adjoining county; and (2)(a) renewed his driver's license in the county where he worked; and (b) at times, would change his voter registration to the county of work.

31 KAR 4:130 & E. Submitting absentee ballot application by facsimile. Subcommittee staff stated that this was a new administrative regulation that established application procedures by facsimile for an absentee ballot, pursuant to House Bill 587.

In response to a question by Chairman Arnold, Mr. Bushart stated that: (1) this administrative regulation was required to implement House Bill 587; (2) the three categories of people who could use this application method were: (a) those who served in the Armed Forces; (b) dependents of those in the Armed Forces; and (c) Kentucky citizens living abroad; (3) a person in the Armed Forces could apply within the United States, if he was stationed somewhere other than Kentucky; and (4) other applicants had to be outside of the United States to: (a) fax an application; or (b) receive a ballot.

In response to a question by Senator Roeding, Mr. Bushart stated that: (1) the Federal Voting Assistance Program was a program of the Department of Defense; (2) the main purpose of the Program was to enable people in the service and abroad access to register to vote; (3) Kentucky: (a) followed the procedures that were adopted in several other states; and (b) adapted it to Kentucky's existing statutes; and (4) a completed ballot: (a) could not be faxed to Kentucky; and (b) must be mailed for security reasons.

Department Of Law: Office of the Attorney General: Kentucky Victim and Witness Protection Program

40 KAR 6:010 & E. Kentucky Victim and Witness Protection Program. David McKnight, Deputy Attorney General, represented the Office of the Attorney General.

Mr. McKnight stated that: (1) Section 50 of House Bill 455, enacted during the 1998 Regular Session of the General Assembly, included the Kentucky Victim and Witness Protection program; (2) the statute: (a) created the programs; (b) required the Attorney General to administer the program; and (c) required State, County, and City Police and Sheriff's Departments to provide the protective services at their discretion; (3) the Commonwealth's Attorney or County Attorney applied to the Attorney General's office for reimbursement for protective services; (4) the Attorney General's office would reimburse the police department for providing the services; and (5) this administrative regulation established the procedure for the police departments and prosecutors to apply for those funds.

In response to a question by Senator Roeding, Mr. McKnight stated that: (1) the term "substantial" was not defined in the administrative regulation; (2) the term would be defined by its common, dictionary meaning; (3) the term "victim at risk" would be defined by the provision "at substantial risk of imminent, serious physical injury; (4) the police officer that completed the crime report would: (a) indicate whether a victim was at substantial risk of imminent, serious physical injury; and (b) note the facts that supported that determination; and (5) the form was quite simple to complete.

Subcommittee staff stated that: (1) there were additional questions raised by the initial staff review; (2) those issues had been: (a) discussed with the agency; and (b) addressed in the suggested amendment; (3) most of the questions related to the discretion and the need to protect the victim; (4) they did not find any constitutional or legal problems with those issues; (5) an important issue raised was that the administrative regulation did not provide an avenue for appeal; (6) if a prosecutor's request for reimbursement was denied, he could appeal to the Circuit Court; and (7) he felt that would be a better process than an administrative hearing, which would defeat the purpose of the act.

Kentucky Board of Licensure for Nursing Home Administrators

201 KAR 6:011. Repeal of 201 KAR 6:010. Nancy L. Black represented the Division of Occupations and Professions, and Debra Finneran, Chairman, represented Board of Licensure for Nursing Home Administrators.

Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:181 & E. Quota deer hunt procedures. Bob Bates, Director of Administrative Services, John Wilson, Assistant Director of Public Affairs and Policy, and Sergeant Mike Fields, Law Enforcement, represented the Department.

Mr. Bates stated that: (1) the quota hunt application fee did not increase; (2) the requirements established by this administrative regulation were more efficient for people who applied for the quota hunts, because a person: (a) was able to find out sooner whether his name had been drawn for the hunt; and (b) who was not drawn was assigned a preference point so that it would be statistically more probable that he would be drawn in future years.

Chairman Arnold stated that he wanted to suggest that the Department install a code to prevent a person from being entered into the telephone deer check-in system twice when reporting a deer kill.

In response to a question by Representative Lee, Mr. Bates stated that the drawings were strictly for quota hunts on wildlife management areas.

301 KAR 2:225 & E. Dove, wood duck, teal and other migratory game bird hunting. Mr. Bates stated that: (1) this administrative regulation established the migratory waterfowl seasons after the agency received the dates from the United States Fish and Wildlife Service; and (2) the agency had tried to reword this administrative regulation to be time-span specific, rather than date specific; and (3) the use of a time-span would prevent the agency from having to amend this administrative regulation each year.

Water Patrol

301 KAR 6:005 & E. Boat registration fees. Mr. Bates stated that: (1) by the enactment of House Bill 717 at its 1998 Regular Session, the General Assembly had removed the fees from statute; (2) this administrative regulation was promulgated to establish the registration fees; and (3) there was no increase in boat registration fees.

Natural Resources And Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Standards of Performance

401 KAR 63:021. Existing sources emitting toxic air pollutants. John Hornback, Director, represented the Division.

401 KAR 63:024. Repeal of 401 KAR 63:022.

Justice Cabinet: Department of Criminal Justice Training: General Training Provisions

503 KAR 3:005. Definitions. Herb Bowling, Director of Training, Stephanie Bingham, General Counsel, Greg Howard, Supervision of Basic Training Section, represented the Department.

Subcommittee staff stated that this was a new administrative regulation that established the definitions to terms found in 503 KAR Chapter 3.

In response to a question by Chairman Arnold, Ms. Bingham stated that there were no major changes to training in this administrative regulation.

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. Kevin Noland, Staff Attorney, represented the Board.

Mr. Noland stated that: (1) this administrative regulation repealed an existing administrative regulation that provided appeal procedures for athletic eligibility determinations from the Kentucky High School Athletic Association; and (2) because House Bill 215, enacted during the 1998 Regular Session of the General Assembly, removed the State Board from the appeal process, this administrative regulation, governing procedures, was no longer required.

In response to a question by Senator Roeding, Mr. Noland stated: (1) there was still an appeal process available to a student; (2) if the KHSAA Commissioner ruled that a student was athletically ineligible, he would have the right to appeal to a hearing officer; (3) the hearing officer was a retired Circuit Judge; (4) if the decision of that hearing was adverse to the student, he could appeal to the KHSAA Board of Control; (5) if the decision of the Board was adverse to the student, he could appeal to the local Circuit Court for injunctive relief; and (6) the intent behind House Bill 215 was to remove the State Board from the process because: (a) it met only every two months; and (b) an athletic season could end before that time period.

701 KAR 5:120. Prevention of sexually explicit materials transmitted to schools via computer. Mr. Noland stated that this administrative regulation: (1) was required by Senate Bill 230 which was: (a) enacted during the 1998 Regular Session of the General Assembly; and (b) required the Board to direct local school boards to have policies on preventing sexually explicit materials from being transmitted to schools via computer; and (2) provided: (a) that guidelines were established for local school districts for the establishment of policies to ensure that students were closely supervised and monitored; (b) that parents were to be involved; (b) standards for computer software to block access to certain internet websites; and (c) software at no cost to local school districts.

Office of District Support Services: Facilities Management

702 KAR 4:151. Repeal of 702 KAR 4:150, Procedures for approving energy conservation projects. Mr. Noland stated that: (1) this administrative regulation repealed 702 KAR 4:150. Procedures for approving energy conservation projects; and (2) House Bill 639, enacted during the 1998 Regular Session of the General Assembly, removed regulatory authority on this subject from the Board.

Office of Learning Programs Development: Office of Instruction

704 KAR 3:035. Annual professional development plan. Mr. Noland stated that this administrative regulation was amended to: (1) comply with House Bill 536, enacted during the 1998 Regular Session of the General Assembly, which addressed the qualifications of the professional development coordinator; and (2) allow professional development grant money to be used: (a) at the local level; and (b) at the discretion of the local school board, to help pay the tuition for a teacher's college and graduate courses for completion of academic courses relating to the subject that he taught.

Office of Learning Support Services

704 KAR 7:070. Guidelines for dropout prevention programs. Mr. Noland stated that this administrative regulation: (1) was amended to comply with House Bill 330, enacted during the 1998 Regular Session of the General Assembly, which addressed school safety; and (2) established different standards for distribution of dropout prevention funds.

Emergency and Secondary Education Act

704 KAR 10:051. Repeal of 704 KAR 10:050, Authority to approve courses not in the Program of Studies. Mr. Noland stated that: (1) this administrative regulation repealed 704 KAR 10:050, because a school or school district that wanted to offer a course that was not in the program of studies was no longer required to obtain state approval; and (2) a local school board or council had greater discretion in offering course for high school students.

Department of Education Office of Special Instructional Services: Instructional Programs

705 KAR 4:240 & E. School to careers. Mr. Noland stated that this administrative regulation was: (1) was promulgated to comply with House Bill 724, enacted during the 1998 Regular Session of the General Assembly; and (2) necessary to establish the criteria for school to careers grant program.

Commission On The Deaf And Hard Of Hearing: Telecommunication Devices for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard-of-hearing and speech-impaired. Dana Parker, Interpreter Administrator, represented the Commission.

Subcommittee staff stated that this was an existing administrative

tive regulation amended to: (1) change the definition of specialized telecommunications equipment; (2) delete outdated language; and (3) distribute one specialized telecommunications equipment device per individual for each residential telephone line.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment. Subcommittee staff stated that this was an existing administrative regulation amended to change the definition of specialized telecommunications equipment.

Interpreter Referral Services

735 KAR 2:060 & E. Grievance procedures. Subcommittee staff stated that this was a new administrative regulation that established a procedure for handling complaints against: (1) an interpreter; (2) a state agency; or (3) a referral service.

In response to questions by Chairman Arnold, Ms. Parker stated that: (1) this was a new program that would be starting January 1; (2) this was included to protect the people utilizing the service; and (3) although this was a new program, a grievance procedure was established to clearly show how a complaint would be handled.

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

Tim Chancellor, Health Standards Specialist, and William Ralston, Safety Standards Specialist, represented the Cabinet.

In response to questions by Senator Roeding, Mr. Chancellor stated that: (1) the increase in cost to employers was a federal OSHA figure; (2) OSHA said it would cost \$111 million nationwide throughout all of the industries; (3) the breakdown of the cost was about \$22 per employee for those using respirators; and (4) it was an annual cost.

In response to questions by Chairman Arnold, Mr. Chancellor stated that: (1) the Cabinet had adopted the Federal standards in these administrative regulations; and (2) Kentucky had to follow the federal requirements.

In response to questions by Senator Roeding, Mr. Chancellor stated that: (1) the standards established by these administrative regulations were federal standards; (2) the proposed administrative regulation was promulgated in 1994; (3) there had been a lot of discussion between labor and management concerning the standards; and (4) these standards had been well received by both groups.

Chairman Arnold stated that: (1) if the requirements were federally mandated, the Subcommittee did not have a lot of control over the implementation of these administrative regulations; and (2) the state had to implement the federal standards or cease doing business.

803 KAR 2:306 & E. Occupational health and environmental control.

803 KAR 2:307 & E. Hazardous materials.

803 KAR 2:308 & E. Personal protective equipment.

803 KAR 2:311 & E. Fire protection.

803 KAR 2:316 & E. Welding, cutting, and brazing.

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.

Department of Insurance: Health Insurance Contracts

806 KAR 17:180 & E. Standard health benefit plan and comparison format. Sharron Burton, Counsel, and D. J. Wasson, Principal Assistant, represented the Department.

Subcommittee staff stated that this was a new administrative regulation that established the format for standard health benefit plan comparison, as required by House Bill 315.

Public Service Commission: Utilities

807 KAR 5:063. Filing requirements and procedures for propos-

als to construct antenna towers for cellular telecommunications services or personal communications services. Deborah Eversole, Counsel, and Wayne Bates, Engineer, represented the Commission.

Ms. Eversole stated that this was an amendment to an existing administrative regulation to comply with statutory changes to cell siting laws enacted by the General Assembly during its 1998 Regular Session.

In response to a question by Senator Roeding, Ms. Eversole stated that: (1) there had been extensive discussions with industry and the sponsors of House Bill 168 about these administrative regulations; (2) this administrative regulation established the filing requirements and procedures for the uniform applications, which had to be filed with the: (a) planning commission, if it has registered its intention to regulate sites; and (b) public service commission; (3) the Public Service Commission was required by statute to promulgate administrative regulations establishing what was required in the uniform application; (4) information on co-location opportunities was required to be filed, which they believed was the intent of House Bill 168.

Department of Financial Institutions: Administration

808 KAR 1:031. Repeal of 808 KAR 1:030 and 808 KAR 1:070. Rick Jones, General Counsel, and Colleen Keefe, Counsel, represented the Department.

Subcommittee staff stated that this administrative regulation repealed 808 KAR 1:030 and 808 KAR 1:070, which are no longer necessary because their requirements had been established by statute.

808 KAR 1:060. Automated teller machines. Subcommittee staff stated that this administrative regulation was amended to: (1) broaden the functions of an ATM; and (2) authorize the Commissioner to require information from a financial institution concerning operation of an ATM.

Credit Unions

808 KAR 3:050. Conduct. Ms. Keefe stated that: (1) the only substantive change to this administrative regulation was to eliminate the charitable contributions limit for a credit union; (2) the Department felt that this was: (a) a business decision to be made by the credit union; and (b) not an appropriate area for regulation; and (3) there were other changes to comply with the drafting and format requirements of KRS Chapter 13A.

In response to questions by Senator Roeding, Ms. Keefe stated that: (1) this administrative regulation did not change fees; (2) the fidelity bond amounts had not been changed; and (3) this administrative regulation had incorporated the requirements of a Federal regulation.

In response to questions by Representative Bruce, Mr. Jones stated that: (1) the federal government insured credit unions; (2) the Department regulated state chartered credit unions for safety and soundness; and (3) Kentucky had several federally chartered credit unions that the Department did not regulate.

In response to questions by Chairman Arnold, Mr. Jones stated that: (1) the Department did review the books of state chartered credit unions; and (2) insurance companies were regulated by the Department of Insurance.

Consumer Loans

808 KAR 6:006. Repeal of 808 KAR 6:005. Subcommittee staff stated that this administrative regulation was repealed because applicable statutes addressed the subject matter.

Cabinet For Health Services: Office of Inspector General: Division of Licensing and Regulation: Long-term Care

900 KAR 2:020. Appeals. David Crane, Health Planner for the Office of Inspector General represented the Cabinet.

In response to questions by Chairman Arnold, Mr. Crane stated that: (1) this administrative regulation removed the appeal from the long-term care rating system; and (2) the appeal process had been removed because House Bill 132 had removed the rating system.

In response to a question by Senator Roeding, Mr. Crane stated that there were no cases with poor ratings still pending from before the enactment of House Bill 132.

Department for Public Health: Health Services and Facilities

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

homes.

Cabinet For Families And Children: Department for Community Based Services: Division of Policy Development: Public Assistance

904 KAR 2:490 & E. Welfare to Work Grant Program. Roseanne Barkley, represented the Cabinet.

Subcommittee staff stated that this administrative regulation established eligibility requirements for the Welfare to Work Grant Program.

Ms. Barkley stated that: (1) this was a new administrative regulation that was necessary to implement the Welfare to Work Grant Program; (2) the purpose of the program was to provide transitional assistance to hard-to-employ welfare recipients who lived in high poverty areas; (3) this would help the recipients to obtain unsubsidized jobs and become economically self-sufficient; (4) this administrative regulation was necessary to: (a) establish eligibility requirements for the program to comply with mandated requirements, pursuant to an approved Title IVA State plan, as required by the U. S. Code; and (b) prevent loss of federal funding; (5) the deadline to implement the grant program was July 31, 1998; (6) an emergency administrative regulation had been filed and would expire next month.

In response to questions by Senator Roeding, Ms. Barkley stated that: (1) long-term recipients were defined in this administrative regulation; (2) there were some limitations placed on the federal welfare reform legislation that prohibited assistance to certain drug felons; and (3) in the last session of Congress, a bill was passed that permitted exceptions to that rule for Tanif recipients.

Cabinet For Health Services: Department for Medicaid Services: Medicaid Services

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

Department for Mental Health and Mental Retardation Services: Division of Mental Retardation: Mental Health

908 KAR 2:120. Kentucky Early Intervention Program evaluation and eligibility. Kevin Lightle, Director, Jim Henson, Assistant Director, represented the Division.

908 KAR 2:130. Kentucky Early Intervention Program assessment and service planning.

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

908 KAR 2:160. Kentucky Early Intervention Program covered services.

The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the January 12, 1999 meeting of the Subcommittee:

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 2:041. 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 3:012. Uniform labeling format.

12 KAR 3:017. Brand and product names.

12 KAR 3:022. Guarantees.

12 KAR 3:027. Ingredients.

12 KAR 3:037. Additives.

12 KAR 3:042. Statement of caloric content.

Kentucky State Treasurer

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

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

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

property.

Secretary Of State: Kentucky Lien Information System

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

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.

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.

Kentucky Commission On Military Affairs: Commission

202 KAR 5:010. Criteria for allocation of grant money.

Department of Fish and Wildlife Resources: Game

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

Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council

503 KAR 1:060. Definitions.

503 KAR 1:080. Certification of schools.

Department of Juvenile Justice: Child Welfare

505 KAR 1:040. Policies and procedures manual.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

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

Department of Highways: Mass Transportation

603 KAR 7:080E. Human service transportation delivery.

Kentucky Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction

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

School Facilities Construction Commission: Procedures

750 KAR 1:010E. Commission procedures.

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.

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 17:200E. Severity codes for high-cost conditions.

Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code

815 KAR 7:105. Kentucky Building Code/1997.

Plumbing

815 KAR 20:120. Water supply and distribution.

Electrical Inspectors

815 KAR 35:015. Certification of electrical inspectors.

Cabinet For Health Services: Office of Inspector General: Division of Licensing and Regulation: Certificate of Need

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900 KAR 6:030. Certificate of need expenditure minimums.

Department for Public Health: Division of Epidemiology and Health Planning: Health Services and Facilities

902 KAR 20:134. Repeal of 902 KAR 20:135.

Milk and Milk Products

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

Cabinet For Families And Children: Department for Community Based Services: Division of Policy-Development: Public Assistance

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

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

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

Cabinet For Health Services: Department for Medicaid Services: Medicaid Services

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

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.

The Subcommittee adjourned at 1 p.m. until January 12, 1999, 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 STATE GOVERNMENT
Meeting of November 24, 1998

The following administrative regulation was available for consideration by the Interim Joint Committee on State Government during its meeting of November 24, 1998, having been referred to the Committee on November 17, 1998, pursuant to KRS 13A.290(6): 105 KAR 1:230

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulation is reflected in the minutes of the November 24, 1998, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of December 3, 1998

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of December 3, 1998, having been referred to the Committee on November 17, 1998, pursuant to KRS 13A.290(6):

11 KAR 5:130
704 KAR 20:700
735 KAR 2:010 & E
735 KAR 2:020 & E
735 KAR 2:030 & E
735 KAR 2:040 & E
735 KAR 2:050 & E
755 KAR 1:070
781 KAR 1:070

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 3, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

EDUCATION ASSESSMENT AND ACCOUNTABILITY REVIEW
SUBCOMMITTEE
Meeting of December 14, 1998

The Education Assessment and Accountability Review Subcommittee met on Monday, December 14, 1998, and submits this report:

The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

703 KAR 5:010 - Strategies for reducing time required for writing portfolio. Kentucky Department of Education staff, Mr. Kevin Noland, Associate Commissioner of the Office of Legal Services and Ms. Starr Lewis, Humanities Branch Manager, represented the Kentucky Board of Education. Mr. Noland summarized the content of the regulation and the process for its development.

In response to a question from Representative Treesh concerning the time spent polishing portfolios, Mr. Noland said that the regulation requires teachers to limit student conferences to one or two areas of need addressing patterns of errors that occur frequently. Ms. Lewis said that the regulation requires teachers to have students use word processing during the development of writing pieces or have students submit handwritten pieces, as typing a finished piece is time-consuming. Representative Rasche said that this will be helpful, but collecting a portfolio at every grade would involve all teachers, not just those in the accountability grades.

This administrative regulation was amended to change the title, to correct statutory citations, and to comply with drafting requirements.

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates G2

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 G12

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 G21

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	907 KAR 1:645E	2350	4-6-98
Expired		10-18-98	Replaced		9-16-98
31 KAR 4:120E	2575	4-22-98	907 KAR 1:755E	2100	2-18-98
200 KAR 15:010E	2327	4-7-98	907 KAR 3:030E	1639	12-19-97
Expired		10-18-98	Expired		7-21-98
302 KAR 20:040E	2330	4-3-98	908 KAR 2:210E	2352	4-6-98
Replaced		10-16-98	Expired		10-18-98
401 KAR 5:002E	2576	4-17-98			
Replaced		11-18-98			
401 KAR 5:009E	2588	4-17-98			
Expired		11-18-98			
601 KAR 2:020E	1863	2-13-98			
Replaced		9-1-98			
803 KAR 6:010E	2333	3-20-98			
Expired		10-18-98			
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			
Replaced		11-18-98			
907 KAR 1:006E	2337	4-6-98			
Replaced		9-16-98			
907 KAR 1:011E	2339	4-6-98			
Replaced		9-16-98			
907 KAR 1:022E	2080	2-18-98			
Expired		10-18-98			
907 KAR 1:026E	2612	4-24-98			
Replaced		11-18-98			
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			
Replaced		11-18-98			
907 KAR 1:640E	2346	4-6-98			
Replaced		9-16-98			

ORDINARY ADMINISTRATIVE REGULATIONS:

202 KAR 3:010	2782	(See Volume 25)
202 KAR 3:030	2783	(See Volume 25)
600 KAR 6:050		
Amended	2760	(See Volume 25)
600 KAR 6:060		
Amended	2762	(See Volume 25)
600 KAR 6:080		
Amended	2765	(See Volume 25)
601 KAR 2:020	2784	(See Volume 25)
810 KAR 1:001		
Amended	2445	(See Volume 25)
810 KAR 1:009		
Amended	2447	10-12-98
810 KAR 1:015		
Amended	2450	(See Volume 25)
810 KAR 1:016		
Amended	2452	(See Volume 25)
811 KAR 1:090		
Amended	2454	(See Volume 25)
811 KAR 1:215		
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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

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EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)

20 KAR 1:040E	1015	10-15-98	40 KAR 2:070E	540	7-15-98
20 KAR 1:070E	1017	10-15-98	40 KAR 2:075E	541	7-15-98
20 KAR 1:080E	1018	10-15-98	40 KAR 2:076E	543	7-15-98
30 KAR 4:010E	539	7-15-98	40 KAR 6:010E	543	7-15-98
31 KAR 4:130E	36	5-20-98	105 KAR 1:170E	222	7-14-98
			Replaced	589	11-20-98
			105 KAR 1:205E	1561	12-1-98
			105 KAR 1:230E	223	7-14-98
			Replaced	1351	11-24-98
			200 KAR 5:021E	548	7-17-98

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Replaced	946	12-17-98	806 KAR 17:180E	275	6-19-98
200 KAR 22:005E	549	7-17-98	806 KAR 17:190E	277	7-2-98
Expires		2-18-99	806 KAR 17:200E	278	7-2-98
201 KAR 9:330E	1338	11-12-98	806 KAR 17:210E	280	7-2-98
201 KAR 9:335E	1339	11-12-98	806 KAR 17:220E	281	7-2-98
201 KAR 9:340E	1340	11-12-98	Replaced	1363	12-17-98
301 KAR 2:181E	551	7-16-98	904 KAR 2:006E	775	9-14-98
301 KAR 2:221E	1341	10-22-98	904 KAR 2:018E	42	5-15-98
301 KAR 2:222E	1343	10-22-98	904 KAR 2:116E	782	9-15-98
301 KAR 2:223E	1347	10-22-98	904 KAR 2:370E	786	9-14-98
301 KAR 2:225E	552	8-10-98	904 KAR 2:380E	44	6-15-98
301 KAR 2:226E	1019	9-23-98	904 KAR 2:490E	283	6-22-98
301 KAR 6:005E	554	7-16-98	907 KAR 1:013E	1025	9-29-98
405 KAR 10:010E	1562	11-24-98	907 KAR 1:025E	285	6-30-98
501 KAR 1:030E	226	7-14-98	907 KAR 1:635E	790	9-1-98
Replaced	1352	12-17-98	907 KAR 1:755E	793	9-1-98
501 KAR 1:050E	229	7-14-98	907 KAR 3:065E	48	5-15-98
Replaced	1037	11-20-98			
501 KAR 2:070E	230	7-14-98	ORDINARY ADMINISTRATIVE REGULATIONS:		
Replaced	1355	12-17-98	2 KAR 2:010		
501 KAR 6:020E	231	7-14-98	Amended	1425	
Replaced	1355	12-17-98	2 KAR 2:020		
501 KAR 6:190E	1564	12-4-98	Amended	1426	
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501 KAR 6:210E	1568	12-4-98	Amended	1427	
501 KAR 14:010E	233	7-14-98	9 KAR 1:010		
Replaced	1038	11-20-98	Amended	883	
502 KAR 31:020E	234	7-14-98	9 KAR 1:015		
503 KAR 1:140E	1570	11-30-98	Amended	883	
601 KAR 1:040E	1573	12-14-98	As Amended	1577	
603 KAR 7:080E	37	5-15-98	9 KAR 1:030		
702 KAR 7:125E	555	8-6-98	Amended	884	
704 KAR 3:480E	1021	10-14-98	As Amended	1577	
704 KAR 20:720E	558	7-15-98	9 KAR 1:036	1259	
705 KAR 4:240E	559	8-6-98	9 KAR 1:040		
735 KAR 2:010E	236	6-30-98	Amended	1086	
Replaced	1357	12-3-98	As Amended	1579	
735 KAR 2:020E	238	6-30-98	9 KAR 1:050		
Replaced	1358	12-3-98	Amended	887	
735 KAR 2:030E	239	6-30-98	As Amended	1580	
Replaced	1359	12-3-98	11 KAR 3:100		
735 KAR 2:040E	240	6-30-98	Amended	375	
Replaced	1360	12-3-98	As Amended	798	10-1-98
735 KAR 2:050E	241	6-30-98	11 KAR 4:050		
Replaced	1361	12-3-98	Amended	385	
735 KAR 2:060E	243	6-30-98	As Amended	806	10-1-98
750 KAR 1:010E	1022	9-23-98	11 KAR 4:070	450	
750 KAR 2:010E	244	7-1-98	As Amended	808	10-1-98
787 KAR 1:200E	245	6-30-98	11 KAR 5:001		
Replaced	914	12-17-98	Amended	390	
803 KAR 2:306E	246	7-2-98	As Amended	809	10-1-98
803 KAR 2:307E	249	7-2-98	11 KAR 5:130		
803 KAR 2:308E	251	7-2-98	Amended	888	12-3-98
803 KAR 2:311E	253	7-2-98	11 KAR 8:030		
803 KAR 2:316E	255	7-2-98	Amended	890	
803 KAR 2:317E	256	7-2-98	Amended	1398	
803 KAR 2:320E	258	7-13-98	11 KAR 12:010		
803 KAR 2:403E	264	7-2-98	Amended	392	
803 KAR 2:404E	265	7-2-98	As Amended	810	10-1-98
803 KAR 2:418E	269	7-2-98	11 KAR 12:040		
803 KAR 2:425E	271	7-2-98	Amended	393	
803 KAR 25:715E	1349	10-28-98	As Amended	811	10-1-98
806 KAR 15:040E	560	7-21-98			
806 KAR 17:160E	272	6-19-98			
Replaced	1363	12-17-98			

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11 KAR 12:060			30 KAR 4:010	1259	
Amended	395		31 KAR 4:120	1260	
As Amended	812		31 KAR 4:130	1261	
Reprint	991	10-1-98	32 KAR 2:050		
11 KAR 12:070			Amended	1092	
Amended	397		As Amended	1581	
As Amended	812	10-1-98	32 KAR 2:210		
11 KAR 14:010	451		Amended	1680	
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11 KAR 14:020	453		Amended	1093	
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11 KAR 14:030	454		40 KAR 2:075	1263	
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11 KAR 14:040	456		40 KAR 2:076	1265	
As Amended	814	10-1-98	As Amended	1584	
11 KAR 14:050	457		40 KAR 6:010	1265	
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11 KAR 14:060	459		Amended	398	10-12-98
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11 KAR 14:080	462		103 KAR 7:020		
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11 KAR 15:010	464		103 KAR 44:060	1743	
As Amended	816	10-1-98	105 KAR 1:170		
11 KAR 15:020	465		Amended	589	11-20-98
As Amended	817	10-1-98	105 KAR 1:230		
11 KAR 15:030	467		Amended	901	
As Amended	817	10-1-98	As Amended	1351	11-24-98
11 KAR 15:040	468		200 KAR 5:021		
As Amended	818	10-1-98	Amended	903	
11 KAR 15:050	470		200 KAR 6:060	946	12-17-98
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12 KAR 2:031			201 KAR 2:015		
Amended	892		Amended	904	
12 KAR 2:041			Died		11-11-98
Amended	1087		201 KAR 2:030		
12 KAR 2:046			Amended	906	
Amended	893		Died		11-11-98
12 KAR 2:051			201 KAR 2:040		
Amended	894		Amended	907	
12 KAR 2:056			Died		11-11-98
Amended	894		201 KAR 2:050		
12 KAR 2:061			Amended	908	
Amended	895		Died		11-11-98
12 KAR 2:066			201 KAR 6:011	1268	
Amended	897		201 KAR 6:020	678	
12 KAR 3:012			As Amended	1584	
Amended	1088		201 KAR 6:030	679	
12 KAR 3:017			As Amended	1584	
Amended	1090		201 KAR 6:040	680	
12 KAR 3:022			As Amended	1585	
Amended	898		201 KAR 6:050	681	
12 KAR 3:027			As Amended	1585	
Amended	899		201 KAR 6:060	681	
12 KAR 3:037			As Amended	1585	
Amended	900		201 KAR 6:070	682	
12 KAR 3:042			As Amended	1586	
Amended	1091		201 KAR 6:080	685	
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201 KAR 9:320	687		Amended	1684	
201 KAR 10:050			301 KAR 1:090		
Amended	1432		Amended	409	
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201 KAR 11:230			Amended	1686	
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201 KAR 14:180	1482		Amended	411	10-16-98
201 KAR 15:030			301 KAR 2:020		
Amended	592		Repealed		4-6-95
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201 KAR 20:070			Amended	1688	
Amended	592		301 KAR 2:140		
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201 KAR 20:090			301 KAR 2:142		
Repealed	1031	11-18-98	Amended	1692	
201 KAR 20:091	689		301 KAR 2:144		
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201 KAR 20:110			301 KAR 2:179	486	
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Amended	596		Amended	1695	
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201 KAR 20:260			Amended	1697	
Amended	597		301 KAR 2:223		
As Amended	1033	11-18-98	Amended	1700	
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Amended	598		Amended	1095	
As Amended	1034	11-18-98	301 KAR 2:226	1746	
201 KAR 26:121			301 KAR 2:251		
Amended	403		Amended	1435	
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201 KAR 26:125			Amended	600	
Amended	406		As Amended	1035	11-18-98
As Amended	823	9-16-98	301 KAR 5:030		
201 KAR 26:180			Amended	602	
Amended	407		As Amended	1036	11-18-98
As Amended	823	9-16-98	301 KAR 6:005	1272	
201 KAR 26:215			302 KAR 20:040		
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201 KAR 34:040	476		401 KAR 5:002	690	11-18-98
As Amended	826	10-12-98	401 KAR 5:009	701	
201 KAR 35:030	947		Amended	1061	11-19-98
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201 KAR 36:020	480		Amended	1437	
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201 KAR 36:030	481		Amended	1442	
As Amended	829	9-16-98	401 KAR 59:001		
201 KAR 36:040	483		Amended	1446	
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