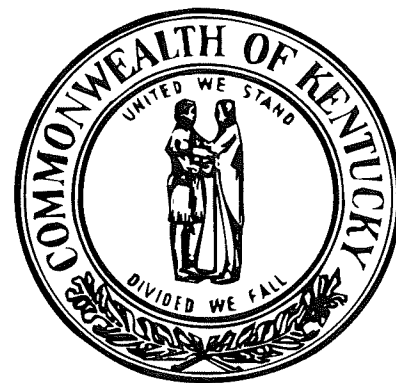


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 25, NUMBER 8  
MONDAY, FEBRUARY 1, 1999

February Agenda, ARRS .....	1795
Regulation Review Procedure .....	1799

## REPRINT: (None)

## NOTICES OF INTENT:

Council on Postsecondary Education .....	1800
Revenue Cabinet .....	1800
Department for Local Government .....	1801
Finance and Administration Cabinet .....	1802
Board of Barbering .....	1802
Board of Nursing .....	1804
Board of Physical Therapy .....	1805
NREPC - Water .....	1806
NREPC - Waste Management .....	1809
Kentucky Heritage Land Conservation Fund Board .....	1810
Justice Cabinet .....	1814
Department of Libraries and Archives .....	1814
Labor Cabinet - OSHA .....	1815
Cabinets for Health Services, and Families and Children .....	1821

## EMERGENCIES:

Board of Nursing .....	1829
Justice Cabinet .....	1831
Department of Libraries and Archives .....	1832
Labor Cabinet - OSHA .....	1835
Cabinets for Health Services, and Families and Children .....	1844

## AS AMENDED:

Legislative Ethics Commission .....	1868
Secretary of State .....	1869
Kentucky Commission on Military Affairs .....	1869
Justice Cabinet - Kentucky Law Enforcement Council .....	1870
Justice Cabinet - Department of Juvenile Justice .....	1872
Transportation Cabinet .....	1877
School Facilities Construction Commission .....	1878
Labor Cabinet - Workers' Claims .....	1879
Department of Insurance .....	1885
Cabinets for Health Services, and Families and Children .....	1885

## AMENDED AFTER HEARING:

Council on Postsecondary Education .....	1899
Petroleum Storage Tank Environmental Assurance Fund .....	1906
Labor Cabinet - Workers' Claims .....	1927
Cabinet for Health Services .....	1930

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON,

### JANUARY 15, 1999:

Agricultural Experiment Station .....	1943
Board of Pharmacy .....	1944

Board of Nursing .....	1945
Board of Podiatry .....	1947
Justice Cabinet - Department of Corrections .....	1948
Justice Cabinet - Kentucky Law Enforcement Council .....	1951
Transportation Cabinet .....	1952
School Facilities Construction Commission .....	1959
Labor Cabinet - Workers' Claims .....	1962
Cabinets for Health Services, and Families and Children .....	1963

## NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JANUARY 15, 1999:

Department of Fish and Wildlife Resources .....	2034
Kentucky Economic Development Finance Authority .....	2035
NREPC - Air Quality .....	2037
NREPC - Surface Mining .....	2048
Petroleum Storage Tank Environmental Assurance Fund .....	2052
Justice Cabinet - Department of Corrections .....	2054
Justice Cabinet - Kentucky Law Enforcement Council .....	2059
Transportation Cabinet .....	2067
Cabinets for Health Services, and Families and Children .....	2068

January 12, 1999 Minutes of the ARRS .....	2084
Other Committee Reports .....	2093

## CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates .....	H2
KRS Index .....	H14
Subject Index .....	H24

## MEETING NOTICE

The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on February 9, 1999, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 1795-1798 of this Administrative Register.

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

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

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

### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA – February 9, 1999 at 10:00 a.m. in Room 149, Capitol Annex**

(& E) - means that the emergency regulation has previously been reviewed by 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. (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. (Amended After Hearing)
- 13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program. (Amended After Hearing)

**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.

**DEPARTMENT OF STATE  
Registry of Election Finance**

**Practice and Procedure**

- 32 KAR 2:210. Judicial hearing procedures.

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

**Selective Excise Tax; Motor Vehicle Usage**

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

**KENTUCKY EMPLOYEES RETIREMENT SYSTEM**

**General Rules**

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

**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. (Deferred from January)
- 201 KAR 9:335E. Discontinuance of resuscitation by a paramedic. (Deferred from January)
- 201 KAR 9:340E. Training of paramedics in determination of death and discontinuance of resuscitation. (Deferred from January)

**Board of Examiners and Registration of Landscape Architects**

- 201 KAR 10:080. Continuing education. (Deferred from January)

**Kentucky Real Estate Commission**

- 201 KAR 11:230. Mandatory continuing education.
- 201 KAR 11:400. Agency disclosure requirements.
- 201 KAR 11:410. Broker duties pursuant to designated agency.

**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.

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

**Fish**

- 301 KAR 1:058. Methods of taking turtles.
- 301 KAR 1:140. Special commercial fishing permit.

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

**Game**

- 301 KAR 2:049. Small game and furbearer hunting on public areas.
- 301 KAR 2:140. Requirements for wild turkey hunting.
- 301 KAR 2:142. Spring wild turkey hunting.
- 301 KAR 2:144. Fall wild turkey hunting.
- 301 KAR 2:221 & E. Waterfowl seasons and limits.
- 301 KAR 2:222 & E. Waterfowl hunting requirements.
- 301 KAR 2:223 & E. Waterfowl reporting requirements.
- 301 KAR 2:226 & E. Youth waterfowl hunting season.

**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. (Public Hearing in Dec.)

**New Source Requirements; Nonattainment Areas**

- 401 KAR 51:001. Definitions and abbreviations of terms used in 401 KAR Chapter 51. (Public Hearing in Dec.)

**New Source Standards**

- 401 KAR 59:001. Definitions and abbreviations of terms used in 401 KAR Chapter 59. (Public Hearing in Dec.)

**Existing Source Standards**

- 401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61. (Public Hearing in Dec.)

**General Standards of Performance**

- 401 KAR 63:001. Definitions and abbreviations of terms used in 401 KAR Chapter 63. (Public Hearing in Dec.)

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

**Mobile Source-related Emissions**

- 401 KAR 65:001. Definitions and abbreviations of terms used in 401 KAR Chapter 65. (Public Hearing in Dec.)

**Chemical Accident Prevention**

- 401 KAR 68:010. General provisions.
- 401 KAR 68:020. Hazard assessment.
- 401 KAR 68:048. Program 2 prevention program.
- 401 KAR 68:065. Program 3 prevention program.
- 401 KAR 68:090. Emergency response.
- 401 KAR 68:100. Regulated substances for accidental release prevention.
- 401 KAR 68:150. Risk management plan.
- 401 KAR 68:200. Recordkeeping.

**Division of Forestry**

**Division**

- 402 KAR 3:020. Master Logger Program.
- 402 KAR 3:030. Best management practices for timber harvesting operations.

**Department for Surface Mining Reclamation and Enforcement**

**Bond and Insurance Requirements**

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

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

**Petroleum Storage Tank Environmental Assurance Fund**

- 415 KAR 1:050. Definitions. (Not Amended After Hearing)
- 415 KAR 1:060. Financial responsibility account. (Amended After Hearing)
- 415 KAR 1:070. Petroleum storage tank account. (Amended After Hearing)
- 415 KAR 1:080. Claims procedures. (Amended After Hearing)
- 415 KAR 1:090. Ranking system. (Amended After Hearing)
- 415 KAR 1:100. Third-party claims. (Not Amended After Hearing)
- 415 KAR 1:110. Contractor costs. (Amended After Hearing)
- 415 KAR 1:114. Contractor certification. (Not Amended After Hearing)
- 415 KAR 1:116. Certification of contracting companies. (Amended After Hearing)
- 415 KAR 1:120. Hearings. (Not Amended After Hearing)
- 415 KAR 1:130. Small owners tank removal account. (Not Amended After Hearing)
- 415 KAR 1:135. Financial audits. (Not Amended After Hearing)

**JUSTICE CABINET**  
**Department of Corrections**

**Office of the Secretary**

- 501 KAR 6:020. Corrections policies and procedures.
- 501 KAR 6:190E. Certification procedures for mental health professionals performing sex offender risk assessments.
- 501 KAR 6:200E. Sex offender risk assessment procedure.
- 501 KAR 6:210E. Sex offender community notification.

**Department of Criminal Justice Training**

**Kentucky Law Enforcement Council**

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

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

**TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Office of General Counsel**

**Division of Motor Carriers**

- 601 KAR 1:040E. Application for operating authority and registration of motor carriers.
- 601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles. (Amended After Hearing) (Deferred from October)
- 601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291.
- 601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291.

**Department of Highways  
Division of Transportation Planning**

**Right-of-Way**

- 603 KAR 4:050. Limited supplemental guide signs.
- 603 KAR 4:055. Scenic highways and byways.

**Mass Transportation**

- 603 KAR 7:080 & E. Human service transportation delivery. (Emergency Expired December 18, 1998) (Public Hearing in December)

**EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of District Support Services**

**Food Service Programs**

- 702 KAR 6:100. Appeal procedures for school and community nutrition programs.
- Office of Learning Programs Development**

**Office of Instruction**

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

**EDUCATION PROFESSIONAL STANDARDS BOARD**

**Board**

- 704 KAR 20:015. Rank I classification.
- 704 KAR 20:022. Continuing education alternative to planned fifth-year program.

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

**Exceptional and Handicapped Programs**

- 707 KAR 1:270. Kentucky Special Education Mentor Program.

**SCHOOL FACILITIES CONSTRUCTION COMMISSION**

**Procedures**

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

**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. (Amended After Hearing)
- 803 KAR 25:175E. Filing of insurance coverage and notice of policy changes or termination. (Deferred from January)

**Occupational Safety and Health Review Commission**

- 803 KAR 50:010. Hearings; procedure, disposition. (Deferred from January)

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

**Insurance Contracts**

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

**Life Insurance and Annuity Contracts**

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

**Health Insurance Contracts**

- 806 KAR 17:170 & E. Genetic testing.
- 806 KAR 17:190 & E. Guaranteed Acceptance Program requirements. (Not Amended After Hearing) (Deferred from January)

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

**Kentucky Building Code**

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

**CABINET FOR HEALTH SERVICES  
Department for Public Health**

**Maternal and Child Health**

- 902 KAR 4:110. Abortion information. (Amended After Hearing)

**Health Services and Facilities**

- 902 KAR 20:016. Hospitals; operations and services.

## **VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

902 KAR 20:041. Operation and services; family care homes.  
902 KAR 20:078. Operations and services; group homes.  
902 KAR 20:134. Repeal of 902 KAR 20:135. (Deferred from December)  
902 KAR 20:360. Abortion facilities. (Amended After Hearing)

### **Milk and Milk Products** (Deferred from February 1998)

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**

### **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)

### **Day Care**

905 KAR 2:090. Child care facility licensure.

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

### **Medicaid Services**

907 KAR 1:002. Definitions.  
907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from December)  
(Deferred from September)  
907 KAR 1:019. Pharmacy services. (Amended After Hearing)  
907 KAR 1:021. Amounts payable for drugs. (Amended After Hearing)  
907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. 907 KAR 1:635 & E.  
Conditions of coverage for the Kentucky Hospital Care Program (KHCP).  
907 KAR 1:755 & E. Preadmission Screening and Resident Review Program.

### **Payment and Services**

907 KAR 3:005. Physicians' services.  
907 KAR 3:010. Reimbursement for physicians' services.

## **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)

### **Institutional Care**

908 KAR 3:050. Per diem rate pursuant to the "Patient Liability Act of 1978."

## **OTHER BUSINESS**

### **1. Justice Cabinet: Department of Juvenile Justice: Child Welfare**

505 KAR 1:040. Policies and procedures manual.

### **2. Cabinet for Health Services: Office of Inspector General: Division of Licensing and Regulation: Certificate of Need**

900 KAR 6:050. Certificate of need administrative regulations.

### **3. Bill on Electrical Inspectors**

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**  
**ADMINISTRATIVE REGULATION REVIEW PROCEDURE**  
**(See KRS Chapter 13A for specific provisions)**

**Notice of Intent**

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing**

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five working (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

**NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS  
RECEIVED AS OF NOON, JANUARY 15, 1999**

**COUNCIL ON POSTSECONDARY EDUCATION**

January 11, 1999

(1) **13 KAR 2:045.** Determination of residency status for admission and tuition assessment purposes. The subject matter of the proposed amendment to the administrative regulation is the criteria for determination of residency status for tuition assessment purposes and the processes and procedures attendant upon those determinations.

(2) The Council on Postsecondary Education (CPE) is charged by KRS 164.020(8) with responsibility for determining tuition at the state-supported postsecondary education institutions. The current administrative regulation needs to be revised to establish new appeals procedures.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1999, at 9 a.m., in the conference room, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

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

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

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

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to February 23, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request no later than February 13, 1999, to the following address: Council on Postsecondary Education, Attn: Ken Walker, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601. Phone (502) 573-1555; FAX (502) 573-1535.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Council on Postsecondary Education at the address listed above.

(7) The following information relates to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the 13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes.

(b) The administrative regulation the CPE intends to promulgate is a proposed amendment to an existing administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: In order to implement effectively the provisions of KRS 164.020(8), the CPE has determined that a revision to the student appeals process is required.

(d) The benefit expected from the administrative regulation is to streamline the appeals process for determinations of student residency by delegating responsibility to the institutions to conduct appeals processes.

(e) This administrative regulation will be implemented as follows: By the CPE and the 9 state-supported postsecondary education institutions.

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

January 15, 1999

(1) **103 KAR 30:091** - Sales to farmers.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1999, at 10 a.m., at 200 Fair Oaks Lane, Third Floor - Training Room A, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 23, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Charlotte T. Quarles, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone: (502) 564-6843, Ext. 4442, Fax: (502) 564-9565.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the sales and use tax exemptions is KRS 131.130(1) and 139.710.

(b) It will establish the requirements and procedures necessary for the administration of the sales and use tax regarding exemptions afforded farmers. It will also incorporate by reference the appropriate certificates of exemption.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 131.130(1) and 139.710 requires the cabinet to make administrative regulations for the administration of the tax laws. This administrative regulation establishes the form and procedures required for the implementation of KRS Chapter 139.

(d) The benefits expected from the administrative regulation are improved taxpayer education and voluntary compliance.

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be implemented as soon as they are effective and will be incorporated into publications issued by the Revenue Cabinet.

January 15, 1999

- (1) **103 KAR 30:096.** Repeal of 103 KAR 30:095 - Farm chemicals.
- (2) The Revenue Cabinet intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1999, at 10 a.m., at 200 Fair Oaks Lane, Third Floor - Training Room A, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 23, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Charlotte T. Quarles, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone: (502) 564-6843, Ext. 4442, Fax: (502) 564-9565.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Revenue Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the sales and use tax exemptions is KRS 131.130(1).
  - (b) The proposed administrative regulation will repeal 103 KAR 30:095.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Regulation 103 KAR 30:095 which classified farm chemicals as fertilizer for purposes of the sales and use tax law is no longer needed as insecticides, fungicides, herbicides, rodenticides and other farm chemicals are specifically exempted by KRS 139.480(8).
  - (d) The benefit expected from the administrative regulation is to repeal a regulation that is no longer needed.
  - (e) The administrative regulation will be implemented as follows: The provisions of this administrative regulation will be implemented as soon as they are effective and will be incorporated into publications issued by the Revenue Cabinet.

### DEPARTMENT FOR LOCAL GOVERNMENT

January 15, 1999

- (1) Regulation number and title: **109 KAR 7:020.** Energy conservation project.
- (2) The Department for Local Government intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999 at 9 a.m., at Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to February 22, 1999 the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Thomas M. Troth, Attorney, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601; Phone (502) 573-2382; fax (502) 573-2939.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department for Local Government at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 45A.343 and 1998 Ky. Acts ch. 375.
  - (b) The administrative regulation that the Department for Local Government intends to promulgate will amend 109 KAR 7:020. Energy conservation projects. It will eliminate most of or perhaps repeal the provisions of the current administrative regulation. If the administrative regulation is retained, only the portion that requires a local government to adopt the relevant provisions of KRS Chapter 45A relating to energy conservation procedures prior to entering into an energy conservation contract will be repromulgated.
  - (c) The necessity and function of the proposed administrative regulation is as follows: Adopting the provisions of the model procurement code for local governments is optional. The provisions of 1998 Kentucky Acts ch. 375, that relate to energy conservation contracts for local governments are contained in the discretionary provisions of KRS Chapter 45A. Therefore a local government must adopt those provisions of the Model Procurement Code before they enter into energy conservation contracts.
  - (d) The benefits expected from administrative regulation are: This amendment will greatly reduce if not totally eliminate the requirements contained in the administrative regulation.

January 15, 1999

- (1) Regulation number and title: **109 KAR 13:010.** Uniform financial information report.
- (2) The Department for Local Government intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999 at 9 a.m., at Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601.

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

- (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 February 22, 1999 the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Thomas M. Troth, Attorney, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601; Phone (502) 573-2382; fax (502) 573-2939.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department for Local Government at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 65.905.
- (b) The administrative regulation that the Department for Local Government intends to promulgate will amend 109 KAR 13:010. Uniform financial information report, by deleting Section 2 of the administrative regulation to conform to a statutory change and to delete language that is duplicated in the statutes. The forms will be updated to comply with the U.S. Census requirements.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 65.905 requires the Department for Local Government to prescribe the format of the uniform financial information report. This administrative regulation incorporates those forms by reference.
- (d) The benefits expected from administrative regulation are: This amendment will reduce some of the paperwork required when submitting the uniform financial information report, and will make the report a more user friendly document.

### FINANCE AND ADMINISTRATION CABINET Office of the Secretary

December 22, 1998

- (1) **200 KAR 5:340.** Process for evaluating information for use in determining whether to approve privatization of a government service.
- (2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1999, at 10 a.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten calendar days prior to the hearing date, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Board, Principal Assistant, Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-4240 Phone, (502) 564-6785 Fax.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file the request may obtain a request form from the Office of the Secretary at the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-6660 Phone, (502) 564-9875 Fax.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in 1998 Ky. Acts ch. 492, sec. 3.
- (b) The proposed regulation will adopt the process for evaluating the information to be used in determining whether to approve privatization of a government service.
- (c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Act ch. 492, sec. 3 states that the Finance and Administration Cabinet shall develop an objective and systematic process for evaluating the information required to be submitted to it for use in determining whether to approve privatization of a government service and that the process shall be adopted by administrative regulation promulgated by the Finance and Administration Cabinet. This administrative regulation adopts the stated process.
- (d) The benefit expected from this proposed administrative regulation is as follows: Compliance with the above Act of the General Assembly which will result in increased savings and efficiency to the Commonwealth by use of an objective and systematic process for evaluating information for use in determining whether to approve privatization of a government service.
- (e) This administrative regulation will be implemented by the Finance and Administration Cabinet utilizing the process in determining whether to approve privatization of government services.

### KENTUCKY BOARD OF BARBERING

January 12, 1998

- (1) **201 KAR 14:040.** Inspection of shops and schools.
- (2) The Kentucky Board of Barbering intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999, at 10 a.m., at the State Board's Office, 9114 Leesgate Road, Suite 6, Louisville, Kentucky.
- (4)(a) The public hearing will be held if:



**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having a 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 February 22, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Bill Maggard, Jr., Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, Phone (502) 429-8841, FAX (502) 429-5223.
- (b) On request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Bill Maggard, Jr. at the above address, or by calling (502) 429-8841 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KAR 317.440.
  - (b) The administrative regulation that the Kentucky Board of Barbering intends to promulgate will amend an existing administrative regulation. It will identify the inspection sheet as the document with the telephone number and address of the Barber Board so the consumer would know whom to contact in case of a complaint.
  - (c) The necessity and function of the proposed administrative regulations is as follows: it will save the board money by not duplicating this information.
  - (d) The benefits expected from this administrative regulation are: The document with this information will be clearly defined.
  - (e) The administrative regulation will be implemented as follows: Every shop must post the most current inspection sheet which pursuant to the administrative regulation will be in each shop for consumers information. This amendment will be applied the same to all.

January 12, 1998

- (1) **201 KAR 14:055.** Permanent license after apprenticeship.
- (2) The Kentucky Board of Barbering intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999, at 10 a.m., at the State Board's Office, 9114 Leesgate Road, Suite 6, Louisville, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having a 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 February 22, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Bill Maggard, Jr., Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, Phone (502) 429-8841, FAX (502) 429-5223.
- (b) On request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form by writing to Bill Maggard, Jr. at the above address, or by calling (502) 429-8841 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KAR 317.440.
  - (b) The administrative regulation that the Kentucky Board of Barbering intends to promulgate will amend an existing administrative regulation. It will change the length of the apprenticeship to 9 months to coincide with changes in KRS 317.440 as amended by the General Assembly of the Commonwealth of Kentucky in 1998.
  - (c) The necessity and function of the proposed administrative regulations is as follows: KRS 317.440 was amended by the General Assembly of the Commonwealth of Kentucky in 1998.
  - (d) The benefits expected from this administrative regulation are: The regulation will match the law.
  - (e) The administrative regulation will be implemented as follows: Apprentice barbers will complete a 9 month apprenticeship. This amendment will be applied the same to all.

January 12, 1998

- (1) **201 KAR 14:090.** School curriculum.
- (2) The Kentucky Board of Barbering intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999, at 10 a.m., at the State Board's Office, 9114 Leesgate Road, Suite 6, Louisville, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having a 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 February 22, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Bill Maggard, Jr., Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, Phone (502) 429-8841, FAX (502) 429-5223.
- (b) On request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

- (b) Persons who wish to file this request may obtain a request form by writing to Bill Maggard, Jr. at the above address, or by calling (502) 429-8841 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KAR 317.440.
- (b) The administrative regulation that the Kentucky Board of Barbering intends to promulgate will amend an existing administrative regulation. It will identify the hours of instruction for shampooing, the hours for history, professional ethics and other information and make some grammatical corrections.
- (c) The necessity and function of the proposed administrative regulations is as follows: To add the hours of instruction for shampooing, history, professional ethics and other information in the curriculum.
- (d) The benefits expected from this administrative regulation are: Each section of the curriculum will have the number of hours of instruction listed in the regulation.
- (e) The administrative regulation will be implemented as follows: Every student will be required to have 40 hours of instruction in shampooing and 10 hours of history, professional ethics and other information. This amendment will be applied the same to all.

**GENERAL GOVERNMENT CABINET  
Board of Nursing**

January 4, 1999

- (1) **201 KAR 20:400.** Delegation of nursing tasks to unlicensed persons.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999 at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (a) The public hearing will be held if:
1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
  2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to February 22, 1999, the public hearing will be cancelled.
- (4)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, Fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (5)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate amends an existing administrative regulation.
- (c) The necessity and function of the proposed administrative regulation is as follows: To include a client's delegate in those not considered unlicensed persons.
- (d) The benefits expected from the administrative regulation are: To assist disabled individual's who utilize personal care attendants.
- (e) The administrative regulation will be implemented as follows: Through the regular administrative procedures.

January 4, 1999

- (1) **201 KAR 20:420.** Determination of death by a registered nurse employed by an ambulance service.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999 at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
  2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to February 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, Fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
- (b) The administrative regulation that the Board of Nursing intends to promulgate is a new regulation. It is required by KRS 314.181 (enacted in 1998). It sets the protocol for determination of death by a registered nurse employed by an ambulance service.
- (c) The necessity and function of the proposed administrative regulation is as follows: To fulfill the requirements of KRS 314.181.
- (d) The benefits expected from the administrative regulation are: To provide a protocol for registered nurses employed by an ambulance service to determine the death of a patient.
- (e) The administrative regulation will be implemented as follows: It will be implemented through the regular administrative process of the

agency.

January 4, 1999

- (1) **201 KAR 20:430.** Discontinuance of resuscitation by a registered nurse employed by an ambulance service.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999 at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
  2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to February 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, Fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
  - (b) The administrative regulation that the Board of Nursing intends to promulgate is a new regulation. It is required by KRS 314.181 (enacted in 1998). It sets the protocol for discontinuance of resuscitation by a registered nurse employed by an ambulance service.
  - (c) The necessity and function of the proposed administrative regulation is as follows: To fulfill the requirements of KRS 314.181.
  - (d) The benefits expected from the administrative regulation are: To provide a protocol for registered nurses employed by an ambulance service to discontinue resuscitation.
  - (e) The administrative regulation will be implemented as follows: It will be implemented through the regular administrative processes of the agency.

January 4, 1999

- (1) **201 KAR 20:440.** Training of registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation.
- (2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999 at 9 a.m. (EST) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:
  1. It is requested in writing by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
  2. A minimum of five (5) persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing is not received at least ten (10) days prior to February 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 329-7009, Fax (502) 329-8206.
- (b) On a request for public hearing, a person should state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.
  - (b) The administrative regulation that the Board of Nursing intends to promulgate is a new regulation. It is required by KRS 314.181 (enacted in 1998). It sets the training requirements for registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation.
  - (c) The necessity and function of the proposed administrative regulation is as follows: To fulfill the requirements of KRS 314.181.
  - (d) The benefits expected from the administrative regulation are: To provide the training requirements for registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation.
  - (e) The administrative regulation will be implemented as follows: It will be implemented through the regular administrative processes of the agency

**GENERAL GOVERNMENT CABINET  
Board of Physical Therapy**

November 13, 1998

- (1) Regulation number and title: **201 KAR 22:135, Fees**
- (2) The Board of Physical Therapy 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 February 23, 1999 at 9 a.m., at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.
- (4)(a) The public hearing will be held if:

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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 the administrative body or association, agree, in writing to be present at the public hearing.
- (b) If 5 persons, or 1 person representing an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 23, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail or fax their written request to the following address: Nancy Brinley, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222. Telephone number is (502) 327-8497, and fax number is (502) 423-0934.
- (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 Physical Therapy 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 fees is KRS 327.040(2)
  - (b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:135, as follows: Section 2(1) will be amended to increase the application fee by thirty (30) dollars, the additional money required to fund obtaining background checks for applicants; as well as changing the payee for application payment.
  - (c) The necessity and function of the proposed administrative regulation is: The purpose of this administrative regulation is to establish fees required to apply for physical therapist (PT) licensure or physical therapist's assistant (PTA) certification.
  - (d) The benefits expected from this administrative regulation are that: additional fees will pay for obtaining a criminal background check for each applicant. The change in payee was necessitated by the board's securing an intermediate banking account for revenue.
  - (e) The administrative regulation will be implemented as follows: The requirement will be implemented on the effective date of the administrative regulation.

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

January 14, 1999

- (1) The subject matter of the administrative regulation to be amended is: **401 KAR 5:002**, Definitions of terms for 401 KAR Chapter 5.
- (2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 February 25, 1999, at 7 p.m. Eastern Standard Time at the Capital Plaza Tower auditorium, Wilkinson Boulevard, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. A minimum of 5 persons, or an administrative body, or an association having at least 5 members, request, in writing, a public hearing at least 10 days prior to the date of the public hearing.
  2. A minimum of 5 persons, or one 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 an agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to February 25, 1999, the public hearing will be canceled.
- (c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before February 15, 1999, at the address below or by telephone, (502) 564-3410 or TDD 1-800-648-6056.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. The telephone number is (502) 564-3410; the fax number is (502) 564-0111.
- (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 Division of Water at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of the administrative regulations relating to definitions for water quality standards is KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 33 USC 1288, 1313, 1314(b), 1342, and 40 CFR Parts 116, 131, 136, 401-471.
  - (b) The administrative regulation that the Division of Water intends to promulgate will amend the administrative regulation listed in (1) above that constitutes one of the water quality standards administrative regulations of the cabinet. A summary of these amendments follows. 401 KAR 5:002 will be amended to add definitions that were formerly in 401 KAR 5:029, to clarify previous definitions, and to add definitions that are needed as a result of amendments to the regulations. Of particular note are definitions of outstanding national resource waters (ORWs), high quality waters, use protected waters proposed for implementing the nondegradation policy, and other definitions relating to the nondegradation policy. A discussion paper on the proposed amendments is available from the Division of Water at the address listed in (5) above.
  - (c) The necessity and function of the proposed amendments are as follows: Federal statutes require state water quality standards to be reviewed at least every three years. These proposed amendments are necessary to comply with that federal requirement. The function is to clarify existing provisions, add new provisions to meet federal regulations, make needed updates since the previous triennial review, and implement KRS Chapter 224, which requires that the Natural Resources and Environmental Protection Cabinet provide for the prevention,

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

abatement, and control of water pollution.

(d) The benefits expected from these amendments will clarify several existing definitions and add new definitions that are needed because of amendments to other water quality standards regulations.

(e) The administrative regulation will be implemented as follows: On and after the effective date of its adoption, the administrative regulation will be implemented through the cabinet's existing regulatory programs.

January 14, 1999

(1) The subject matter of the administrative regulation to be amended is: **401 KAR 5:026**, Classification of waters.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 February 25, 1999, at 7 p.m. Eastern Standard Time at the Capital Plaza Tower auditorium, Wilkinson Boulevard, Frankfort, Kentucky.

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

1. A minimum of 5 persons, or an administrative body, or an association having at least 5 members, request, in writing, a public hearing at least 10 days prior to the date of the public hearing.

2. A minimum of 5 persons, or one 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 February 25, 1999, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before February 15, 1999, at the address below or by telephone, (502) 564-3410 or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. The telephone number is (502) 564-3410; the fax number is (502) 564-0111.

(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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulations relating to the classification of waters in the water quality standards is KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, and 33 USC 1313.

(b) The administrative regulation that the Division of Water intends to promulgate will amend the administrative regulation listed in (1) above that constitutes one of the water quality standards regulations of the cabinet. A summary of this amendment follows. 401 KAR 5:026 will be amended to: (1) remove the outdated provision that prioritized use designation activities; (2) add ORW designation to waters that contain federal threatened or endangered species or are ecologically significant; (3) remove ORW designation on streams that do not support federal threatened or endangered species as previously thought; (4) add new coldwater aquatic habitat streams that support trout populations; (5) remove coldwater aquatic habitat streams that do not support trout populations; and (6) remove warmwater aquatic life use designations as applicable. A discussion paper on the proposed amendments is available from the Division of Water at the address listed in (5) above.

(c) The necessity and function of the proposed amendments are as follows: Federal statutes require state water quality standards to be reviewed at least every three years. These proposed amendments are necessary to comply with that federal requirement. The function is to clarify existing provisions, add new provisions to meet federal regulations, make needed updates since the previous triennial review, and implement KRS Chapter 224, which requires that the Natural Resources and Environmental Protection Cabinet provide for the prevention, abatement, and control of water pollution.

(d) The benefits expected from these amendments will provide greater protection of: (1) Human health from fish and water consumption; and (2) aquatic life from polluting activities and substances.

(e) The administrative regulation will be implemented as follows: On and after the effective date of its adoption, the administrative regulation will be implemented through the cabinet's existing regulatory programs.

January 14, 1999

(1) The subject matter of the administrative regulation to be amended is: **401 KAR 5:029**, General provisions.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 February 25, 1999, at 7 p.m. Eastern Standard Time at the Capital Plaza Tower auditorium, Wilkinson Boulevard, Frankfort, Kentucky.

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

1. A minimum of 5 persons, or an administrative body, or an association having at least 5 members, request, in writing, a public hearing at least 10 days prior to the date of the public hearing.

2. A minimum of 5 persons, or one 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 February 25, 1999, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before February 15, 1999, at the address below or by telephone, (502) 564-3410 or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. The telephone number is (502) 564-3410; the fax number is (502) 564-0111.

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

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

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulations relating to the general provisions of the water quality standards is KRS 224.10-100, 224.16-060, 224.70-100, 224.70-110, and 33 USC 1313.

(b) The administrative regulation that the Division of Water intends to promulgate will amend the administrative regulation listed in (1) above that constitutes one of the water quality standards regulations of the cabinet. A summary of these amendments follows. 401 KAR 5:029 will be amended to move the definitions to 401 KAR 5:002 and strengthen the mixing zone provisions by limiting the use and size of zones of initial dilution. A discussion paper on the proposed amendments is available from the Division of Water at the address listed in (5) above.

(c) The necessity and function of the proposed amendment are as follows: Federal statutes require state water quality standards to be reviewed at least every three years. These proposed amendments are necessary to comply with that federal requirement. The function is to clarify existing provisions, add new provisions to meet federal regulations, make needed updates since the previous triennial review, and implement KRS Chapter 224, which requires that the Natural Resources and Environmental Protection Cabinet provide for the prevention, abatement, and control of water pollution.

(d) The benefits expected from this amendment will provide greater protection of: (1) Human health from fish and water consumption; and (2) aquatic life from polluting activities and substances.

(e) The administrative regulation will be implemented as follows: On and after the effective date of its adoption, the administrative regulation will be implemented through the cabinet's existing regulatory programs.

January 14, 1999

(1) The subject matter of the administrative regulations to be amended is: **401 KAR 5:030**, Nondegradation policy implementation methodology.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate one 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 February 25, 1999, at 7 p.m. Eastern Standard Time at the Capital Plaza Tower auditorium, Wilkinson Boulevard, Frankfort, Kentucky.

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

1. A minimum of 5 persons, or an administrative body, or an association having at least 5 members, request, in writing, a public hearing at least 10 days prior to the date of the public hearing.

2. A minimum of 5 persons, or one 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 February 25, 1999, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before February 15, 1999, at the address below or by telephone, (502) 564-3410 or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. The telephone number is (502) 564-3410; the fax number is (502) 564-0111.

(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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulations relating to nondegradation policy implementation methodology of the water quality standards is KRS 224.10-100, 224.16-050, 224.70-110, 40 CFR Part 131, and 33 USC 1313, 1342.

(b) The administrative regulation that the Division of Water intends to promulgate will amend the administrative regulation listed in (1) above that constitutes one of the water quality standards regulations of the cabinet. A summary of this amendment follows. 401 KAR 5:030 will be amended to: (1) add high quality waters that have been identified by the cabinet since the administrative regulation was last promulgated; (2) remove the exclusion of carcinogenic compounds from more stringent limits in high quality waters; (3) add another biological index as a means of qualifying a water as high quality; (4) revise provisions relating to sanitary discharges; and (5) add language to strengthen the nondegradation review process. A discussion paper on the proposed amendments is available from the Division of Water at the address listed in (5) above.

(c) The necessity and function of the proposed amendment is as follows: Federal statutes require state water quality standards to be reviewed at least every three years. These proposed amendments are necessary to comply with that federal requirement. The function is to clarify existing provisions, add new provisions to meet federal regulations, make needed updates since the previous triennial review, and implement KRS Chapter 224, which requires that the Natural Resources and Environmental Protection Cabinet provide for the prevention, abatement, and control of water pollution.

(d) The benefits expected from this amendment will provide greater protection of: (1) Human health from fish and water consumption; and (2) aquatic life from polluting activities and substances. The nondegradation implementation provisions will further protect many state waters from new and expanded discharges by requiring a more rigorous permit review of alternatives to the proposed discharge.

(e) The administrative regulation will be implemented as follows: On and after the effective date of its adoption, the administrative regulation will be implemented through the cabinet's existing regulatory programs.

January 14, 1999

(1) The subject matter of the administrative regulation to be amended is: **401 KAR 5:031**, Surface water standards.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, 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 February 25,

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

1999, at 7 p.m. Eastern Standard Time at the Capital Plaza Tower auditorium, Wilkinson Boulevard, Frankfort, Kentucky.

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

1. A minimum of 5 persons, or an administrative body, or an association having at least 5 members, request, in writing, a public hearing at least 10 days prior to the date of the public hearing.

2. A minimum of 5 persons, or one 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 February 25, 1999, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before February 15, 1999, at the address below or by telephone, (502) 564-3410 or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort, Kentucky 40601. The telephone number is (502) 564-3410; the fax number is (502) 564-0111.

(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 Division of Water at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of the administrative regulations relating to surface water standards of the water quality standards is KRS 224.10-100, 224.16-050, 224.16-060, 224.70-100, 224.70-110, and 33 USC 1313.

(b) The administrative regulation that the Division of Water intends to promulgate will amend the administrative regulation listed in (1) above that constitutes one of the water quality standards regulations of the cabinet. A summary of this amendment follows. 401 KAR 5:031 will be amended to: (1) update numeric criteria from the most recent criteria table published by EPA; (2) add dioxin criteria; and (3) add a variance procedure for individual dischargers. A discussion paper on the proposed amendments is available from the Division of Water at the address listed in (5) above.

(c) The necessity and function of the proposed amendment is as follows: Federal statutes require state water quality standards to be reviewed at least every three years. This proposed amendment is necessary to comply with that federal requirement. The function is to clarify existing provisions, add new provisions to meet federal regulations, make needed updates since the previous triennial review, and implement KRS Chapter 224, which requires that the Natural Resources and Environmental Protection Cabinet provide for the prevention, abatement, and control of water pollution.

(d) The benefits expected from this amendment will provide greater protection of: (1) Human health from fish and water consumption; and (2) aquatic life from polluting activities and substances.

(e) The administrative regulation will be implemented as follows: On and after the effective date of its adoption, the administrative regulation will be implemented through the cabinet's existing regulatory programs.

### Division of Waste Management

January 15, 1999

(1) **401 KAR 47:110**, Registered permit-by-rule.

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

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for February 24, 1999, at 9 a.m., Eastern Standard Time, at the Capital Plaza Tower, Ground Floor Auditorium, Mero Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by:

1. Five (5) persons;

2. An administrative body, or an association having at least five (5) members, provided that one (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 February 24, 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: Mark Ritter, Supervisor, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716 or (502) 564-4049 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 Bruce Cassidy, Division of Waste Management at the address listed above.

(7) Information relating to the administrative regulation:

(a) The statutory authority for the administrative regulation is KRS 224.10-100, 224.40-100, 224.40-120, and 224.40-305.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will amend 401 KAR 47:110, Registered permit-by-rule. The administrative regulation will be amended to require the applicant to submit the registration to the cabinet at least five (5) working days prior to the operation of the facility, to reference applicable environmental performance standards, and submit a form prescribed by the cabinet.

(c) The necessity of the administrative regulation is as follows: KRS Chapter 224 requires the cabinet to adopt regulations for the management of waste. KRS 224.40-305 requires that persons engaging in the management, processing, and disposal of waste obtain a permit. This regulation establishes requirements for registered permits-by-rule. The requirements of this administrative regulation are consistent with 40 CFR Part 257.

(d) The benefits expected from administrative regulation are: The cabinet shall have five (5) working days to review the compliance record



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

of the owner or operator regarding an application for a registered permit-by-rule.

(e) The administrative regulation will be implemented as follows: The cabinet shall have five (5) working days from the date of registration receipt to review the compliance record of the owner or operator, including applications for a new registration and modifications to existing registrations.

January 15, 1999

(1) **401 KAR 48:320**, Operating requirement for less than one (1) acre construction and demolition debris landfills.

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

(3) A public hearing to receive oral and written comments on the administrative regulation has been scheduled for February 24, 1999, at 9 a.m., Eastern Standard Time, at the Capital Plaza Tower, Ground Floor Auditorium, Mero Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if requested at least ten (10) calendar days prior to the date of the public hearing, in writing, by:

1. Five (5) persons;

2. An administrative body, or an association having at least five (5) members, provided that one (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) days calendar prior to February 24, 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: Mark Ritter, Supervisor, Division of Waste Management, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716 or (502) 564-4049.

(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 Bruce Cassidy, Division of Waste Management at the address listed above.

(7) Information relating to the administrative regulation:

(a) The statutory authority for the administrative regulation is KRS 224.10-100, 224.40-100, 224.40-120, 224.40-305, 224.40-330, 224.50-760.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet intends to promulgate will not amend an existing administrative regulation. It will provide siting, technical, and operating requirements for less than one (1) acre construction and demolition debris landfills.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS Chapter 224 requires the cabinet to promulgate administrative regulations for the management, processing or disposal of wastes. This administrative regulation sets forth the siting, technical, and operating requirements for less than one (1) acre construction and demolition debris landfills.

(d) The benefits expected from this administrative regulation are: Establishment of siting, technical, and operating requirements necessary to protect human health and environment with respect to disposal of construction and demolition debris in a less than one (1) acre landfills.

(e) The administrative regulation will be implemented as follows: Upon the effective date of this administrative regulation, all owners and operators of new less than one (1) acre construction demolition debris landfills (CDDL) must register with the cabinet and must meet minimum siting, technical, and operating requirements.

## KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD

January 12, 1999

(1) Regulation number and title: **418 KAR 1:020**. Administrative procedures of the board.

(2) The Kentucky Heritage Land Conservation Fund Board intends to amend an existing regulation, 418 KAR 1:020, relating to administrative procedures followed by the board in carrying out its statutory duties pertaining to review and approval of grant applications and acquisition of land.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1999 at 10 a.m. local prevailing time at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601.

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

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

2. A minimum of five (5) persons, or one (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 ten (10) calendar days prior to February 24, 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: Joseph R. Dietz, Staff Assistant, Kentucky Heritage Land Conservation Fund Board, c/o Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-2184, FAX (502) 564-6193.

(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 Heritage Land Conservation Fund Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to administrative procedures of the board is found at KRS 146.560(2), 146.565 and 146.570.

(b) The proposed administrative regulation will amend an existing regulation. The amendment will modify the procedures followed when an appointed state agency board member does not attend a board meeting but instead designates someone else to attend, and will reduce the number of board members required to serve on committees.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 146.560(2)



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

directs the board to promulgate administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds.

(d) The benefit expected from the amendment to the administrative regulation is a greater efficiency in decision making by the board regarding proposed new projects as well as adequate staffing of committees to satisfy ongoing board responsibilities.

(e) The amendment to the administrative regulation will be implemented as follows: On and after the effective date of this amendment, all board members shall comply with the provisions of 418 KAR 1:020 as part of the existing regulations governing procedures for attendance at board meetings and participation in committees.

(8) Any person with a disability for which the Kentucky Heritage Land Conservation Fund Board needs to make an accommodation in order for the person to participate in the public comment hearing should notify Joseph R. Dietz at the above-mentioned address at least ten (10) calendar days prior to February 24, 1999.

January 12, 1999

(1) Regulation number and title: **418 KAR 1:030. State agency projects.**

(2) The Kentucky Heritage Land Conservation Fund Board intends to amend an existing regulation, 418 KAR 1:030, establishing standards for the review and approval of proposed state agency projects funded pursuant to KRS 146.570(4)(a) through (e).

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1999 at 10 a.m. local prevailing time at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601.

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

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

2. A minimum of five (5) persons, or one (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 ten (10) calendar days prior to February 24, 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: Joseph R. Dietz, Staff Assistant, Kentucky Heritage Land Conservation Fund Board, c/o Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-2184, FAX (502) 564-6193.

(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 Heritage Land Conservation Fund Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to state agency projects is found at KRS 146.560(2) and 146.570(4)(a) through (e).

(b) The proposed administrative regulation will amend an existing regulation. The amendment will modify the procedures followed by a state agency when applying for funds from the board and will require that one project application form be used for all applications, whether state agency or competitive. The amendment will also omit the reference to a conservation easement in state agency applications.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 146.560(2) directs the board to promulgate administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(4)(a) through (e) authorizes the allocation of fund money to certain state agencies.

(d) The twofold benefit expected from the amendment to the administrative regulation is a reduced burden on state agencies when submitting applications for fund money, and an increased efficiency for the board in reviewing applications.

(e) The amendment to the administrative regulation will be implemented as follows: On and after the effective date of this amendment, all board members shall comply with the provisions of 418 KAR 1:030 as part of the existing regulations governing procedures for applying for funds from the board. The amended application form will be incorporated by reference in 418 KAR 1:030.

(8) Any person with a disability for which the Kentucky Heritage Land Conservation Fund Board needs to make an accommodation in order for the person to participate in the public comment hearing should notify Joseph R. Dietz at the above-mentioned address at least ten (10) calendar days prior to February 24, 1999.

January 12, 1999

(1) Regulation number and title: **418 KAR 1:040. Competitive grants.**

(2) The Kentucky Heritage Land Conservation Fund Board intends to amend an existing regulation, 418 KAR 1:040, establishing standards for the review and approval of grants funded pursuant to KRS 146.570(4)(f).

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1999 at 10 a.m. local prevailing time at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601.

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

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

2. A minimum of five (5) persons, or one (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 ten (10) calendar days prior to February 24, 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: Joseph R. Dietz, Staff Assistant, Kentucky Heritage Land Conservation Fund Board, c/o Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-2184, FAX (502) 564-6193.

(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.

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

(b) Persons who wish to file this request may obtain a request form from the Kentucky Heritage Land Conservation Fund Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to administrative procedures of the board is found at KRS 146.560(2) and 146.570(4)(f).

(b) The proposed administrative regulation will amend an existing regulation. The amendment will modify the procedures followed by state agencies, local governments, and state colleges and universities seeking grants from the board pursuant to KRS 146.570(4)(f). It will modify the procedures followed by these applicants when applying for funds from the board and will require that one project application form be used for all applications. The amendment will also clarify the timing of conveying conservation easements, and will omit the duplication in the regulation of application requirements.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 146.560(2) directs the board to promulgate administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(f) authorizes the allocation of fund money to state agencies, local governments, and state colleges and universities.

(d) The twofold benefit expected from the amendment to the administrative regulation is a reduced burden on competitive grant applicants when submitting applications for fund money, and an increased efficiency for the board in reviewing applications.

(e) The amendment to the administrative regulation will be implemented as follows: On and after the effective date of this amendment, all board members shall comply with the provisions of 418 KAR 1:040 as part of the existing regulations governing procedures for applying for funds from the board. The amended application form will be incorporated by reference in 418 KAR 1:040.

(8) Any person with a disability for which the Kentucky Heritage Land Conservation Fund Board needs to make an accommodation in order for the person to participate in the public comment hearing should notify Joseph R. Dietz at the above-mentioned address at least ten (10) calendar days prior to February 24, 1999.

January 12, 1999

(1) Regulation number and title: **418 KAR 1:050. Procedures for acquisition of land.**

(2) The Kentucky Heritage Land Conservation Fund Board intends to amend an existing regulation, 418 KAR 1:050, governing the acquisition of land purchased, in whole or in part, with Kentucky Heritage Land Conservation Fund money.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1999 at 10 a.m. local prevailing time at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or one (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 ten (10) calendar days prior to February 24, 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: Joseph R. Dietz, Staff Assistant, Kentucky Heritage Land Conservation Fund Board, c/o Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-2184, FAX (502) 564-6193.

(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 Heritage Land Conservation Fund Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to administrative procedures of the board is found at KRS 146.560(2), 146.565 and 146.570.

(b) The proposed administrative regulation will amend an existing regulation. The amendment will clarify that applicants must attempt to acquire matching public or private funds when acquiring property that is the subject of an application submitted to the board, and omits a duplicate reference to the requirement of a conservation easement.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 146.560(2) directs the board to promulgate administrative regulations governing land acquisition. This administrative regulation governs the acquisition of land purchased, in whole or in part, with fund money.

(d) The benefit expected from the amendment to the administrative regulation is clarification to all applicants regarding attempts to acquire matching funds to purchase land.

(e) The amendment to the administrative regulation will be implemented as follows: On and after the effective date of this amendment, all board members shall comply with the provisions of 418 KAR 1:050 as part of the existing regulations governing procedures for attendance at board meetings and participation in committees.

(8) Any person with a disability for which the Kentucky Heritage Land Conservation Fund Board needs to make an accommodation in order for the person to participate in the public comment hearing should notify Joseph R. Dietz at the above-mentioned address at least ten (10) calendar days prior to February 24, 1999.

January 12, 1999

(1) Regulation number and title: **418 KAR 1:060. Management.**

(2) The Kentucky Heritage Land Conservation Fund Board intends to amend an existing regulation, 418 KAR 1:060, relating to management of land acquired with fund money.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1999 at 10 a.m. local prevailing time at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601.

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

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

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

(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 February 24, 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: Joseph R. Dietz, Staff Assistant, Kentucky Heritage Land Conservation Fund Board, c/o Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-2184, FAX (502) 564-6193.

(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 Heritage Land Conservation Fund Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to administrative procedures of the board is found at KRS 146.560(2), 146.565 and 146.570(3).

(b) The proposed administrative regulation will amend an existing regulation. The amendment will modify and clarify how lands acquired with fund money are managed in accordance with statutory requirements. The amendment simplifies the requirement of fund recipients filing resource management plans; adds biological and archeological inventories as information included in final resource management plans; allows preliminary resource management plans to be accepted as final resource management plans; provides guidance for correcting deficiencies in resource management plans; provides a deadline for expending management funds following receipt of fund money; expands the time for requesting additional management money and removes the cap on the amount that can be requested; limits the length of time biennial reports are submitted to the board; provides alternatives to fund recipients on how to publicly identify the source of funds used to acquire property; and corrects citations to previously referenced subsections.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 146.560(2) directs the board to promulgate administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. KRS 146.565 requires prior board approval of expenditure of funds. KRS 146.570(3) requires each recipient of fund money to develop and implement a resource management plan, allocate at least ten (10) percent of fund money received toward management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money.

(d) The benefit expected from the amendment to the administrative regulation is a reduced burden on fund recipients to carry out their management obligations following receipt of fund money.

(e) The amendment to the administrative regulation will be implemented as follows: On and after the effective date of this amendment, all board members shall comply with the provisions of 418 KAR 1:060 as part of the existing regulations governing management of properties acquired with fund money. The resource management plan instructions will be set forth in a form incorporated by reference in the regulation.

(8) Any person with a disability for which the Kentucky Heritage Land Conservation Fund Board needs to make an accommodation in order for the person to participate in the public comment hearing should notify Joseph R. Dietz at the above-mentioned address at least ten (10) calendar days prior to February 24, 1999.

January 12, 1999

(1) Regulation number and title: **418 KAR 1:070. Remedies.**

(2) The Kentucky Heritage Land Conservation Fund Board intends to amend an existing regulation, 418 KAR 1:070, ensuring that land acquired with fund money is maintained in accordance with statutory requirements, and that fund money is used for acquisition and management only, in accordance with KRS 146.560.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1999 at 10 a.m. local prevailing time at the Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601.

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

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or one (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 ten (10) calendar days prior to February 24, 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: Joseph R. Dietz, Staff Assistant, Kentucky Heritage Land Conservation Fund Board, c/o Department for Natural Resources, 663 Teton Trail, Frankfort, Kentucky 40601, (502) 564-2184, FAX (502) 564-6193.

(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 Heritage Land Conservation Fund Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to administrative procedures of the board is found at KRS 146.560, 146.565 and 146.570.

(b) The proposed administrative regulation will amend an existing regulation. The amendment will clarify the regulatory language addressing the board's ability to utilize administrative and other methods to ensure that land acquired with fund money is acquired and maintained in accordance with statutory requirements.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 146.570(3) requires each recipient of fund money to implement a resource management plan for each tract acquired, allocate at least ten (10) percent of monies received for management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money. It also requires that fund money be spent exclusively on acquisition and management of lands as defined in KRS 146.560.

(d) The benefit expected from the amendment to the administrative regulation is clarification and simplification of the methods by which the board may enforce compliance with statutory requirements governing acquisition and management.

(e) The amendment to the administrative regulation will be implemented as follows: On and after the effective date of this amendment, all

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

board members shall comply with the provisions of 418 KAR 1:070 as part of the existing regulations governing the board's ability to enforce compliance with statutory and regulatory requirements, including but not limited to procedures to be followed in forfeiting land acquired with fund money.

(8) Any person with a disability for which the Kentucky Heritage Land Conservation Fund Board needs to make an accommodation in order for the person to participate in the public comment hearing should notify Joseph R. Dietz at the above-mentioned address at least ten (10) calendar days prior to February 24, 1999.

### KENTUCKY JUSTICE CABINET

December 30, 1998

- (1) Regulation number and title: **500 KAR 13:010**, Appeals hearings for substantiated abuse investigations.
- (2) The Justice Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 22, 1999, at 9 a.m., in the Conference Room, in the 2nd Floor of the Bush Building at 403 Wapping Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 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, Barbara W. Jones, General Counsel 403 Wapping Street, 2nd Floor Bush Building, Frankfort, Kentucky 40601, Phone (502) 564-3279, FAX (502) 564-5244.
- (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 Justice Cabinet 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 Justice Cabinet intends to promulgate will not amend an existing administrative regulation. The administrative regulation that the cabinet intends to promulgate will establish the procedure to conduct hearings following notification to an employee that they have been identified as a substantiated perpetrator of child abuse or neglect.
  - (c) The necessity and function of the proposed administrative regulation is to develop and implement a procedure for the conduct of hearings as statutorily required.
  - (d) The benefits expected from this administrative regulation are: The establishment of a uniform procedure for the conduct of hearings.
  - (e) This administrative regulation shall be implemented as follows: With an ordinary administrative regulation.

### EDUCATION, ARTS, AND HUMANITIES CABINET Department for Libraries and Archives

January 6, 1999

- (1) **725 KAR 1:070**, Standards for instruments presented to a county clerk for recording.
- (2) The Kentucky Department for Libraries and Archives 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 February 22, 1999, at 10 a.m., in the Board Room of the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons or 1 person representing an administrative body or association having at least 5 members.
  2. A minimum of 5 persons, or 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 days prior to February 22, 1999, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Darrell Gabhart, Manager, Local Records Branch, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Phone: (502) 564-8300, ext. 255; Fax: (502) 564-5773.
- (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 Kentucky Department for Libraries and Archives 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 standards for instruments presented to a county clerk for recording is KRS 171.450(1)(c), (2); 171.520(1), (3).
  - (b) The administrative regulation that the Kentucky Department for Libraries and Archives intends to promulgate will amend 725 KAR 1:070, Standards for instruments presented to a county clerk for recording. It will set standards relating to size and weight of paper; print clarity and format of documents presented to a county clerk for recording, along with exceptions to these standards.

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

(c) The necessity and function of the proposed administrative regulation is as follows: To provide standards, as mandated by KRS 171.420 and 171.520, that will improve the management, ensure the preservation and enhance public access of instruments presented to a county clerk for official recording.

(d) The benefits expected from administration regulation are: To improve the overall legibility of instruments lodged for recording in a county clerk's office, thereby enhancing his ability to fulfill his statutory duty to properly record and made them accessible. Improvements in efficiency and reduction in costs associated with duplication, supplies and storage equipment will be realized by county clerks. Public users of the records will receive better service.

(e) The administrative regulation will be implemented as follows: The regulation will allow ample time for county clerks and others to use any current supplies not meeting standards set by the regulation, and to reorder.

**LABOR CABINET  
Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training**

January 15, 1999

(1) Regulation number and title: **803 KAR 2:307**. Hazardous materials.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:307, as follows: The revisions will incorporate changes to the standards regulating explosives and blasting agents (29 CFR 1910.109), storage and handling of liquefied petroleum gas (29 CFR 1910.110), and storage and handling of anhydrous ammonia (29 CFR 1910.111), as published in the Federal Register, Volume 63, Number 117, June 18, 1998. These revisions eliminate duplicative, inconsistent, and unnecessary provisions.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:309**. General environmental controls.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor Cabinet at the address listed above.

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:309, as follows: This administrative regulation will change the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions to existing standards on sanitation and temporary labor camps (29 CFR 1910.141), as published in the Federal Register, June 18, 1998, which eliminates duplicative, unnecessary and inconsistent provisions.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:310. Medical services and first aid.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:310, as follows: This administrative regulation will change the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph and the numbering of the regulation to meet KRS Chapter 13A considerations, and delete sections requiring a physician's certification of first aid supplies reflecting a revision of 29 CFR 1910.151, as published in the Federal Register, June 18, 1998, and incorporate an appendix published in the same Federal Register, which lists appropriate first aid supplies.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:311. Fire protection.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

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

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

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:311, as follows: This amendment will incorporate, by reference, a Federal Register publication dated June 18, 1998, which revises the standard regulating fire brigades, which eliminates an unnecessary provision.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:313**. Materials handling and storage.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:313, as follows: This amendment will incorporate, by reference, a Federal Register publication, dated June 18, 1998, which revises the standard regulating helicopters, which eliminates an unnecessary provision.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:317**. Special industries.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor Cabinet at the address listed above.



VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:317, as follows: This amended administrative regulation incorporates, by reference, a Federal Register publication, dated June 18, 1998, which revises the standards regulating pulp, paper and paperboard mills (29 CFR 1910.261), textiles (29 CFR 1910.262), sawmills (29 CFR 1910.265), agriculture (29 CFR 1910.266), and telecommunications (29 CFR 1910.268), removing inconsistent, duplicative and unnecessary provisions.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:320**. Toxic and hazardous substances.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. Timothy P. Chancellor, Health Standards Specialist Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:320, as follows: This amended administrative regulation incorporates, by reference, a Federal Register publication, dated June 18, 1998, which revises the standards regulating standards regulating vinyl chloride (29 CFR 1910.1017), inorganic arsenic (29 CFR 1910.1018), and coke oven emissions (29 CFR 1910.1029), removing inconsistent, duplicative and unnecessary provisions. This amended administrative regulation also incorporates, by reference, a Federal Register publication, dated September 22, 1998, which revises the standard for methylene chloride to provide medical removal protection for employees and to allow an extension of start-up compliance dates for employers in certain industries.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:402**. General safety and health provisions.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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



VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:402, as follows: This amended administrative regulation will change the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions to an existing standard, as published in the Federal Register, June 18, 1998, which clarifies that only mandatory provisions of national consensus standards are adopted as OSHA standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:403**. Occupational health and environmental controls.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:403, as follows: This amended administrative regulation will clarify provisions for first aid requirements, incorporate revisions to an existing standard, as published in the Federal Register, June 18, 1998.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:405**. Fire protection and prevention.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. William L. Ralston, Safety Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

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

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

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:405, as follows: This amended administrative regulation will change the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph, updates the reference to the current Code of Federal Regulations, and incorporates revisions to the existing standard regulating flammable and combustible liquids, as published in the Federal Register, June 18, 1998, which clarify the type of containers to be used for the storage and handling of flammable and combustible liquids.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:420**. Blasting and use of explosives.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. Timothy P. Chancellor, Health Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:420, as follows: This amended administrative regulation will change the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph and reformats the regulation to meet KRS Chapter 13A considerations, updates the reference to the current Code of Federal Regulations, and incorporates revisions to an existing standard, as published in the Federal Register, June 18, 1998, which clarify that only mandatory provisions of national consensus standards are adopted as OSHA standards.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:425**. Toxic and hazardous substances.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. Timothy P. Chancellor, Health Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:425, as follows: This amended administrative regulation incorporates, by reference, a Federal Register publication, dated June 29, 1998, which revises the construction industry standard regulating asbestos (1926.1101). The standard will no longer cover asbestos-containing roof cements, coatings and mastics.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

January 15, 1999

(1) Regulation number and title: **803 KAR 2:500**. Maritime employment.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for February 26, 1999, at 10 a.m. (ET), in the Bay 3 Conference Room at 1047 U.S. 127 South, 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, or one (1) person representing the administrative body or association, agrees to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 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: Mr. Timothy P. Chancellor, Health Standards Specialist, Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(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 Labor 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 occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:500, as follows: This amended administrative regulation will incorporate, by reference, a Federal Register publication, dated June 29, 1998, which revises the standard dealing with asbestos used in public sector shipyard employment, conforming the standard to meet a Court of Appeals decision. The standard will no longer cover asbestos-containing cements, coatings, and mastics.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

CABINET FOR HEALTH SERVICES  
Office of Inspector General

January 15, 1999

(1) **902 KAR 20:140**. Operation and services; hospices.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 1999, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The cabinet intends to amend 902 KAR 20:140, Section 4(7) and (8) to extend the time for the physician to review and sign changes in care plans from seven (7) days to twenty-one (21) days. Other amendments will comply with drafting requirements of KRS Chapter 13A.

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

(d) The benefits expected are that the amendments will extend the time for the physician to sign changes in treatment plans.

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

**Department for Medicaid Services**

January 15, 1999

(1) **907 KAR 1:025**, Payments for nursing facility and intermediate care facility for the mentally retarded services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 February 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: Hiren Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payment for certified brain injury, a nursing facility with a distinct part ventilator unit, a nursing facility designated as a mental retardation specialty, a pediatric facility or an intermediate care facility for the mentally retarded are KRS 194A.030, 194A.050 and 205.520.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025 to establish the eligibility criteria in order to equitably distribute the \$3,000,000 extenuating circumstance pool to nursing facilities which have incurred an extraordinary cost due to circumstances beyond their control to:

1. Incorporate:

a. The \$504 million budget cap for state fiscal year 1998; and

b. The 1998 Ky. Acts ch. 615 provides a Medicaid reimbursement budget cap nursing facilities for the state fiscal years 1999 and 2000, of \$519.1 million and \$534.6 million respectively and provides a methodology for monitoring and adjusting rates. This process also includes a revised methodology for monitoring and adjusting rates;

2. Revise ventilator payment provisions to comply with a Franklin County Circuit Court order;

3. Revise distinct part requirement, 20 bed nursing facility unit, 15 bed census requirements for payments purposes for ventilator rate;

4. Revise the requirements for the Preadmission Screening and Resident Review (PASRR) Program; and

5. Establish an extenuating circumstance pool and eligibility criteria to provide an add-on to the calculated rate.

6. Ensure that there is no conflicting information between the regulation and the manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation recognizes the budget limit for state fiscal years 1998, 1999 and 2000 and sets forth the method for determining amounts payable by the cabinet to reimburse nursing facilities, nursing facilities with a certified brain injury unit, nursing facilities with a distinct part ventilator unit, nursing facilities designated as a mental retardation specialty, a pediatric facilities or intermediate care facilities for the mentally retarded. This administrative regulation sets forth the criteria to equitably distribute the \$3,000,000 extenuating circumstance pool to nursing facilities which have incurred

an extraordinary cost due to circumstances beyond their control.

(d) The benefits expected from administrative regulation are:

1. Ensure that a nursing facility does not incur a nonrecoupable extraordinary loss due to an event outside the usual and ordinary course of business; and
  2. Ensure that the extraordinary loss affects the facility as a whole.
  3. Medicaid eligibles will benefit by being provided access to and payments for additional facility sites offering ventilator services.
- (e) The administrative regulation will be implemented as follows: By the Division of Financial Management and Analysis, Department for Medicaid Services, Cabinet for Health Services.

Department for Medicaid Services

January 15, 1999

(1) **907 KAR 1:044**, Mental health center services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 February 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: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to Community Mental Health Centers are KRS 194A.030, 205.520 and 1998 Ky. Acts ch. 615 (1998 Budget Bill); 42 CFR 440.250 and 440.210.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:044 to include the definitions, eligibility criteria, schedule of benefits, substance abuse assessment and patient placement criteria instruments, referral procedures and provider qualifications for the provision of substance abuse treatment for pregnant women and postpartum women up to the end of the month of 60 days following the date of delivery.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the eligibility criteria, schedule of benefits, and qualifications and criteria for the provision of substance abuse treatment services to pregnant women and postpartum women up to the end of the month of 60 days following the date of delivery.

(d) The benefits expected from the administrative regulation are: The improved health status of pregnant women in Kentucky and that of their infant children. These benefits to pregnant women are authorized under 42 CFR 440.250, Limits on comparability of services (p)(1) and (2) and 440.210, Required services for the categorically needy (a)(2) and (3).

(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.

January 15, 1999

(1) **907 KAR 1:045**, Mental health center services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 February 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: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medi-

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

caid 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 Community Mental Health Centers are KRS 194A.030 and 1998 Ky. Acts ch. 615 (1998 Budget Bill); 42 CFR 440.250, 440.210, 447.325 and 42 USC 1396a-d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:045 to include reimbursement methodologies for the provision of substance abuse treatment for pregnant women and postpartum women up to the end of the month of 60 days following the date of delivery.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the reimbursement methodologies for the provision of substance abuse treatment services to pregnant women and postpartum women up to the end of the month of 60 days following the date of delivery.

(d) The benefits expected from the administrative regulation are: Reimbursement to qualified providers will enable substance abuse services to be provided, thereby improving the health status of pregnant women in Kentucky and that of their infant children. These benefits to pregnant women are authorized under 42 CFR 440.250, Limits on comparability of services (p)(1) and (2) and 440.210, Required services for the categorically needy (a)(2) and (3).

(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.

January 15, 1999

(1) **907 KAR 3:090**, Acquired brain injury services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 February 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: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to acquired brain injury services are KRS 194A.030, 205.520.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide medical and social services in the community to individuals with acquired brain injuries who would otherwise require these services in a nursing facility. These rehabilitative services will permit individuals with brain injuries to reside in the community without additional services other than what currently exists in the community after they leave the Acquired Brain Injury Program.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and training for reentry of the individual into the community with existing resources.

(d) The benefits expected from administrative regulation are: to provide individuals with brain injuries an alternative to nursing facility services by providing rehabilitative services so these individuals can remain in the community with only existing resources. These services will be better tailored to the individuals needs and will promote the health and welfare of these individuals.

(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.

January 15, 1999

(1) **907 KAR 3:100**, Payment for acquired brain injury services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 February 26, 1999, the public hearing will be canceled.

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to acquired brain injury services are KRS 194A.030, 194A.050, 205.520.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide medical and social services in the community to individuals with acquired brain injuries who would otherwise require these services in a nursing facility. These rehabilitative services will permit individuals with brain injuries to reside in the community without additional services other than what currently exists in the community after they leave the Acquired Brain Injury Program.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the payment provisions for providers relating to home and community based waiver services provided to an individual with an acquired brain injury. These services are an alternative to nursing facility services for the purpose of rehabilitation and training for reentry of the individual into the community with existing resources.

(d) The benefits expected from administrative regulation are: to provide individuals with brain injuries an alternative to nursing facility services by providing rehabilitative services so these individuals can remain in the community with only existing resources. These services will be better tailored to the individuals needs and will promote the health and welfare of these individuals.

(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.

January 15, 1999

(1) **907 KAR 4:020**, Kentucky Children's Health Insurance Program.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 February 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: Hiren Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to KCHIP is KRS 205.6481 through 205.6497, 194A.030, 42 USC 1397aa et seq.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will establish the definitions, eligibility criteria, copayments for services, schedule of benefits, premium contributions, KCHIP entity requirements, grievance and appeal rights and procedures for the Kentucky Children's Health Insurance Program. The Department for Medicaid Services anticipates making a draft of this ordinary administrative regulation available for review at least 48 hours prior to the hearing on the internet at: <http://cfc-chs.chr.state.ky.us/chs/kchip/kchip.htm>. It is also anticipated that a copy of the draft regulation will be available at the time and place of the public hearing.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The ordinary administrative regulation sets forth eligibility criteria, schedule of benefits, premium contribution, level of copayments, and criteria for health services providers wishing to contract with the Commonwealth to provide KCHIP coverage.

(d) The benefits expected from administrative regulation are: The improved health status of children in Kentucky and continuity of care for previously uninsured children.

(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 8 – FEBRUARY 1, 1999

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

January 15, 1999

(1) **921 KAR 2:015**, Supplemental programs for persons who are aged, blind, or have a disability.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 1999, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 2:015 is KRS 205.245, 194B.050 and EO 98-731. Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along the cost of living supplemental security income benefit increases to state supplementation recipients.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 2:015. The proposed administrative regulation is necessary to:

1. Revise the standard of need for all levels of care for the State Supplementation Program due to the pass along of the 1999 supplemental security income cost of living adjustment.

2. In conformity with the repeal of the conditional rating in KRS 216.550, as a result of HB-679:

a. Amend Section 11(4), regarding the days the personal care home is ineligible for a payment, by deleting references to the conditional rating, KRS 216.550 and 900 KAR 2:030, and replacing with the days the personal care home has a Type A citation, as determined by the Division of Licensing and Regulation.

b. Amend Section 13(6) by deleting the requirement of the Division of Licensing and Regulation notifying the cabinet of the days a personal care home has a conditional rating with the requirement of being notified of the days the personal care home has a Type A citation.

c. To comply with changes in 921 KAR 2:050, add criteria to allow the reduction of a MI/MR quarterly payment, for days the personal care home has a Type A citation by the Division of Licensing and Regulation, instead of a reduction for days a conditional rating was received by the Division of Licensing and Regulation, the first administratively feasible quarter following notification by the Division of Licensing and Regulation.

3. Amend the material Incorporated by Reference to conform with:

a. The language in KRS 194B.050 and EO 98-731 regarding the reorganization of the Cabinet for Families and Children; and

b. The repeal of the conditional rating system in KRS 216.550, as a result of HB-679.

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

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated increases in the standard of need for the State Supplementation Program due to the pass along of the supplemental security income 1999 cost of living adjustment. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet operates a supplement program for certified personal care homes which accept state supplementation recipients and have a thirty-five (35) percentage of residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation set forth the provisions of the supplementation program.

(d) The benefits expected from administrative regulation are: This administrative regulation will increase the standard of need for all levels of care for the recipients of the State Supplementation Program due to the pass along of the supplemental security income cost of living increase.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community-Based Services, Division of Policy Development.

January 15, 1999

(1) **921 KAR 3:030**, Application process (Food Stamp Program).

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 1999, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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 ten (10) calendar days prior to February 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: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4 West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community-Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 3:030, Application process for the Food Stamp Program, are 7 USC 2020(e)(2)(B)(ii),(iii),(iv), KRS 13A.120, 116.048, and 194B.050.
- (b) The administrative regulation that the Department for Community-Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 3:030. The proposed administrative regulation is necessary to:
  1. Amend administrative regulation to conform with language in KRS 194B.050 and EO 98-731 regarding reorganization of Cabinet of Families and Children, and to make technical changes in compliance with KRS Chapter 13A.
  2. Amend administrative regulation to replace references to the Aid to Families with Dependent Children Program (AFDC) with Kentucky Transitional Assistance Program (K-TAP), Kentucky's TANF Program.
  3. Permit an applicant household to apply to participate in the Food Stamp Program on the same day that the household first contacts a food stamp office in person during office hours.
  4. Consider an application that contains the name, address, and signature of the applicant to be filed on the date the applicant submits the application.
  5. Clarify the application process in Section 2.
  6. Amend material Incorporated by Reference to reflect previous policy changes now incorporated in these forms and to change the cabinet and department names.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the application process used by the cabinet in the administration of the Food Stamp Program.
- (d) The benefits expected from administrative regulation are: To bring administrative regulation in compliance with federal requirements.
- (e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community-Based Services, Division of Policy Development.

January 15, 1999

- (1) **922 KAR 5:070, Adult protective services.**
- (2) Cabinet for Families and Children, Department for Community-Based Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 26, 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 ten (10) calendar days prior to February 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: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community-Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to 922 KAR 5:070, Adult protective services are KRS 194B.050, 209.030(1) and EO 98-731.
- (b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 922 KAR 5:070, Adult protective services to include requirements from legislation passed in the 1998 General Assembly, which amended KRS 209.020(4),(7),(14),(15), 209.030, 209.100(1)(c), 209.120(1)(a), 209.990(3), and revisions required by executive order. The changes are as follows:
  1. In Section 1, redefine the central register to become a historical file, accessible to staff during the process of assessment, investigation and case

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

2. Amend Section 2 which deals with receiving the report to allow for the determination for assignment by the family service office supervisor;
  3. Reword Section 2 which deals with receiving the report to clarify the intake procedure when the reporting source originates with law enforcement work.
  4. In Section 3(3)(e), expand the access to records for staff who perform investigations;
  5. In Section 3, redefine financial exploitation of a adult pursuant to KRS 209.990.
  6. Remove procedural details from Section 3 which deals with adult protective service investigations and place these procedures into the manual provided to field staff;
  7. Reword the investigations Section 3(3)2, to separate adult protective services investigations occurring in alternate care facilities from other types of adult protective service investigations;
  8. Revise the form DSS-284, Complaint report, to provide updated material;
  9. Revise the regulation Section 3(3)(l), regarding the inclusion of consultation with the licensing and regulation staff when performing an investigation, due to procedural changes;
  10. Amend Section 4 which deals with the failure to gain entry, adding an interim step to include returning with a law enforcement official;
  11. Revise Section 5 which deals with the results of the investigation to clarify documentation of the results;
  12. Remove procedural steps within Section 5 dealing with the results of the investigation and place these procedures into the manual provided to the field staff;
  13. Reword Section 5 dealing with the findings of the investigation to comply with KRS 209.030(4)(c);
  14. Revise Section 6(2) which deals with opening a case to comply with case management requirements;
  15. Revise Section 10 which deals with guardianship or conservatorship of disabled persons to include wording addressing protective service cases;
  16. Remove procedural steps within Section 10 dealing with guardianship and conservatorship of disabled persons and place these procedures into the manual provided to the field staff;
  17. Revise form DSS-292, Adult Protective Services Investigation, to update as required by executive order;
  18. Expand Section 12 to include domestic violence K-TAP policy;
  19. Revise the entire administrative regulation to update according to executive order;
  20. Make general revisions to this regulation which are required by 1998 General Assembly legislative changes dealing with the improvement of services directly related to the protection of adults.
- (c) The necessity, function and conformity of the proposed administrative regulation is as follows: Pursuant to KRS 209.030(1), the Department for Community-Based Services is amending this administrative regulation to enable the implementation of provisions of KRS 209.010 to 209.160, concerning the protection of adults who may be suffering from or at risk of abuse, neglect or exploitation.
- (d) The benefits expected from administrative regulation are: This amendment implements required provisions passed in the 1998 General Assembly dealing with the improvement of services which are directly related to the protection of adults.
- (e) The administrative regulation will be implemented as follows: by the Division of Policy Development, Department for Community-Based Services, Cabinet for Families and Children.

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

**STATEMENT OF EMERGENCY**  
**201 KAR 20:420E**

This emergency administrative regulation provides a protocol for the determination of death by registered nurses employed by an ambulance service. The Administrative Regulations Review Subcommittee at its October meeting directed that this administrative regulation be filed as an emergency. This administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 20:420 was filed with the Regulations Compiler on January 4, 1999.

PAUL PATTON, Governor  
SUE DAVIS, President

**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Nursing**

**201 KAR 20:420E. Determination of death by a registered nurse employed by an ambulance service.**

RELATES TO: KRS 72.020, 216B.410, 314.181, 446.400

STATUTORY AUTHORITY: KRS 314.131, 314.181

EFFECTIVE: January 4, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.181 directs the Kentucky Board of Nursing to adopt administrative regulations relating to determination of death by registered nurses. The function of this administrative regulation is to provide a protocol for determination of death a registered nurse employed by an ambulance service.

Section 1. When it appears that a person whom a registered nurse in the employ of an ambulance service has been called to attend is dead the following procedure shall be followed prior to determining that the person is dead.

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

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

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

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

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

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

with the determination.

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

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

SUE DAVIS, President  
NATHAN GOLDMAN, General Counsel  
APPROVED BY AGENCY: December 14, 1998  
FILED WITH LRC: January 4, 1999 at 1 p.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Registered nurses employed by an ambulance service. Number unknown.

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

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

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

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: agency operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Registered Nurses employed by an ambulance service will be able to determine the death of patients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The board is not aware of any detrimental effects.

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

(9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: N/A

(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? The regulation applies equally to all registered nurses employed by an ambulance service.

**STATEMENT OF EMERGENCY  
201 KAR 20:430E**

This emergency administrative regulation provides a protocol for the discontinuance of resuscitation by a registered nurse employed by an ambulance service. The Administrative Regulations Review Subcommittee at its October meeting directed that this administrative regulation be filed as an emergency. This administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for 201 KAR 20:430 was filed with the Regulations Compiler on January 4, 1999.

PAUL E. PATTON, Governor  
SUE DAVIS, President

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Nursing**

**201 KAR 20:430E. Discontinuance of resuscitation by a registered nurse employed by an ambulance service.**

RELATES TO: KRS 72.020, 216B.410, 311.621 to 311.643, 314.181, 446.400

STATUTORY AUTHORITY: KRS 314.131, 314.181

EFFECTIVE: January 4, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.181 directs the Kentucky Board of Nursing to adopt administrative regulations relating to discontinuance of resuscitation by a registered nurse. The function of this administrative regulation is to provide protocol for discontinuance of resuscitation by a registered nurse employed by an ambulance service.

Section 1. A registered nurse may discontinue resuscitation when the patient has suffered a cardiac arrest prior to arrival at the hospital and does not meet the criteria specified in 201 KAR 20:420. The registered nurse may discontinue resuscitation when the criteria specified in Section 1 of 201 KAR 20:420 are met and the resuscitation efforts specified in the applicable resuscitation protocol have been performed and documented.

Section 2. A registered nurse may discontinue resuscitation initiated by someone other than a registered nurse when the patient suffers cardiac arrest and when the treatment and resuscitation protocols applicable to the patient's medical condition have been performed and documented and patient meets the criteria specified in Section 1 of 201 KAR 20:420.

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

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

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

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

Section 7. If a registered nurse discontinues resuscitation on a patient during transport to a medical facility, the registered nurse shall make the notifications required by KRS 72.020 and shall continue to the medical facility unless advised to the contrary by the coroner or a law enforcement officer. If advised to the contrary by the coroner or law enforcement officer, the registered nurse shall

take the deceased to a facility within the primary service area of the ambulance provider as directed by the coroner or the law enforcement officer.

SUE DAVIS, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 11, 1998

FILED WITH LRC: January 4, 1999 at 10 a.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Registered nurses employed by an ambulance service. Number unknown.

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

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

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

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Registered nurses employed by an ambulance service will know when to discontinue resuscitation of patients.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The board is not aware of any detrimental effect.

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

(9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: N/A

(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? The regulation applies equally to all registered nurses employed by an ambulance service.

**STATEMENT OF EMERGENCY  
201 KAR 20:440E**

This emergency administrative regulation provides for the training of registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation. The Administrative Regulations Review Subcommittee at its October meeting directed that this administrative regulation be filed as an emergency. This administrative regulation shall be replaced by an ordinary

nary administrative regulation. The Notice of Intent for 201 KAR 20:440 was filed with the Regulations Compiler on January 4, 1999.

PAUL E. PATTON, Governor  
SUE DAVIS, President

**GENERAL GOVERNMENT CABINET  
KENTUCKY BOARD OF NURSING**

**201 KAR 20:440E. Training of registered nurses employed by an ambulance service in determination of death and discontinuance of resuscitation.**

RELATES TO: KRS 72.020, 216B.410, 311.621 to 311.643, 314.181, 446.400

STATUTORY AUTHORITY: KRS 314.131, 314.181

EFFECTIVE: January 4, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.181 directs the Kentucky Board of Nursing to specify how a registered nurse employed by an ambulance service to be trained in determination of death and in the discontinuance of resuscitation. The function of this administrative regulation is to implement the training program.

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

- (1) Information on and a copy of KRS 314.181; and
- (2) Information on and a copy of 201 KAR 20:420; and
- (3) Information on and a copy of 201 KAR 20:430; and
- (4) Information on and a copy of KRS 72.020; and
- (5) Information on and a copy of KRS 311.621 to 311.643; and
- (6) Information on the duties of and role of the coroner and state medical examiner; and
- (7) Information on preservation of evidence; and at the scene of a death.

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

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

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

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

SUE DAVIS, President  
NATHAN GOLDMAN, General Counsel  
APPROVED BY AGENCY: December 11, 1998  
FILED WITH LRC: January 4, 1999 at 1 p.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Nathan Goldman, General Counsel

- (1) Type and number of entities affected: Registered nurses employed by an ambulance service. Number unknown.
- (2) Direct and indirect costs or savings on the:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the ex-

tent available from the public comments received: No comments received.

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

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

1. First year following implementation: N/A
2. Second and subsequent years: N/A
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: N/A
    2. Continuing costs or savings: N/A
  3. Additional factors increasing or decreasing costs: N/A
- (b) Reporting and paperwork requirements: N/A
- (4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: agency operating fund.

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

(a) Geographical area in which administrative regulation will be implemented: No comments received.

(b) Kentucky: No comments received.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Training requirements to comply with KRS 314.181 for registered nurses employed by an ambulance service will be specified.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The board is not aware of any detrimental effect

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

(9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: na

(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? The regulation applies equally to all registered nurses employed by an ambulance service. No. The administrative regulation applies to all affected equally.

**STATEMENT OF EMERGENCY  
500 KAR 13:010E**

In order to comply with the Child Abuse Prevention and Treatment Act, 42 USC section 5106a(b)(2)(A)(xi)(II), this emergency administrative regulation shall establish fair hearing procedures for substantiated child abuse and neglect investigations. This administrative appeal right shall be provided to any employee of a group home, residential treatment facility or detention center operated by the Department of Juvenile Justice when a finding of substantiated abuse or neglect has been made following an investigation by the Justice Cabinet Internal Investigation Unit. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent of 501 KAR 13.010 was filed with the Regulations Compiler on December 30, 1998.

PAUL E. PATTON, Governor  
E. DANIEL CHERRY, Secretary

**JUSTICE CABINET**

**500 KAR 13:010E. Appeals hearings for substantiated abuse investigations.**

RELATES TO: KRS 13B.010, 13B.170, 620.020, 42 USC 5106a(b)(2)(A)(xi)(II)

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

STATUTORY AUTHORITY: KRS 15A.160

EFFECTIVE: December 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures to be followed by the Justice Cabinet, Office of the Secretary in conducting hearings following notification to an employee that they have been identified as a substantiated perpetrator of child abuse or neglect pursuant to 42 USC section 5106a(b)(2)(A)(xi)(II) Child Abuse Prevention and Treatment Act (CAPTA).

Section 1. Definitions. (1) "Facility" means a group home, residential treatment facility, or a detention facility operated by the Department of Juvenile Justice.

(2) "Finding of substantiation" means the final results of the Internal Investigation Unit which concludes that the employee has been found to have committed abuse or neglect of a resident.

(3) "Internal Investigation Unit" means that unit within the Justice Cabinet which has responsibility for conducting investigations of abuse and neglect of residents by staff in a facility.

(4) "Perpetrator" means the employee of a facility against whom the Internal Investigation Unit has substantiated child abuse or neglect allegations pursuant to KRS 620.020.

Section 2. Right to a Fair Hearing. (1) Any employee of a facility found to be a perpetrator shall:

(a) Have a right to a fair hearing to challenge the finding of substantiation; and

(b) Be given certified notification of his right to appeal the finding of substantiation.

(2) A perpetrator who chooses to appeal the finding shall file a request for an appeal in writing on the Justice Cabinet, IIU Form #1 within thirty (30) calendar days from the receipt of the certified notification to the Supervisor, Internal Investigation Unit, Justice Cabinet, The Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601.

Section 3. Conduct of Hearings. The provisions of KRS 13B.010 through 13B.070 shall govern all hearings conducted pursuant to this administrative regulation.

Section 4. Incorporated by Reference. (1) DOJ-IIU Form #1, Request for an Appeal Form, Justice Cabinet is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Internal Investigation Unit, The Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Office hours are 8 a.m. to 4:30 p.m.

E. DANIEL CHERRY, Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: December 29, 1998

FILED WITH LRC: December 30, 1998 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Barbara W. Jones, General Counsel

(1) Type and number of entities affected: 17 group homes, 13 residential treatment centers and 1 detention facility operated by the Department of Juvenile Justice with approximately 800 employees.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$15,000 calculated at an average of 30 substantiated abuse investigations in a 12 month period.

2. Continuing costs or savings: Approximately \$15,000 per year

3. Additional factors increasing or decreasing costs: The extent of the hearings and the number may increase or decrease.

(b) Reporting and paperwork requirements: Investigatory documents filed by the Internal Investigation Unit.

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium. General Fund dollars.

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

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

(b) Kentucky: N/A

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied: No. The regulation applies equally to all employees affected.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 5106a(b)(2)(A)(xi)(II), The Child Abuse Prevention and Treatment Act (CAPTA).

2. State compliance standards. In order to comply with the requirements of the above referenced mandate this regulation is being proposed to provide due process through notification by certified mail to all alleged perpetrators of substantiated abuse/neglect investigations who are employees of group homes, residential treatment facilities and detention centers operated by the Department of Juvenile Justice. This due process will be offering appeal rights to these individuals. These appeals will be heard a hearing officer from the Office of the Attorney General.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 42 USC 5106a, the requirement of providing uniform due process appeal rights to alleged perpetrators of substantiated abuse/neglect investigations is the primary purpose of the regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities, than those required by the federal mandate. No, this due process right of appeal will be offered to alleged perpetrators of child abuse/neglect, as required by federal mandate.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

### STATEMENT OF EMERGENCY 725 KAR 1:070E

KRS 171.450(1)(c) requires the Department for Libraries and Archives to establish standards and procedures for: (1) recording, managing, and preserving public records; and (2) reproduction of public records by photographic or microphotographic process. KRS 171.520 requires the department to prescribe policies for state and local agencies for efficient record management programs. County clerks are required by statute to record, manage, preserve and make accessible instruments lodged for recording with the clerks. Because 725 KAR 1:070, Standards for documents presented for

recording, does not establish a date on which documents governed by it must comply with its requirements, immediate implementation of its requirements is required. This administrative regulation does not provide the time required for affected entities to redesign forms, document forms, and software relating thereto, that are governed by this administrative regulation, or sufficient time to use existing supplies. Additionally, unless a delayed implementation date is established, an unreasonable expense will be imposed on affected entities because of the loss of investment in the stock of existing documents. Unless an emergency administrative regulation is filed: (1) the filing of documents relating to public health, safety, or welfare will be adversely affected; and (2) the department will be unable to implement the provisions of KRS Chapter 171 through the promulgation of an administrative regulation as required by KRS Chapter 171.

PAUL E. PATTON, Governor  
JAMES A. NELSON, Commissioner

**EDUCATION AND HUMANITIES CABINET  
Department for Libraries and Archives  
Division of Public Records**

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

RELATES TO: KRS 171.450(1)(c), (2), 171.520

STATUTORY AUTHORITY: KRS 171.450(1)(c), (2), 171.520

EFFECTIVE: January 6, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(c) requires the Department for Libraries and Archives to establish standards and procedures for:

(1) Recording, managing, and preserving public records; and  
(2) Reproduction of public records by photographic or micro-photographic process. KRS 171.520 requires the department to prescribe policies for state and local agencies for efficient record management programs. County clerks are required by statute to record, manage, preserve and make accessible instruments lodged for recording with the clerks. This administrative regulation establishes standards for print clarity, paper quality, and document size uniformity of these instruments.

Section 1. Definitions. (1) "Dark" means equal to or darker than Step 8 on a Stouffer Opaque Sensitivity Guide or "Gray Scale".

(2) "Hand printing" or "hand writing" means writing done by hand with a pen or pencil.

(3) "Nonessential information" includes information that does not affect the validity of a document, such as instructions, page numbers, form number and other notations.

(4) "Printed" means an image produced by a mechanical device, such as a printing press, typewriter, and computer printer.

Section 2. Document Size. (1) An instrument lodged for record in the office of a county clerk shall:

(a) Consist of one (1) or more individual sheets measuring eight and one-half (8 1/2) inches by eleven (11) inches in size;

(b) Not be permanently bound;

(c) Not be a continuous form; and

(d) For each page except the first page and the final page, have a minimum one (1) inch top, side and bottom margin;

(e) For the first page [and the final page], have a minimum:

1. Two (2) inch top margin;

2. One (1) [Two (2)] inch bottom margin; and

3. One (1) inch side margins [margin].

(f) For the final page, have a minimum:

1. One (1) inch top margin;

2. Two (2) inch bottom margin; and

3. One (1) inch side margins.

(2)(a) The following documents [A map, plat, drawing, will, and instrument whose specific size is mandated by federal or state law] shall be exempt from the requirements of this section:

1. A map;

2. A plat;

3. A drawing;

4. A will; and

5. An instrument whose size is mandated by federal law or regulation or state law.

(b) A map, plat or drawing shall contain a three (3) inch by three (3) inch space at the bottom right corner.

Section 3. Print Clarity. A printed instrument lodged for record in the office of a county clerk shall meet the following requirements:

(1) It shall be printed with dark ink, on white paper that shall not have background color, images or writing.

(2)(a) Except as provided by paragraph (b) of this subsection, a printed character shall be no smaller than eight (8) point, standard, noncursive font type.

(b) Nonessential information that is printed or written in the margin, and instructions for completing a form, shall be exempt from the provisions of paragraph (a) of this subsection.

(3) A printed character shall be crisp, clean, complete and legible.

(4) A document governed by the provisions of this administrative regulation [it] shall not have [no] superfluous decorations, such as wax, ribbons and gold seals.

Section 4. (1) Except as provided by subsection (2) of this section, a handwritten signature, date, and other portions required to be completed by handwriting shall be written in dark ink.

(2) Blue ink shall be accepted if it is dark when photographically or electronically reproduced.

Section 5. An instrument lodged for record in the office of a county clerk shall be printed on a minimum of twenty (20) pound weight [bond] paper.

Section 6. A county clerk shall not be prohibited from filing an instrument that does not meet the requirements established by this administrative regulation if the instrument has been [is] created, certified, or accepted for filing or recording by the:

(1) United States government; or

(2) [the] Government of a [any] nation or state.

Section 7. Exemptions. The following documents shall be exempt from the provisions of this administrative regulation:

(1) A document executed prior to February 1, 1999; and

(2) A document governed by KRS Chapters 355 and 186A.

Section 8. Documents governed by the provisions of this administrative regulation shall comply with the provisions of this administrative regulation on and after July 1, 1999.

JAMES A. NELSON, State Librarian and Commissioner

RICHARD CARROLL, Assistant Attorney General

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 6, 1999 at 3 p.m.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Darrell Gabhart

(1) Type and number of entities affected: 120 county clerks' offices and individuals, companies, and other agencies presenting a document for official recording in a county clerk's office will be affected.

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

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

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

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

(a) First year following implementation: Recording paper and bookbinder cost will be reduced by an average of 20%. Since many



clerks will continue to use current stock, this saving may not be fully realized the first year of implementation. Recording fees may increase slightly, due to a small increase in the number of pages per document. This could be off-set by users taking advantage of the provision of KRS 382.295 allowing the filing of standard mortgage clauses that can be attached by reference to the specific mortgage, lien, or other document being presented for recordation. These provisions will greatly increase the legibility of documents, resulting in savings in labor, recording time and copying costs, especially when electronic or photographic systems are being used. Users will receive better, more legible copies.

(b) Second and subsequent years: Savings in supplies and equipment will continue due to the standardization in size. Savings in the costs of recording by photo reproduction or digitization of the original will be realized by the faster, more accurate throughput of a standard size, more legible original.

(4) Effects on the promulgating administrative body:

(a) Direct and Indirect costs or savings:

1. First year: There will be no costs or savings realized by the Kentucky Department for Libraries and Archives the first year.

2. Continuing costs or savings: No direct continuing cost will be realized. There should be indirect savings in providing access to these records in future years due to better legibility.

3. Additional factors increasing or decreasing costs:

(b) Reports and paperwork requirements: None

(5) Assessment of anticipated effect on state and local revenues: Recording fees may increase slightly due to increased number of pages on multipage documents.

(6) Source of revenue to be used for implementation and enforcement of administrative regulation: None needed.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: No public comments received.

(8) Assessment of alternative methods: None. This change can only be uniformly brought about through administrative regulation.

(9) Assessment of expected benefits: In addition to the cited savings to the county clerk's office, implementation of this administrative regulation will greatly enhance a clerk's ability to use automated recording and retrieval devices, such as optical imaging systems, thus providing much better, faster and more accurate, citizen access to the vital public records in his office.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effect on public health and environmental welfare in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administrative regulation would not effect the environment or public health.

(c) If detrimental effect would result, explain detrimental effect: There will be no detrimental effect.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or government policy in conflict with, overlapping or duplicating this administrative regulation.

(a) Necessity of proposed if in conflict: This proposal is not in conflict with any statute, administrative regulation or government policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No effort to harmonize the proposed administrative legislation with other provisions was made because there is no conflict.

(11) Any additional information or comments: The advantages of standardization of letter size documents has long been recognized by: Professional records management groups, such as the Association of Records Managers and Administrators (ARMA), who published the results of a study on the subject in 1991 called ELF = Eliminate Legal Size Files – A Guideline; by a number of state governments and federal agencies, and; by the Administrative Office of the Courts, since 1978. Now, county clerks must accept documents of any size, forcing them to purchase and maintain copy equipment

and storage equipment that will accommodate the largest of documents presented to them. This increases their costs and uses more valuable storage space. In addition, documents presented to the clerk for recordation vary greatly in legibility due to size of type, faded copies in color and shades and poor handwriting. Some documents do not allow enough blank space for the clerk's recording stamp to be applied without covering information. All of these problems are compounded when, as more and more clerks are doing, a county clerk utilizes microfilm, photocopy machines or optical scanners to provide preservation, certified copies or digitized access of the records. By requiring that a standard sized, well laid out and legible document is presented to a clerk, this administrative regulation will enable a county clerk to fulfill his statutory recording duties faster, more efficient, more accurate and less costly. The result will be greatly enhanced public access now and in the future.

(12) TIERING: Is tiering applied? No. Tiering was not used since this administrative regulation will apply to all individuals or entities equally.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. The county clerk's office.

3. State the aspect or service of local government to which this administrative regulation relates: This administrative regulation relates to the county clerk's statutory mandate to act as the official recorder and custodian of legal documents (KRS Chapters 382, 73, 376, and 355).

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

Revenues (+/-): The specific fiscal impact of this administrative regulation on the office of the county clerk or on state government revenues is not possible to predict. The county clerk is assigned specific fees for recording legal instruments. Many of these fees are designed with a base amount for documents up to a specified number of pages, with a specified additional amount assessed for each page over the base. By going to a standard letter size page and eliminating extremely small size type clauses, some of the traditionally larger documents, leases, mortgages and liens, for instance, will contain more pages and therefore a larger fee will be assessed. However, this may not be the case if this administrative regulation acts as a catalyst for more regular customers, such as lawyers, mortgage companies and banking institutions, to take advantage of the statutory provision for filing standard document clauses with the clerk. These standard clauses are filed under the user's name, and can be attached to the document being recorded by reference. This practice would eliminate all but the base fee being charged for a very large percentage of documents filed, thus reducing to some extent the overall amount of fees collected. With these variables it is not possible to predict the specific fiscal effect, if any, the standard paper size will have on revenues.

Expenditures (+/-): County clerks should realize approximately a 20% savings through the purchase of letter size recording paper (32 or 36 lbs.) and bookbinders as well as the purchase of any copying, scanning or storage equipment.

Other Explanation: KRS 171.520 requires the department to prescribe policies for state and local agencies for efficient record management programs. County clerks are required by statute to record, manage, preserve and make accessible instruments lodged for recording with the clerks. County clerks are increasingly finding it more difficult to provide users access to a legible record, in a reasonable time frame. Many of the documents presented for recording are faded, have colored ink or contain clauses in such small print that they cannot be read, especially when photocopied, microfilmed, or digitally scanned. They are also experiencing problems with the format and layout of some documents that do not provide room for a clerks recordation stamp on the margins. This administrative regulation establishes standards for print clarity, paper quality, and docu-

ment size uniformity of these instruments and should provide the county clerks a foundation to ensure that they can fulfill adequately their recordkeeping mandates. Since the county clerk keeps the vital records of every citizen, everyone will benefit from that improvement.

**STATEMENT OF EMERGENCY**  
**803 KAR 2:320E**

This emergency administrative regulation, in Section 6(1) incorporates, by reference, a Federal Register publication, dated June 18, 1998, which revises the standards regulating vinyl chloride, inorganic arsenic, and coke oven emissions, deleting unnecessary, duplicative, or inconsistent requirements. This emergency administrative regulation, also incorporates, by reference, a Federal Register publication, dated September 22, 1998, which revises the standard for methylene chloride to add medical removal protection benefits for employees and grant extensions of compliance start-up dates for employers in certain industries. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, January 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and**  
**Health Education and Training**

**803 KAR 2:320E. Air contaminants.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-1500  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-1500

EFFECTIVE: January 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions applicable to this part:

- (a) "Act" means KRS Chapter 338.
- (b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
- (c) "Employee" means any person employed except those employees excluded in KRS 338.021.
- (d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
- (e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.
- (f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
- (g) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.
- (h) "U.S. Department of Labor" means Kentucky Labor Cabinet,

U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.

(2) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary of Health, Education and Welfare to act for the Director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in Section 1(1)(m) of this administrative regulation are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level or protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting proce-

dures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, non-regulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:
  - a. Covered daily or after any spill with a clean covering;
  - b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed

In this Area

Impervious Suit Including Gloves,  
Boots, and Air-Supplied Hood  
Required At All Times

Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director; and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are re-

leased.

(5) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

(b) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 3(2), (3), and (4) of this administrative regulation.

(c) Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, other than those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suite, or fully buttoned laboratory coat;

(b) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under Section 3(2), (3), and (4) of this administrative regulation.

(c) Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(10) There shall be no connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin

when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and
2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 149, August 4, 1997, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1001, "Asbestos", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(d) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(e) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(f) The revisions to 29 CFR 1910.1017, "Vinyl Chloride", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(g) The revisions to 29 CFR 1910.1017, "Vinyl Chloride", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(h) The revisions to 29 CFR 1910.1018, "Inorganic Arsenic", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(i) The revisions to 29 CFR 1910.1018, "Inorganic Arsenic", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(j) [(h)] The revisions to 29 CFR 1910.1025, "Lead", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(k) [(h)] The revisions to 29 CFR 1910.1025, "Lead", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(l) [(h)] The revisions to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(m) [(h)] The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(n) [(h)] The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(o) The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(p) [(m)] The revisions to 29 CFR 1910.1029, "Coke Oven Emissions", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(q) The revisions to 29 CFR 1910.1029, "Coke Oven Emissions", as published in the Federal Register, Volume 63, Number 117, June 18, 1998, are incorporated by reference.

(r) [(m)] The revisions to 29 CFR 1910.1043, "Cotton Dust", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(s) [(e)] The revisions to 29 CFR 1910.1044, "1,2-Dibromo-3-chloropropane", published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(t) [(p)] The revisions to 29 CFR 1910.1045, "Acrylonitrile", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(u) [(q)] The revisions to 29 CFR 1910.1045, "Acrylonitrile", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(v) [(r)] The revisions to 29 CFR 1910.1047, "Ethylene Oxide", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(w) [(s)] The revisions to 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(x) [(t)] The revisions to 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(y) [(u)] The revisions to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(z) [(v)] The revisions to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(aa) [(w)] The revisions to 29 CFR 1910.1051, "Butadiene", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(bb) [(x)] The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(cc) [(y)] The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(dd) The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 183, September 22, 1998, are incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: January 8, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as published in the Federal Register, June 18, 1998, as they delete unnecessary, duplicative, or inconsistent requirements in the standards regulating vinyl chloride, inorganic arsenic, and coke oven emissions. OSHA estimates that the methylene chloride changes as published in the Federal Register, June 29, 1998 will have an estimated nationwide cost of approximately \$920,000. The costs are not provided on a state level.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no known effect on the cost of doing business.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

3. Reporting and paperwork requirements: These amendments will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:



FISCAL NOTE ON LOCAL GOVERNMENT

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
  - (b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.
- (4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
  - (a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.
  - (b) Kentucky: Undetermined; no public comments were received.
- (7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations, as published in the Federal Register.
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.
  - (b) State whether detrimental effect on environment and public health would result if not implemented:
  - (c) If detrimental effect would result, explain detrimental effect:
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.
  - (a) Necessity of proposed regulation if in conflict:
  - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments adopt federal regulations.
3. Minimum or uniform standards contained in the federal mandate. These revisions, as published in the Federal Register, June 18, 1998, delete unnecessary, duplicative, or inconsistent requirements in the standards regulating vinyl chloride, inorganic arsenic, and coke oven emissions. This emergency regulation also, incorporates, by reference, a Federal Register publication, dated September 22, 1998, which revises the standard for methylene chloride to add medical removal protection benefits for employees and grants extensions of compliance start-up dates for employers in certain industries.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates federal regulations.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work vinyl chloride, inorganic arsenic, coke ovens and methylene chloride.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work vinyl chloride, inorganic arsenic, coke ovens and methylene chloride.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY  
803 KAR 2:425E

This emergency administrative regulation, incorporates, by reference, a Federal Register publication, dated June 29, 1998, which revises the standards dealing with asbestos used in construction employment, conforming the standard to meet a Court of Appeals decision. It is necessary to promulgate this emergency administrative regulation to comply with federal mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, January 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

LABOR CABINET  
Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety  
and Health Education and Training

803 KAR 2:425E. Toxic and hazardous substances.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: January 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

- (a) 29 CFR 1926.1100-.1148 revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.
- (b) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, is incorporated by reference.
- (c) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 63,



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

Number 78, April 23, 1998, is incorporated by reference.

(d) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 63, Number 124, June 29, 1998, is incorporated by reference.

(e) The amendment to 29 CFR 1926.1127, "Cadmium", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: January 15, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers in the Commonwealth in shipyard employment.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no known costs or savings resulting from the promulgation of these proposed amendments, as these revisions, published in the Federal Register, June 29, 1998, remove from the scope of coverage of the construction employment standard the following materials: asbestos-containing roof cements, coatings and mastics.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from these revisions.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, which remove certain roofing materials from the scope of coverage of the construction standard.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations, which revise the asbestos standard covering construction employment.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 124, June 29, 1998, which remove asbestos-containing roof cements, coatings and mastics from the scope of coverage of the construction employment asbestos regulation, 29 CFR 1915.1001.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in construction industry roofing work dealing with asbestos-containing cements coatings and mastics.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in construction industry roofing work dealing with asbestos-containing cements coatings and mastics.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:500E

This emergency administrative regulation, in Section 2(1)(b) incorporates, by reference, a Federal Register publication, dated June 29, 1998, which revises the standards dealing with asbestos used in public sector shipyard employment, conforming the standard to meet a Court of Appeals decision. It is necessary to promulgate this emergency administrative regulation to comply with federal

mandate, 29 CFR 1953.23, which requires implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, January 15, 1999.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety**  
**and Health Education and Training**

**803 KAR 2:500E. Maritime employment.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

EFFECTIVE: January 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of Maritime employment.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

- (1) "Administration" means the Kentucky Occupational Safety and Health Program, Frankfort, Kentucky;
- (2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;
- (3) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;
- (4) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following is incorporated by reference:

(a) Chapter 29, Part 1915 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1915.1001, "Asbestos", as published in the Federal Register, Volume 63, Number 124, June 29, 1998.

(c) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

1. The revisions to 29 CFR 1917.1, "Scope and Applicability", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

2. The revisions to 29 CFR 1917.2, "Definitions", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

3. The revisions to 29 CFR 1917.3, "Incorporation by Reference", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

4. The revisions to 29 CFR 1917.11, "Housekeeping", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

5. The revisions to 29 CFR 1917.13, "Slings", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

6. The revisions to 29 CFR 1917.17, "Railroad Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

7. The revisions to 29 CFR 1917.20, "Interference with Communications", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

8. The revisions to 29 CFR 1917.23, "Hazardous Atmospheres and Substances (See also 1917.2(r))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

9. The revisions to 29 CFR 1917.24, "Carbon Monoxide", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

10. The revisions to 29 CFR 1917.25, "Fumigants, Pesticides, Insecticides, and Hazardous Preservatives (See also 1917.2(p))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

11. The revisions to 29 CFR 1917.26, "First Aid and Lifesaving Facilities", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

12. The revisions to 29 CFR 1917.27, "Personnel", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

13. The revisions to 29 CFR 1917.28, "Hazard Communication (See also 1917.1(a)(2)(vi))", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

14. The revisions to 29 CFR 1917.30 "Emergency Action Plans", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

15. The revisions to 29 CFR 1917.42, "Miscellaneous Auxiliary Gear", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

16. The revisions to 29 CFR 1917.43, "Powered Industrial Trucks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

17. The revisions to 29 CFR 1917.44, "General Rules Applicable to Vehicles", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

18. The revisions to 29 CFR 1917.45, "Cranes and Derricks (See also 1917.50)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

19. The revisions to 29 CFR 1917.46, "Load Indicating Devices", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

20. The revisions to 29 CFR 1917.48, "Conveyors", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

21. The revisions to 29 CFR 1917.50, "Certification of Marine Terminal Material Handling Devices (See also mandatory Appendix IV, Part 1918 of this Chapter)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

22. The revisions to 29 CFR 1917.71, "Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

23. The revisions to 29 CFR 1917.73, "Terminal Facilities Handling Menhaden and Similar Species of Fish (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

24. The revisions to 29 CFR 1917.91, "Eye and Face Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

25. The revisions to 29 CFR 1917.93, "Head Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

26. The revisions to 29 CFR 1917.94, "Foot Protection", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

27. The revisions to 29 CFR 1917.95, "Other Protective Measures", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

28. The revisions to 29 CFR 1917.112, "Guarding of Edges", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

29. The revisions to 29 CFR 1917.118, "Fixed Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

30. The revisions to 29 CFR 1917.119, "Portable Ladders", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

31. The revisions to 29 CFR 1917.121, "Spiral Stairways", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

32. The revisions to 29 CFR 1917.124, "Dockboards (Car and Bridge Plates)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

33. The revisions to 29 CFR 1917.126, "River Banks", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

lished in the Federal Register, Volume 62, Number 143, July 25, 1997.

34. The revisions to 29 CFR 1917.152, "Welding, Cutting and Heating (Hot Work) (See also 1917.2, Definition of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

35. The revisions to 29 CFR 1917.153, "Spray Painting (See also 1917.2, Definitions of Hazardous Cargo, Materials, Substance, or Atmosphere)", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

36. The revisions to 29 CFR 1917.156, "Fuel Handling and Storage", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

37. The revisions to 29 CFR 1917.157, "Battery Charging and Changing", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

(d) [(e)] The revisions to 29 CFR Part 1918, "Safety and Health Regulations for Longshoring", as published in the Federal Register, Volume 62, Number 143, July 25, 1997.

(e) [(d)] Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: January 8, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers in the Commonwealth in shipyard employment.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no known costs or savings resulting from the promulgation of these proposed amendments, as these revisions, published in the Federal Register, June 29, 1998, remove from the scope of coverage of the shipyard employment standard the following materials: asbestos-containing roof cements, coatings and mastics.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from these revisions.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

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

(a) Geographic area in which administrative regulation will be

implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, which remove certain roofing materials from the scope of coverage of the construction standards.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

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

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations, which revise the asbestos standard covering shipyard employment.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions, as published in the Federal Register, Volume 63, Number 124, June 29, 1998, which remove asbestos-containing roof cements, coatings and mastics from the scope of coverage of the shipyard employment asbestos regulation, 29 CFR 1915.1001.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities engaged in shipyard industry roofing work dealing with asbestos-containing cements coatings and mastics.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government engaged in shipyard industry roofing work dealing with asbestos-containing cements coatings and mastics.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational

safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

**STATEMENT OF EMERGENCY**  
**907 KAR 1:025E**

This emergency administrative regulation is being promulgated to ensure that a nursing facility does not incur a nonrecoupable extraordinary loss due to an event outside the usual and ordinary course of business and ensure that the extraordinary loss affects the facility as a whole. This action must be taken on an emergency basis to establish the eligibility criteria to equitably distribute the \$3,000,000 extenuating circumstance pool to nursing facilities which have incurred an extraordinary cost due to circumstances beyond their control. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients. This emergency administrative language differs from the emergency administrative regulation on the same subject matter that was filed on June 30, 1998 by establishing the eligibility criteria for a facility which is applying for a calculated rate add-on from the \$3,000,000 extenuating circumstance pool. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
JOHN H. MORSE, Secretary

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

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

RELATES TO: 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [KRS 205.520]

STATUTORY AUTHORITY: KRS 194A.030, [194.050;] 205.520, 1998 Ky. Acts ch. 615 [42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s;]

EFFECTIVE: January 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. KRS 205.520 authorizes [empowers] the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the Medicaid Program [cabinet] for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [cabinet] in establishing the reimbursement rate. Cost shall be considered allowable if the:

(a) Item of supply or service is necessary for the provision of the appropriate level of patient care; and

(b) [the] Cost incurred by the facility is within cost limits established by the department [cabinet], i.e., the allowable cost is "reasonable."

(3) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be limited to the following:

(a) Physical, occupational and speech therapy;

(b) Laboratory procedures;

(c) X-ray;

(d) Oxygen and other related oxygen supplies;

(e) Respiratory therapy (excluding the routine administration of oxygen);

(f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and

(g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the:

(a) Computed rate arrived at, if [when] otherwise allowable costs are trended and adjusted in accordance with the inflation factor;

(b) [the] Occupancy factor; and

(c) [the] Median cost center per diem upper limits.

(5) "Calculated rate" means the rate effective July 1, 1998 for nursing facilities, nursing facilities with mental retardation specialty and hospital-based facilities.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(8) [(6)] "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(9) [(7)] "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) [(8)] "ICF-MRs" means intermediate care facilities for the mentally retarded.

(11) [(9)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) [(10)] "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(13) [(11)] "Nursing facilities with waiver (NFs-W)" means a facility which:

(a) May not meet Medicare participation requirements;

(b) Has a license as a nursing facility; and

(c) Is certified to the Department for Medicaid Services [facilities certified to the Medicaid Program] by the state survey agency as meeting all nursing [NF] requirements except for the nurse staffing requirement for which a Medicaid [an-NF] waiver has been granted by the survey agency.

(14) [(12)] "Nursing facility (NFs)" means:

(a) A facility which:

1. Has a license as a nursing facility; and

2. Is certified to the Department for Medicaid Services [Program] by the state survey agency as meeting [all] nursing facility standards; or

(b) A hospital swing bed that provides services in accordance with 42 USC 1395TT and 13961, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with [requirements, and in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds) meeting all conditions of participation in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in] 42 USC 1396r(b), [(4)](c), (d), 42 CFR 447.280 and 482.66 [(ii)], unless the context specifies otherwise.

(15) [(13)] "Nursing facility with a mental retardation specialty" (NF-MRS) means a nursing facility in which at least fifty-five (55) per-

cent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(16) [(14)] "Nursing services costs" means the direct costs associated with nursing services.

(17) [(15)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(18) [(16)] "PRO" means peer review organization.

(19) [(17)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department [cabinet].

(20) "Quarterly rate sheet" means the notice sent to each nursing facility each calendar quarter which provides information pertaining to the quarterly case mix and resultant prospective payment rate adjustment for a facility.

(21) "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by one (1) plus a percent of increase as determined by the department in accordance with the biennial budget.

(22) [(18)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services shall include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouth-washes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(23) [(19)] "Upper limit" means the maximum level at which the department [cabinet] shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, [(NFs)] Including Nursing Facilities with Waiver, [}] and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, [(NFs)] including nursing facilities with waiver[}] or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022[, Nursing facility and intermediate care facility for the mentally retarded services].

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds [(b)but no [not] less than ten (10) beds participate in the Medicare Program. [-for] A facility with less than ten (10) beds, shall have all beds{]} participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds [(b)but no [not] less than ten (10) beds, [;} If the facility has less than ten (10) beds, all beds shall [}] participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the department [cabinet] to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department [cabinet] and contained in the [Kentucky-Medicaid-Program] Nursing Facility Reimbursement Manual[, revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky-Medicaid Program Nursing Facility Reimbursement Manual may be reviewed 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. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020].

Section 4. Implementation of the Payment System. The department's [cabinet's] reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department [cabinet] on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department [cabinet].

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;

2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or

3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which are [is] available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk-reviewed prior to rate setting for the universal year beginning July 1, the [with] prospective rates based on cost reports which are not audited or desk reviewed shall be subject to adjustment when the audit or desk review is completed.

2. [Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform

shall be made effective October 1, 1990.

3.] Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall be subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-mental retardation specialty (MRS), NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a [standard] metropolitan statistical area, as defined by the U.S. Office of Management and Budget.

b. The rural array shall include all facilities in nonmetropolitan [nonstandard metropolitan] statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case-mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRSs shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year. The swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. ~~[Hospital dual-licensed beds shall be paid at the hospital-based facility upper limits;~~

d.] Facilities recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part ventilator unit of not less than twenty (20) beds shall be required, with a consensus of at least fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year. The fixed rate for hospital-based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased or decreased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year. Costs of distinct part ventilator nursing facility units shall be excluded from allowable cost for purposes of rate setting and settlement of nursing facility cost reports; and

d. [which shall be equal to projected costs; and

e.] Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which

shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [cabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective universal [uniform] rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [cabinet] exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the department [cabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that



directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [cabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the [Kentucky-Medicaid-Program] Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [cabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was

entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) [Ne] Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a)(13)(C) and the Nursing Facility Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department [cabinet]) which the department [cabinet] may require to justify and document all costs to and services performed by the facility. The department [cabinet] shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department [Cabinet] approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If [When] a request for prior approval of projections or expansions is made, absence of a response by the department [cabinet] shall not be construed as approval of the item or expansion.

(13) The department [cabinet] shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.



(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department [cabinet] may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department [cabinet] to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's [cabinet's] concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department [cabinet].

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department [cabinet] may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing facility newly constructed or opened serving the same area.

2. The department [cabinet] may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, [dual licensed hospital beds,] institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) An NF-MRS shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. [No] Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)		
Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 - 102.99	1.29	\$.75
103.00 - 108.99	1.18	\$.62
109.00 - 114.99	1.06	\$.47
115.00 - 120.99	.92	\$.31
121.00 - 126.99	.76	\$.13

127.00 - 133.49	*.53	--
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\*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

~~(a) [1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high intensity, low intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight).~~

2.] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home

reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the department [agency].

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case-mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

- (1) The adjusted allowable cost for the facility;
- (2) Adjustments to allowable cost related to occupancy;
- (3) Adjustments to allowable cost related to application of upper limits;
- (4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;
- (5) Rates shall be recomputed quarterly based on revisions in the case-mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. ~~[-; however,]~~ The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;
- (6) Adjustments as appropriate for costs shifted from ancillary to routine;
- (7) Nursing home reform adjustments; and
- (8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal department [cabinet] decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671. ~~[- Conditions of Medicaid provider participation; enrollment, documentation of services; disclosure, claims processing; withholding overpayments, appeals process, and sanctions].~~

Section 7. Reimbursement for Required Services Under PASRR. (1) Prior to an admission of any individual, the NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for service delivered to an individual only if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 shall be grounds for termination of the NF's participation in Medicaid.

Section 8. Reimbursement Provisions. (1) With the exceptions of the following types of facilities, a nursing facility, including a nursing facility with waiver participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation:

- (a) A nursing facility with a certified brain injury unit, as established in Section 4A.C and D of the Nursing Facility Services Manual, incorporated by reference in 907 KAR 1:022;
- (b) A nursing facility with a distinct part ventilator unit, as established in Section 4B.A of the Nursing Facility Services Manual;
- (c) A nursing facility designated as an institution for mental diseases, as established in Section 501 of the Nursing Facility Reimbursement Manual, incorporated by reference;
- (d) A nursing facility designated as a mental retardation specialty, as established in Section 601 of the Nursing Facility Reimbursement Manual;

(e) A pediatric nursing facility, as established in Section 701 of the Nursing Facility Reimbursement Manual; or

(f) An intermediate care facility for the mentally retarded, as defined in 907 KAR 1:022, Section 1(3).

(2) Payment shall be in accordance with the requirements established in 907 KAR 1:022.

Section 9. Prospective Rate Methodology. Nursing facility Medicaid expenditures during the rate year beginning July 1, 1997 and ending June 30, 1998 shall not exceed \$504 million, including appeal and ancillary settlements. In order to ensure that expenditures do not exceed this amount, the department shall:

(1) On a monthly basis, compile a spreadsheet which contains actual data by facility, for each month and year beginning with July 1, 1997 and includes the following items:

- (a) Patient days paid;
- (b) Routine costs paid;
- (c) Ancillary costs paid;
- (d) Medicare crossovers paid;
- (e) Patient liability collected;
- (f) Third-party liability collected;
- (g) Appeal settlements; and
- (h) Year-end ancillary settlements.

(2) Compile a detailed listing of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$504 million budgeted limit.

(3) Distribute monthly the Medicaid spreadsheets containing the data identified in subsection (1) of this administrative regulation to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, Budget Review Subcommittee on Human Resources and, upon request, to other interested parties.

(4) Determine any necessary adjustments to the prospective rate of a nursing facility based upon information made available pursuant to the provisions of this administrative regulation and after an analysis by an independent accounting firm on or after August 1, 1998, if determined necessary by DMS and the Technical Advisory Committee on Nursing Homes.

(a) If nursing facility Medicaid net expenditures during the state fiscal year beginning July 1, 1997 and ending June 30, 1998 exceed the \$504 million budget limit, the ratio of \$504 million to net expenditures shall be applied to proportionately reduce the payments for a nursing facility for the 1998 state fiscal year based upon the total net expenditures for all nursing facilities according to the following formula: \$504 million divided by the total net expenditures for all nursing facilities shall be the proportionate rate adjustment factor. The proportionate rate adjustment factor shall be weighted based upon the number of Medicaid payment cycles which remain through June 30, 1998. The nursing facility's prospective rate multiplied by the proportionate rate adjustment factor shall be the reduced prospective rate for the nursing facility.

(b) The actual reduction shall be reflected as a separate line item on the quarterly rate sheet for a nursing facility, subsequent to the quarterly case-mix adjustment and any applicable rate add-ons.

(c) The reduced prospective rate adjustment shall not be applied to claims with dates of service earlier than January 1, 1998 or later than May 31, 1998.

(5) Determine on or after August 1, 1998 of 1998 state fiscal year-end actual Medicaid nursing facility expenditures. If after the August 1, 1998 analysis of year-end actual expenditures the \$504 million budget limit was exceeded, a recoupment based on an adjustment of each nursing facility's state fiscal year 1998 payments will be made by the department in the proportion that \$504 million is to the total expenditures for all nursing facilities for state fiscal year 1998.

Section 10. Litigation, collection and appeals shall be pursued by the cabinet with vigor. The final court order in West View Nursing Home, Inc. et al v. Commonwealth of Kentucky, Cabinet for Health Services and Cabinet for Human Resources, Franklin Circuit Court, No. 97-CI-00418, or extraordinary changes related to nursing facility beds in new or existing certificate of need administrative regulations or interpretations thereof shall be excluded from the \$504 million budget target.

Section 11. The provisions of this administrative regulation shall be applicable to payments made for the state fiscal year 1998 and shall be applicable to payments made in the subsequent state fiscal year for claims with dates of service between January 1, 1998 and May 31, 1998.

Section 12. Reimbursement Methodology for State Fiscal Year 1998-1999 and State Fiscal Year 1999-2000. The provisions of this section shall be applicable to payments to nursing facilities made for the state fiscal year 1998-1999 and the state fiscal year 1999-2000.

(1) The provisions of this section shall not apply to payments to the following:

- (a) A nursing facility with a certified brain injury unit;
- (b) A nursing facility with a distinct part ventilator unit;
- (c) A nursing facility designated as an institution for mental diseases; and
- (d) A pediatric nursing facility.

(2) Payments to facilities specified in subsection (1) of this section are included in the \$519.1 million biennium budget cap for state fiscal year 1998-1999 and the \$534.6 million biennium budget cap for state fiscal year 1999-2000.

(3) Rates for nursing facilities and nursing facilities designated as mental retardation specialty for the rate year beginning July 1, 1998 and ending June 30, 1999 shall be determined by utilizing a rate-on-rate method.

(a) The rate of increase over a facility's June 30, 1998 rate shall be five and eight-tenths (5.8) percent for state fiscal year 1998-1999.

(b) The rate of increase over a facility's June 30, 1999 rate shall be, at a minimum, three (3) percent for state fiscal year 1999-2000, to achieve a rate of increase which shall cause total payments to nursing facilities to be at a minimum of \$534.6 million in that fiscal year, based upon static utilization of beds by Medicaid recipients.

(4) The department shall remain at risk for increases in total nursing facility payments which result from higher utilization of beds by Medicaid recipients.

(5) The calculated rate shall be determined by the department as follows:

(a) The department shall use a facility's June 30, 1998, lesser of actual or maximum nursing facility cost-per-case-mix unit, which is specified on line 11 of the nursing cost component on the most recent revised rate form MAP-NF1 with an effective date of April 1, 1998.

(b) On the MAP-NF2, the number as specified on line 11 of the MAP-NF1 shall be multiplied by the department's approved facility case-mix average for the quarter being calculated.

(c) To this product the department shall add the facility's June 30, 1998 cost-saving incentive per diem, as specified on line 15 of MAP-NF1.

(d) The calculation which is determined as specified in paragraphs (a) through (c) of this subsection shall be added to the department's approved "all other cost" per diem payment rate as indicated on line 16 of the "all other cost component" on the MAP-NF1.

(e) The sum arrived at in paragraph (d) of this subsection shall be multiplied on MAP-NF2 by the rate of increase as specified in subsection (3) of this section.

(f) The amount arrived at in paragraph (e) of this subsection plus Schedule J Capital Cost and other department approved add-ons shall yield the calculated nursing facility rate on MAP-NF2.

(6) A case-mix adjustment shall be the only adjustment made by the department to the July 1, 1998 through June 30, 2000 rates except as specified in subsection (3) of this section.

(a) Other adjustments shall not be made to the rates in force from July 1, 1998 to June 30, 1999 except for errors identified by the department when computing the rate.

(b) The case-mix adjustment shall be made each quarter to the nursing component of the rates.

(7) The department shall establish an extenuating circumstance pool used to provide an add-on to the calculated rate. An add-on to the calculated rate shall be considered if a facility's increased costs are due to extenuating circumstances that affect one (1) or more facilities as approved by the department.

(8) The extenuating circumstance pool shall:

(a) Not exceed \$3,000,000;

(b) Be prorated among all nursing facilities qualifying for partici-

pation in the pool as determined by the department; and

(c) Be adjusted downward if the total Medicaid payments made to nursing facilities are projected to exceed, as a result of inflation, the biennium budget caps as specified in subsection (2) of this section. The biennium budget caps shall include all payments to nursing facilities including the following:

- 1. Certified brain injury unit;
- 2. Nursing facilities with a distinct part ventilator unit;
- 3. Nursing facilities designated as an institution for mental diseases;
- 4. Federally-defined swing beds; and
- 5. Pediatric nursing facilities.

(9) Applications for a Medicaid rate add-on shall be submitted to the department by July 31 of each rate year on a form MAP-NF4 provided by the department.

(10) To be eligible for the calculated rate add-on from the \$3,000,000 extenuating circumstance pool a facility shall meet the following criteria:

(a) The facility's July 1, 1998 or July 1, 1999 Medicaid rate (as would have been calculated under the previous rate-setting methodology) shall exceed their current July 1, 1998 or July 1, 1999 Medicaid rate (as calculated under the new rate-setting methodology). If so, the add-on amount shall not cause the total per diem rate to exceed the rate as would have been calculated under the previous rate-setting methodology. (If actual upper-limit calculations do not exist, the upper limit should be established by increasing the upper limits in effect during 1997 by five and eight-tenths (5.8) percent. If actual upper-limit calculators do not exist, the upper limit should be established by increasing the upper limit in effect during 1998 by three (3) percent.)

(b) The facility's rate, including the extenuating Schedule J add-on, shall not exceed the Medicaid rate upper limit. (If actual upper-limit calculations do not exist, the upper limit shall be established by increasing the upper limits in effect during 1997 by five and eight-tenths (5.8) percent. If actual upper-limit calculators do not exist, the upper limit should be established by increasing the upper limit in effect during 1998 by three (3) percent.)

(c) The request shall meet the true intent of the extenuating circumstance Schedule J as determined by the Department for Medicaid Services.

(11) \$3,000,000 shall continue to be distributed through the current capital cost Schedule J process as described in Section 4 of this administrative regulation.

(12) The ancillary payment methodology shall remain the same as that used on July 1, 1997 and as specified in Section 4 of this administrative regulation.

Section 13. Newly Participating Facilities. The rate for a facility that began participating in the Medicaid Program after July 1, 1998 shall be 115 percent of the median payment rate of the appropriate urban or rural array determined by the department subsequent to the application of the rate of increase applied effective July 1 of the applicable rate year. The median payment rate established shall not be subject to retroactive cost settlement.

(1) Nursing facility arrays. For purposes of setting rate for a nursing facility newly participating after July 1, 1998 the rates for nursing facility's (exclusive of the nursing facility-mentally retarded services, nursing facility-institutions for mental disease, and nursing facility pediatric facilities) shall be divided into urban and rural arrays.

(2) The urban array shall include all facilities within a metropolitan statistical area.

(3) The rural array shall include all facilities in nonmetropolitan statistical area counties.

(4) The urban and rural arrays shall be further broken down into a "nursing cost center" array and an "other cost center" array.

Section 14. Incorporation by Reference. (1) "Nursing Facility Reimbursement Manual", Department for Medicaid Services, December 1998, edition which includes MAP-NF1, MAP-NF2, MAP-NF3, and MAP-NF4 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.

[Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995.]

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 15, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 350 Medicaid nursing facilities. Previous provisions of the regulatory impact analysis for 907 KAR 1:025 filed on June 30, 1998.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: None\*

2. Second and subsequent years: None\*

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None\*

2. Continuing costs or savings: The department anticipates increased payments to nursing facilities in FY 1999 in the amount of \$15.1 million. In FY 2000, the department anticipates increased payments to nursing facilities in the amount of \$15.5 million.

3. Additional factors increasing or decreasing costs: \*At this time the cabinet is not aware of additional factors that may increase or decrease costs. However, costs will be monitored on a monthly basis to determine anticipated costs to Kentucky Medicaid Program.

(b) Reporting and paperwork requirements: Determine any necessary adjustments to the extenuating circumstance pool. Existing staff will assume the aforementioned responsibilities.

(4) Assessment of anticipated effect on state and local revenues: None, this administrative regulation is consistent with the budgetary appropriations in HB 321 enacted by the 1998 General Session of the legislature.

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

FY	Federal matching funds of 70.49%	State matching funds of 29.51%	Total
1999	\$10,643,990	\$ 4,456,010	\$15.1 million
2000	\$10,925,950	\$ 4,574,050	\$15.5 million

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will ensure the Commonwealth will meet the health and welfare needs of Kentucky's Medicaid eligible individuals who are elderly and disabled.

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

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, and welfare of Medicaid recipients by not having a reimbursement methodology in place to provide compensation for services needed by the elderly and disabled Medicaid eligible recipients of the Commonwealth.

(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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

## FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect those counties operating nursing facilities.

3. State the aspect or service of local government to which this administrative regulation relates. County governments that own or operate nursing facilities.

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, provided a brief narrative to explain the fiscal impact of the administrative regulation. There is no impact.

STATEMENT OF EMERGENCY  
907 KAR 3:090E

This emergency administrative regulation is being promulgated to provide medical and social services in the community to individuals with acquired brain injuries who would otherwise require nursing

facility care. This action must be taken on an emergency basis to protect human health by providing additional rehabilitative services that will allow individuals with brain injuries to reenter the community using existing resources. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health or welfare of Medicaid recipients due to the fact that, currently, brain injured individuals are subject to being transferred out-of-state, resulting in trauma from the transfer and being isolated from their families. This administrative regulation allows for these individuals with brain injuries to remain in the community where they are close to loved ones. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
JOHN H. MORSE, Secretary

**CABINET FOR HEALTH SERVICES  
DEPARTMENT FOR MEDICAID SERVICES  
Division of Financial Management and Analysis**

**907 KAR 3:090E. Acquired brain injury services.**

RELATES TO: KRS 205.8451, 205.8477, 42 CFR 441, Subpart G, Subpart B, 42 USC 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520  
EFFECTIVE: January 11, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designated agent.

(2) "Acquired brain injury (ABI) waiver services" means home- and community-based waiver services provided to a Medicaid-eligible person aged twenty-one (21) to sixty-five (65) who has acquired a brain injury to his central nervous system of the following nature:

- (a) Injury from a physical trauma;
- (b) Damage from anoxia or hypoxic episode; or
- (c) Damage from an allergic condition, toxic substance or an other acute medical incident.

Section 2. Exclusions of the Acquired Brain Injury Waiver Program. The following list includes conditions which shall not be considered acquired brain injuries requiring specialized rehabilitation:

- (1) Strokes treatable in nursing facilities providing routine rehabilitation services;
- (2) Spinal cord injuries in which there are no known or obvious injuries to the intracranial central nervous system;
- (3) Progressive dementia or other mentally impairing conditions of a chronic degenerative nature such as, senile dementia, organic brain disorders, Alzheimer's disease, alcoholism or other addictions;
- (4) Depression and psychiatric disorders in which there is no known or obvious central nervous system damage;
- (5) Birth defect;
- (6) Mental retardation without an etiology to the acquired brain injury; or
- (7) Conditions which cause an individual to pose a level of danger or aggression which is unable to be managed and treated in the community.

Section 3. General Coverage Provision. (1) The aggregate cost of the ABI Waiver Program shall not exceed the cost of care in a nursing facility as established in 907 KAR 1:025.

(2) ABI waiver services shall be provided to an individual eligible

for Medicaid who:

(a) Is aged twenty-one (21) to sixty-five (65) years with an impairment that may involve cognition, behavior, or physical functions which necessitates supervised and supportive services;

(b) Meets the level of care criteria established in 907 KAR 1:022 for nursing facility services, including nursing facility services for brain injuries;

(c) Meets the following conditions:

1. Has a primary diagnosis that indicates an acquired brain injury with structural, nondegenerative brain damage as defined in Section 1 of this administrative regulation and is medically stable;

2. Exhibits cognitive, behavioral, motor or sensory damage with indications for rehabilitation and retraining potential; and

3. Has a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale which is incorporated by reference in the Acquired Brain Injury Services and Reimbursement Program Manual;

(d) Upon discharge from the program, an individual shall be expected to remain in a community setting with existing community resources and shall not remain in the Acquired Brain Injury Waiver Program for an indefinite period of time.

(2) The basis of the determination for eligibility in the ABI-waiver program shall be:

- (a) The presenting problem;
- (b) The plan of care goals;
- (c) The expected benefits of the admission;
- (d) The expected outcome;
- (e) The initial estimated time frames for achieving the plan of care goals;
- (f) The services required; and
- (g) The cost-effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(3) ABI waiver services shall not be furnished to an individual while he is an inpatient of a hospital, nursing facility, or an intermediate care facility for persons with mental retardation.

(4) The department or its designated agent shall make:

- (a) Initial evaluation for level of care;
- (b) Periodic reevaluation level of care determinations; and
- (c) Determination of admission to the ABI Waiver Program.

Section 4. Recipient Participation Termination. (1) An individual with an approved plan of care who receives ABI waiver services may withdraw from the ABI Waiver Program at any time without cause.

(2) Continued coverage for an ABI Waiver Program recipient shall be terminated if the department determines that the individual does not have the potential for reentry into the community in accordance with Section 3(1)(d) of this administrative regulation without the availability of continued ABI waiver services.

Section 5. Conditions for Agency and Service Provider Participation.

(1) A participating provider agency shall meet the following requirements:

(a) A "free-standing case-management provider" shall be a legally constituted entity in the Commonwealth of Kentucky and have documenting evidence of its operating authority; i.e., the administrative framework of the governmental department of which it is a component; a private agency shall have a charter or articles of incorporation; a constitution, and bylaws.

(b) With the exception of a free-standing case-management agency, a brain injury service provider shall be a licensed Medicaid participating agency in the Commonwealth of Kentucky.

(c) A participating brain injury service provider agency, including a free-standing case-management agency shall:

1. Be subject to the financial sanctions as established in 907 KAR 1:671; and

2. Have written policies and procedures that comply with all conditions for participation in the Acquired Brain Injury Services and Reimbursement Program Manual;

3. Comply with all applicable federal and state statutes and regulations relating to the provision of services under the Kentucky Medicaid Program.

(2) A participating ABI waiver service provider shall meet the

applicable certification requirements for providing ABI waiver services in accordance with 907 KAR 1:672, KRS 205.8477 and 42 CFR 455 Subpart B.

(3) An ABI waiver provider agency or service provider shall comply with all conditions for participation established in the Acquired Brain Injury Services and Reimbursement Program Manual.

(4) Prior to employing an individual to provide ABI waiver services, an ABI waiver provider agency shall:

(a) Check all information supplied on the potential employee's application; and

(b) Conduct a thorough and complete check on the potential employee prior to his employment.

(5) All professional direct service and paraprofessional staff shall:

(a) Have a high school diploma or GED;

(b) Be CPR certified;

(c) Have no criminal record as defined in Section IV of the Acquired Brain Injury Services and Reimbursement Program Manual;

(d) Have no history of perpetrating fraud, abuse, neglect, or exploitation;

(e) Complete six (6) hours of continuing education in brain injury annually; and

(f) Meet all other requirements pertinent to the service they will provide as specified in the Acquired Brain Injury Services and Reimbursement Program Manual.

(6) All professional direct service staff shall meet:

(a) The requirements in subsection (5) of this section; and

(b) All licensing, certification, and degree requirements necessary to practice in the Commonwealth of Kentucky.

(7) Providers terminated from another Medicaid program are not eligible for participation in the ABI waiver program in accordance with 907 KAR 1:672.

Section 6. Provider Participation Termination. A provider's participation may be terminated by the provider or the department for cause or without cause in accordance with 907 KAR 1:671.

Section 7. Covered Services. (1) ABI Waiver Program services and services established in 42 USC 1396a, b, d, and n shall be available to an ABI recipient to prepare him to reside in the community without the need for continued ABI waiver services.

(2) The following ABI waiver services are defined in the Acquired Brain Injury Services and Reimbursement Program Manual, which is incorporated by reference:

(a) Case management;

(b) Personal care services;

(c) Respite care;

(d) Companion services;

(e) Structured day program services;

(f) Prevocational services;

(g) Supported employment services;

(h) Behavior programming;

(i) Counseling and training;

(j) Occupational therapy, speech, hearing, and language services.

(k) Specialized medical equipment and supplies;

(l) Environmental modifications;

(m) Community residential services.

Section 8. Prior Approval for ABI Waiver Services. The department or its designated agent shall prior authorize ABI waiver services for each individual to ensure that:

(1) The level of care criteria and ABI waiver service eligibility requirements are met in accordance with Section 3 of this administrative regulation;

(2) The ABI waiver services are defined in the individual's approved plan of care;

(3) The services are of direct or remedial benefit to prepare the recipient for reentry into the community;

(4) The ABI waiver services prevent placement of the individual in a nursing facility and prepare him to reside in the community without continued ABI waiver services;

(5) Adequate services are available to meet the needs of the individual's care needs; and

(6) The services shall not reasonably be expected to exceed the cost of the appropriate level of institutional care.

Section 9. Recipient Choice. An individual eligible to receive acquired brain injury waiver services and his legal representative shall be given a choice to:

(1) Receive home- and community-based services or nursing facility services subject to the limitations established in Section 3 of this administrative regulation; and

(2) Select participating ABI waiver providers from whom he wishes to receive services.

Section 10. Appeals Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference. (1) Acquired Brain Injury Services and Reimbursement Program Manual, Department for Medicaid Services, November 1998 Edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 11, 1999 at 10 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 95 individuals with brain injuries who meet program criteria.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: will increase due to paperwork requirements.

2. Second and subsequent years: same and are expected to increase due to training requirements and the need to verify that providers receive training.

(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. \*Federal matching funds of 70.49% and state matching funds of 29.51%. State revenues will come from general and 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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefits expected from administrative regulation are to provide individuals with brain injuries an alternative to nursing facility services by providing rehabilitative services so these individuals needing only existing resources can remain in the community.

(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 or welfare of Medicaid recipients. The regulation would permit individuals with brain injuries to receive rehabilitative services so they can reenter and remain in the community. This prevents trauma from being transferred to out-of-state facilities where they would be isolated from their families.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The department believes this administrative regulation would result in budget neutrality because expenditures will be offset by not having to place these individuals in more expensive nursing facility settings.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full

year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### STATEMENT OF EMERGENCY 907 KAR 3:100E

This emergency administrative regulation is being promulgated to reimburse providers for medical and social services to individuals with acquired brain injuries who would otherwise require nursing facility care. This action must be taken on an emergency basis to protect human health by providing additional rehabilitative services that will allow individuals with brain injuries to reenter the community using existing resources. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health or welfare of Medicaid recipients due to the fact that brain injured individuals are subject to being transferred out-of-state resulting currently in trauma from the transfer and being isolated from their families. This administrative regulation allows for these individuals with brain injuries to remain in the community where they are close to loved ones. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
JOHN H. MORSE, Secretary

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

#### 907 KAR 3:100E. Payments for acquired brain injury services.

RELATES TO: 42 CFR 441, Subpart G, 42 USC 1396a, b, d, n,  
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520  
EFFECTIVE: January 11, 1999

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 payment provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services for the purpose of rehabilitation and retraining for reentry into the community with existing resources.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services and its designated agent.

(2) "Acquired brain injury (ABI) waiver services" means home- and community-based waiver services provided to a Medicaid-eligible individual aged twenty-one (21) to sixty-five (65) who has acquired a brain injury to his central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or hypoxic episode; or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

Section 2. Coverage. (1) The department shall reimburse a participating provider for ABI waiver services to a Medicaid eligible person who meets ABI Waiver Program requirements as established in 907 KAR 3:090E.

(2) The department shall reimburse ABI participating providers for prior-authorized ABI waiver services which are included in the plan of care and are medically necessary and essential for the rehabilitation and retraining of the recipient.



Section 3. Exclusions to Acquired Brain Injury Waiver Program. Under the ABI Waiver Program, the department shall not reimburse for conditions established in Section 2 of 907 KAR 3:090E.

Section 4. Payment Amounts. (1) A participating ABI waiver service provider shall be reimbursed a fixed rate for reasonable and medically necessary services for each prior-authorized unit of service provided to the recipient.

(2) A participating ABI waiver service provider certified in accordance with 907 KAR 3:090E shall be reimbursed at the lesser of the provider's usual and customary charge or the Medicaid fixed upper payment limit per unit of service as established in Section 5 of this administrative regulation.

Section 5. Fixed Upper Payment Limits. (1) The following rates are the fixed upper payment limits for ABI waiver services:

(a) A case-management unit of service provided shall be reimbursed at the maximum of \$407.50;

(b) A personal care unit of service shall be reimbursed at the maximum of five (5) dollars and twenty-two (22) cents;

(c) Respite care services shall be:

1. Reimbursed at a maximum of fifteen (15) dollars per unit of service not to exceed \$150 per day; and

2. Limited to no more than 168 units of service in a six (6) month period. An exception to this period may be granted by the department only when the individual's primary caregiver's ability to provide care for the individual is compromised by:

a. A death in the family,

b. A serious illness, or

c. Hospitalization.

(d) Environmental modifications shall be provided only to the individual's home and reimbursed based on the actual cost of each modification, not to exceed a total reimbursement of \$1,000 per six (6) month period;

(e) A companion unit of service shall be reimbursed at the maximum of five (5) dollars and twenty-two (22) cents;

(f) An occupational therapy unit of service shall be reimbursed at the maximum of twenty-four (24) dollars and thirty-two (32) cents;

(g) A speech, hearing, and language unit of service shall be reimbursed at the maximum of twenty-six (26) dollars and sixty-eight (68) cents;

(h) A behavioral programming unit of service shall be reimbursed at the maximum rate of thirty-one (31) dollars and fifty-five (55) cents;

(i) A counseling and training unit of service shall be reimbursed at the maximum of twenty-two (22) dollars and thirty-nine (39) cents;

(j) A structured day program unit of service shall be reimbursed at the maximum of fifteen (15) dollars and thirteen (13) cents;

(k) Specialized medical equipment and supplies, not covered through the Medicaid Durable Medical Equipment Program, that are provided to the individual, shall be reimbursed on a per-item-basis based on a reasonable cost as negotiated by the department;

(l) A prevocational unit of service shall be reimbursed at the maximum of seventeen (17) dollars and eighteen (18) cents;

(m) A supported employment unit of service shall be reimbursed at the maximum of twenty-nine (29) dollars and ninety-seven (97) cents;

(n) A community-residential unit of service shall be reimbursed according to the number of hours provided as defined in Section 7(14) of this administrative regulation as follows:

1. Level One (1) shall not exceed the maximum of fifty-four (54) dollars and eighteen (18) cents.

2. Level Two (2) shall not exceed the maximum of sixty-seven (67) dollars and seventy-two (72) cents.

3. Level Three (3) shall not exceed:

a. The maximum of eighty-four (84) dollars and sixty-five (65) cents; and

b. 230 days. An exception to this period may be granted by the department for an individual only in extreme and difficult circumstances.

(2) The Medicaid fixed upper payment limits shall be adjusted by the department annually for inflation using the Standard and Poor DRI Medical Index.

Section 6. Payment Exclusions. Payment shall not include:

(1) The cost of room and board, except as provided as part of respite care in a Medicaid certified nursing facility;

(2) The cost of maintenance, upkeep, improvements, or environmental modifications to a group home or other licensed facility;

(3) The cost of maintenance, upkeep, or improvements to the recipient's place of residence excluding environmental modifications as established in the Acquired Brain Injury Services and Reimbursement Program Manual incorporated by reference;

(4) The cost of services that are not listed in the approved plan of care; or

(5) Services provided by the family members.

Section 7. Units of Service. (1) A case-management unit of service shall be one (1) month.

(2) A personal care unit of service shall be fifteen (15) minutes.

(3) A respite care unit of service shall be one (1) hour.

(4) An environmental modification unit of service shall be one (1) modification.

(5) A companion unit of service shall be fifteen (15) minutes.

(6) An occupational therapy unit of service shall be fifteen (15) minutes.

(7) A speech, hearing, or language unit of service shall be fifteen (15) minutes.

(8) A behavior programming unit of service shall be fifteen (15) minutes.

(9) A counseling and training unit of service shall be fifteen (15) minutes.

(10) A structured day program unit of service shall be one (1) hour.

(11) A specialized medical equipment and supplies unit of service shall be one (1) item.

(12) A prevocational unit of service shall be one (1) hour.

(13) A supported employment unit of service shall be one (1) hour.

(14) A community residential unit of service shall be reimbursed according to the number of hours provided as follows:

(a) Level One (1) shall consist of at least eight (8) hours of service per day;

(b) Level Two (2) shall consist of at least sixteen (16) hours of service per day;

(c) Level Three (3) shall consist of twenty-four (24) hours of service per day.

Section 8. Audit and Reporting. (1) A participating provider shall:

(a) Maintain fiscal and service records for a period of at least five (5) years; and

(b) Provide, as requested by the department, information necessary for the effective functioning and administration of the ABI Waiver Program.

(2) Upon request, a participating provider shall make available service and financial records to a representative or designee of:

(a) The Commonwealth of Kentucky, Cabinet for Health Services or its designated agent;

(b) The United States Department for Health and Human Services, Comptroller General;

(c) The Department for Health and Human Services, Health Care Financing Administration (HCFA);

(d) The General Accounting Office;

(e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts; or

(f) The Commonwealth of Kentucky, Office of the Attorney General.

(3) The department shall provide for an independent audit of the ABI Waiver Program, except as HCFA may otherwise specify for particular waivers; and

(4) The department shall maintain and make information available to the United States Department for Health and Human Services as required.

Section 9. Appeal Rights. (1) An appeal of a negative action regarding a Medicaid beneficiary shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding the Medicaid eligi-

bility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

DENNIS BOYD, Commissioner  
JOHN H. MORSE, Secretary  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 11, 1999 at 10 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 95 individuals with brain injuries who meet program criteria.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: Will increase due to paperwork requirements.

2. Second and subsequent years: Same and are expected to increase due to training requirements and the need to verify that providers receive training.

(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. \*Federal matching funds of 70.49% and state matching funds of 29.51%. State revenues will come from general and 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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The benefits expected from administrative regulation are to provide individuals with brain injuries an alternative to nursing facility services by providing rehabilitative services so these individuals needing only existing resources can remain in the community.

(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 or welfare of Medicaid recipients. The regulation would permit individuals with brain injuries to receive rehabilitative services so they can reenter and remain in the community. This prevents trauma from being transferred to out-of-state facilities where they would be isolated from their families.

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The department believes this administrative regulation would result in budget neutrality because expenditures will be offset by not having to place these individuals in more expensive nursing facility settings.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### STATEMENT OF EMERGENCY

907 KAR 4:020E

This emergency administrative regulation is being promulgated to establish KCHIP in accordance with SB 128 of the 1998 regular session of the General Assembly and the Balanced Budget Act of 1997. This action must be taken on an emergency basis to ensure access to comprehensive health benefits to children who are currently uninsured and not receiving adequate coverage. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of uninsured children. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor

JOHN H. MORSE, Secretary

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

**907 KAR 4:020E. Kentucky Children's Health Insurance Program.**

RELATES TO: KRS Chapter 45A, 304.17A-110(3), 304.17A-300, 304.17A0310, 304.38, 42 USC 1397aa et seq., PL 105-33

STATUTORY AUTHORITY: KRS 194A.030, 205.6481 to 205.6497, 42 USC 1397aa et seq.

EFFECTIVE: January 15, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Kentucky Children's Health Insurance Program. KRS 205.6481-105.6497 authorizes the cabinet, by administrative regulations, to establish the Kentucky Children's Health Insurance Program (KCHIP) to provide health care coverage and other coordinated services to children of the Commonwealth who are uninsured and otherwise not eligible for health insurance coverage. This administrative regulation establishes the eligibility criteria, schedule of benefits, premium contribution, level of copayments for services, and the criteria for health services providers and insurers wishing to contract with the Commonwealth to provide KCHIP coverage.

Section 1. Definitions. (1) "Accountable pediatric organization" (APO) means a licensed health insurer or other licensed entity that meets the criteria as established in Section 6 of this administrative regulation, under contract with the Cabinet in accordance with KRS Chapter 45A, which agrees to provide, or arrange for the provision of, comprehensive health services to KCHIP enrollees, on the basis of an at-risk, prepaid capitated reimbursement system.

(2) "Cabinet" means the Kentucky Cabinet for Health Services.

(3) "Cabinet agent" means an entity with which the cabinet contracts in accordance with KRS Chapter 45A, to determine the eligibility of applicants for KCHIP.

(4) "Child" means an individual who has not attained age nineteen (19).

(5) "Copayment" means a partial payment based on income made by a responsible party on behalf of an enrollee for the delivery of a service.

(6) "Department" means the Department for Medicaid Services or its contractor.

(7) "Emergency care" means care for a condition as defined in 42 USC 1395dd.

(8) "Enrollee" means a child who receives services from an APO under the KCHIP Plan.

(9) "Family Income" means the income of a child and the income of the child's natural or adoptive parents used to determine financial eligibility and premium contributions for KCHIP.

(10) "KCHIP" means the Kentucky Children's Health Insurance Program.

(11) "Premium contribution" means the responsible party's financial contribution for the purchase of the KCHIP plan.

(12) "Presumed eligible" means a child who is believed to be eligible for KCHIP after administration of an income, health insurance status, and residency screening. The presumed eligibility period for a child shall not exceed a sixty (60) calendar day period, no more than once per year.

(13) "Responsible party" means the individual who applies for coverage under KCHIP on behalf of a child and who is responsible for coordination with the cabinet for eligibility determination, payment of premium contributions to the APO, and copayments to providers and shall include a child who is eighteen (18) years of age who meets the definition of a child as established in Section 1(4) of this administrative regulation.

(14) "Rural area" means an area outside of an urban area.

(15) "Urban area" means a metropolitan statistical area, as designated by the U.S. Office of Management and Budget, which contains an urban nucleus of at least 50,000 population, along with adjacent counties which have a high degree of economic and social ties, for a total metropolitan population of at least 100,000.

(16) "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

Section 2. Eligibility Criteria. (1) A child shall be eligible for KCHIP if:

(a) The child is a resident of Kentucky;

(b) The child is not a transient traveling through and not residing in the state;

(c) The child is an alien legally admitted to this country for permanent residence on or before August 22, 1996;

(d) The child is an alien admitted after August 22, 1996, who is a refugee, asylee, parolee, or a dependent of an active or retired member of the armed forces;

(e) The child is not 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;

(f) The child is not an inmate of a public institution or a patient in an institution for mental diseases.

(g) Family income does not exceed 200 percent the federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 USC 9902(2);

(h) The child is uninsured for at least a six (6) month period prior to application for KCHIP unless the child is an infant less than six (6) months of age; or

(i) The child's insurance was terminated less than six (6) months prior to application for KCHIP for reasons beyond his or her parent's control, including:

1. Loss of employment;

2. Death of a parent;

3. Divorce, with associated loss of health care coverage for the child;

4. Change to a new employer that does not provide an option for dependent coverage;

5. Change of address, no employer-sponsored coverage is offered in that county;

6. Discontinuation of health benefits to employees of the parent's employer;

7. Expiration of the coverage purchased by a parent or guardian under the Consolidated Omnibus Budget Reconciliation Act of 1985;

8. Self-employment;

9. Termination of health benefits due to a long-term disability;

10. Termination of dependent coverage due to an extreme economic hardship on the part of either the employee or employer as determined by the department;

11. Loss of Medicaid benefits due to reasons other than fraud; or

12. Other unique circumstances approved by the department on a case-by-case basis.

(j) The child is not eligible for Medicaid coverage pursuant to 907 KAR 1:011.

(2) Income considerations.

(a) For purposes of eligibility, and except for types of money established in paragraph (c) of this subsection, family income includes money received before taxes from all sources.

(b) Child support paid for a child in the home shall be included in family income. Child support paid from the parent to a child outside the household shall be deducted from the family income.

(c) Family income does not include the following:

1. Capital gains;

2. Assets drawn down as withdrawals from a bank, the sale of property, a house, a car;

3. Tax refunds;

4. Gifts;

5. Loans;

6. Lump-sum inheritances, one (1) time insurance payments, or compensation for injury;

7. Noncash benefits, such as employer-paid or union-paid portion of health insurance or other employee fringe benefits;

8. Food or housing received in lieu of wages;

9. The value of food and fuel produced and consumed on farms;

10. The imputed value of rent from owner-occupied nonfarm or farm housing;

11. Federal noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, and housing assistance; or

12. Income exclusions established in 907 KAR 1:640, Section 6.

(3) Income disregards. In comparing monthly income with the federal poverty income guidelines, which have been divided by twelve (12), gross income shall be adjusted as follows:

(a) The standard work-related expenses of adult enrollees and out-of-school youth shall be deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. All earnings of an in-school child shall be disregarded.

(b) Child care as a work expense shall be allowed for a child who is living in the home of the parent for full-time and part-time employment. The dependent child care work expense shall be deducted after the ninety (90) dollar disregard specified in paragraph (a) of this subsection has been applied. The child care work expense allowed shall not exceed the subsidy rates for the Child Care Assistance Program as defined in 905 KAR 2:160.

(4) Continuation of coverage. Eligibility for KCHIP shall be determined by the cabinet or its agent.

(a) If a child has been approved for KCHIP benefits, the child shall be continuously eligible for six (6) months from the date of the initial enrollment unless the child moves from the state, becomes eligible for Medicaid, is covered under another health insurance policy, or becomes an inmate of a public institution or a patient in an institution for mental disorders.

(b) After the six (6) months continuous eligibility period, the child may become ineligible if the child moves from the state, becomes eligible for Medicaid, is covered under another health insurance policy, or the family income exceeds 200 percent of the federal poverty guidelines.

(5) Eligibility for a child enrolled in KCHIP shall be redetermined every twelve (12) months beginning twelve (12) months from the date the child's eligibility is determined. Enrollment shall continue without interruption for additional twelve (12) month periods if the child meets the eligibility criteria established in subsection (1) of this subsection, and the responsible party reapplies for coverage no sooner than ninety (90) calendar days before and no later than thirty (30) calendar days after the end of the previous twelve (12) month enrollment period.

(6)(a) An APO may serve a child presumed eligible for KCHIP. Reimbursement for a service furnished to a child presumed eligible shall be provided by the department after the child is determined eligible and is enrolled in KCHIP. The APO shall be paid the capitated monthly rate for the time the child is presumed eligible if the child is ultimately determined eligible for KCHIP.

(b) If the child is not determined eligible for KCHIP, the APO shall not be paid for the period of presumed eligibility.

(c) The period that the child may be presumed eligible for KCHIP prior to final eligibility determination shall be limited to a sixty (60) day period, not to exceed once per year.

(d) Premium contributions due for the period the child is presumed eligible shall be determined and collected from the family after the final eligibility determination. Upon the final KCHIP eligibility determination, a child's enrollment date shall begin on the date of enrollment into KCHIP, not including the time-limited period in which the child is presumed eligible.

(7) At the discretion of the cabinet, a pilot project may be established in a geographic region to test the efficacy of alternative models of presumptive eligibility.

(8) Premium contributions shall be paid as specified in Section 5(4) of this administrative regulation in order for a child to remain eligible for KCHIP.

(9) Two (2) statewide open enrollment periods per year shall be established for enrollees who have a voluntary lapse in coverage to reenroll in KCHIP.

Section 3. Copayments for Services. (1) There shall be no copayments for preventive services provided to KCHIP enrollees, and copayments for other services shall not exceed those prescribed by 42 USC 1397.

(2) The copayment shall be made to the provider.

(3) Copayment amounts for specified services shall be established in the KCHIP Schedule of Benefits, which is incorporated by

reference in this administrative regulation.

Section 4. Covered Services. (1) An APO shall provide, or arrange for the provision of, medically necessary health services, including emergency services, to the extent the services are specified in the KCHIP Schedule of Benefits. The amount and duration of benefits covered by KCHIP are established in the KCHIP Schedule of Benefits. The department shall consider health services as medically necessary if the services are reasonable and necessary to diagnose and provide preventive, palliative, curative or restorative treatment for physical or mental conditions in accordance with professionally recognized standards of health care generally accepted at the time services are provided, in accordance with 42 CFR 440.230.

(2) The APO shall make services, service locations, and service sites available and accessible in terms of timeliness, amount, duration, and personnel sufficient to provide, or arrange for the provision of, all covered services on an emergency or urgent care basis, twenty-four (24) hours a day, seven (7) days a week.

(a) Primary care delivery sites shall not be more than:

1. Thirty (30) miles or thirty (30) minutes from residence or place of employment for an enrollee in an urban area; or

2. Forty-five (45) minutes or forty-five (45) miles from residence or place of employment for an enrollee in a rural area.

(b) Appointment and waiting times shall not exceed:

1. Thirty (30) calendar days from the date of the enrollee's request for routine care; or

2. Forty-eight (48) hours from the time of the enrollee's request for urgent care.

(c) Specialty care. With the exception of a specialist who provides behavioral health services established in paragraph (k) of this subsection, specialty care requiring referral appointments to specialists, shall not exceed:

1. Thirty (30) calendar days for routine care; or

2. Forty-eight (48) hours for urgent care.

(d) An APO shall ensure that specialists shall be available for KCHIP enrollees and shall include sufficient pediatric specialists to meet the needs of enrollees.

(e) Emergency care. Emergency care shall be provided immediately, including stabilization, treatment and use of or transfer to the health care facility most suitable for the type of injury, illness or condition, regardless of contracts pursuant to KRS 304.17A.

(f) An APO using a defined network of health care providers shall cover emergency department screening and stabilization services in accordance with KRS 304.17A-580.

(g) Hospitals. Except as provided by clauses a and b of this subparagraph, transport time to a hospital shall not exceed thirty (30) minutes. In a rural area, transport time shall:

1. Not exceed sixty (60) minutes; or

2. Be equivalent to that of another child residing in an APO region and receiving health services under managed care but not served by the APO.

(h) General dental services.

1. Except as provided by subparagraph 2 of this paragraph, transport time shall not exceed one (1) hour.

2. In a rural area, transport time shall be equivalent to that of another child residing in an APO region and receiving health services under managed care but not served by the APO.

3. Appointment and waiting times shall not exceed:

a. Three (3) weeks for regular appointments; or

b. Forty-eight (48) hours for urgent care.

(i) General vision, laboratory or radiology services.

1. Except as provided by subparagraph 2 of this paragraph, transport time shall not exceed one (1) hour.

2. In a rural area, transport time shall be equivalent to that of other children residing in an APO region and receiving health services under managed care but not served by the APO.

3. Appointment and waiting times shall not exceed:

a. Three (3) weeks for regular appointments; or

b. Forty-eight (48) hours for urgent care.

(j) Pharmacy services.

1. Except as provided by subparagraph 2 of this paragraph, transport times shall not exceed one (1) hour.

2. In a rural area, transport time shall be equivalent to that of

another child residing in an APO region and receiving health services under managed care but not served by the APO.

(k) Behavioral health.

1. The evaluation for routine care shall be initiated within seven (7) calendar days of the referral or request for a service by an enrollee.

2. The evaluation for urgent care in a location other than an emergency room or a hospital shall be initiated within twenty-four (24) hours of the:

a. APO's notification of the enrollee's urgent care need from the referring party; or

b. Time of the enrollee's presentation to a licensed mental health care facility.

3. The evaluation for emergency care in a location other than the emergency department of a hospital shall be initiated within three (3) hours of the:

a. APO's notification of the emergency from the referring party; or

b. Time of the enrollee's presentation to a licensed mental health care facility.

4. The evaluation of an enrollee for involuntary hospitalization pursuant to KRS 202A.028, 202A.041, 202A.051, and 202A.061 or 645.120, shall be performed within the time frame for evaluation for emergency care as established by subparagraph 3 of this subsection.

5.a. Except as provided in clause b of this subparagraph, the transport time to a service relating to behavioral health shall not exceed one (1) hour.

b. In a rural area, the transport time shall be equivalent to the amount of time taken to transport a person.

(i) Residing in a APO region, but not served by the APO; and

(ii) Taken over the same route by a motor carrier with a certificate to transport a person in accordance with KRS 281.607 through 281.760.

(l) Other services. Transport time to a covered service not specified in paragraphs (a) through (g) of this subsection shall be equivalent to that of another child residing in an APO region and receiving health services under managed care but not served by the APO.

(3) The cabinet may act to allow limited exceptions to the time and distance standards established in subsection (2)(a) through (d) and (g) through (l) of this section, upon presentation of documentation sufficient in the opinion of the cabinet to support the exception.

(4) If an APO fails to meet access standards as established in subsection (2) of this section, the APO shall submit a corrective action plan for approval by the department prior to implementation of the plan in order to improve enrollees' access to services.

(5) The APO shall ensure direct access and shall not restrict the choice of a qualified network provider by an enrollee for the following services:

(a) Primary care dental services;

(b) Primary care vision services including fitting of eye glasses provided by an ophthalmologist, optometrist or optician;

(c) Mental health care management, with necessary mental health services authorized by the APO;

(d) Prenatal care for enrollees under eighteen (18) years of age;

(e) Voluntary family planning services;

(f) Screening, evaluation and treatment for sexually transmitted diseases, tuberculosis, and other communicable diseases defined in 902 KAR 2:020; or

(g) Childhood immunizations.

Section 5. Premium contributions. (1) Family premium contributions shall be based on a family's annual income, as established in KRS 205.6485.

(2) Family income as a percent of poverty shall be determined by using the most recent federal poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under authority of 42 USC 9902(2), and criteria established in Section 2(2) and (3) of this administrative regulation.

(3) One (1) premium contribution shall be made per family, regardless of the number of enrolled children in the family.

(4) Premium contributions shall be paid in order for the child to

remain eligible for KCHIP.

(5) An APO has the option of discounting the premium contribution for an enrolled family that elects to pay premiums in multiple month sums determined by the APO. The optional discount amount is at the discretion of the APO.

Section 6. KCHIP Entity Requirements. An APO shall meet the criteria established in subsections (1) through (14) of this section prior to the cabinet's approval of the entity as an APO as defined in Section 1(1) of this administrative regulation:

(1) If the APO is a full-risk organization or is not a full-risk organization or proposes partial or shared risk, it shall provide the cabinet with evidence that it meets Department of Insurance licensure requirements for the level and nature of the proposed service.

(2) The APO shall provide the cabinet with evidence that it meets the financial requirements established as follows:

(a) Comply with the applicable solvency requirements of the appropriate statutes relating to licensure of the APO and the risk-bearing agency or health insurance company it is using to provide services;

(b) Maintain solvency reserves that shall:

1. Be met with funds from the risk agency or regular solvency funds as required by the department of Insurance for that particular licensure category;

2. Be accessible to the department of Insurance in the event of the APO's insolvency and shall require approval of the department before any disbursements are made; and

3. Provide coverage for expenses incurred for enrollees' health services from the date of insolvency until the end of the period for which medical capitation payments were received by the APO;

(c) Submit for the department's approval, a plan which shall address the financial insolvency of the APO and specify the method for:

1. Continuation of services to enrollees through the end of the period for which capitation payments have been made;

2. Continuation of inpatient facility services to an enrollee until discharge from the facility occurs; and

3. Immediate notification to the department of anticipated or projected failure to meet financial insolvency reserve requirements as established in this subsection;

(d) Notify the department within sixty (60) calendar days prior to making a change to its insolvency protection arrangements;

(e) Submit a monthly financial statement to the department within forty-five (45) calendar days of the end of each month which shall include:

1. A balance sheet;

2. A statement of revenue and expenses;

3. Changes in the APO equity;

4. A certification statement; and

5. A written report as requested by the department relating to financial conditions and status;

(f) Submit semiannual and annual reports in the National Association of Insurance Commissioners Managed Care format in the time frame required by KRS 304.38.090;

(g) File a financial disclosure report, as required by the Health Care Financing Administration with the department within 120 calendar days of the end of the contract year and within forty-five (45) calendar days of entering into, renewing, or terminating a transaction with an entity, other than an individual practitioner or group of individual practitioners, or with an entity with which the APO contracts for the provision of management functions, supplies, equipment or health-related services;

(h) Make available books, medical records, and information relating to member services, quality of care, and financial transactions for review, inspection, investigation, auditing, and photocopying by authorized federal and state agency reviewers, investigators and auditors.

1. The books, records, information, and APO's staff shall be available upon request of a reviewer, investigator or auditor during routine business hours at the site of operation; and

2. If required by a reviewer, investigator or auditor, an interview of the APO's staff shall be conducted in private at the site of operation during routine business hours;

(i) Maintain books, records, and information relating to health

care providers, enrollee and member services and financial transactions for a minimum of five (5) years in accordance with 907 KAR 1:672, Section 4(3) and (4) and for an additional time period as required by federal and state laws; and

(j) Have adequate stop-loss insurance, certified by an actuary, to be sufficient given the APO's financial status.

(3) The APO shall respond to a request for proposals (RFP) issued by the cabinet within forty-five (45) calendar days of receipt.

(4) The APO shall describe in detail, the region of the state, in which it seeks to provide KCHIP coverage.

(5) The APO shall provide to the cabinet legal documentation of health care provider contracts as it relates to Section 1(1) of this administrative regulation.

(6)(a) The APO shall provide access to a toll-free telephone number to be serviced no less than forty (40) hours per week for the purpose of general enrollment information, prescreening of applicants, questions about services, provider inquiries, primary care physician referrals, and assisting with complaints.

(b) The toll-free number shall be serviced in such a way as to be easily accessible to working parents.

(7) The APO shall provide access to a toll-free telephone number twenty-four (24) hours per day, seven (7) days per week to assist enrollees, parents or guardians with access to emergency or urgent care.

(8)(a) The APO shall provide an enrollee the opportunity to select, from at least two (2) primary care providers serving the enrollee's APO, one (1) of which shall be a physician.

(b) An enrollee shall have the right to change the primary care provider after the initial visit and once a year regardless of reason, and at any time for any reason as approved by the enrollee's APO.

(9) The APO shall be required to maintain confidentiality of enrollee eligibility information and medical records, and prevent unauthorized disclosure of this information for any reason in accordance with KRS 194.060, 434.840 to 434.860 and 42 CFR 431, Subpart F.

(10) The APO shall provide to the cabinet procedures for submission of KCHIP data to the cabinet in accordance with contract requirements established in KRS Chapter 45A.

(11) The APO shall describe its proposed system of outreach and assistance to children potentially eligible for KCHIP to become eligible and to assist children potentially eligible for Medicaid services provided by the cabinet to become eligible for those Medicaid services.

(12) The APO shall include the following providers in the APO network or submit for the cabinet's approval, documentation which establishes that services or service sites shall adequately meet the needs of KCHIP recipients pursuant to Section 4 of this administrative regulation:

(a) Primary care centers, including federally qualified health centers and rural health clinics that serve the proposed region;

(b) Public health departments that serve the proposed region;

(c) The Kentucky Commission for Children with Special Health Care Needs;

(d) Children's hospitals located in the proposed region. If there is not a children's hospital located in the proposed region, a children's hospital serving the region shall be included in the APO network;

(e) Community mental health centers that serve the proposed region; and

(f) School-based health clinics.

(13) The APO shall not discriminate against a provider who is located within the geographic coverage area of the APO and who is willing to meet the terms and conditions for participation established by the APO.

(14) The APO shall establish a consumer advisory committee composed of a majority of parents or guardians of enrollees and advocates. The committee shall be responsible for advising the APO on quality, access to care and other issues affecting APO enrollees.

(15) The APO shall establish a provider advisory committee composed of APO network providers. The committee shall be responsible for advising the APO on quality, access to care and other issues affecting APO enrollees and providers.

(16) The APO shall maintain documentation necessary to investigate allegations of fraud or abuse, shall cooperate with and report all suspected instances of fraud or abuse to the Office of the Inspector General and the department.

Section 7. Contract Procedures. (1) The cabinet shall contract with an entity which it believes best meets the requirements to provide KCHIP coverage established in Sections 2 through 6, 9 and 10 of this administrative regulation.

(2) The cabinet may develop a partial-risk model with the APO for the beginning phases of the KCHIP Program.

(3) Contracts shall conform to the provisions established in KRS Chapter 45A.

Section 8. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with an action taken:

(a) By the APO, with respect to a health care service, involving denial, reduction or termination of a KCHIP service, an enrollee or his parent or guardian shall be entitled to a complaint, grievance or appeal with his respective APO in accordance with Section 9 of this administrative regulation, if the APO processes complaints, grievances or appeals in a time frame that shall not place the enrollee at risk or seriously jeopardizes the enrollee's health or well being. If the enrollee or his parent or guardian is dissatisfied with the APO complaint, grievance, or appeal resolution, the enrollee or his parent or guardian shall be entitled to a complaint, grievance, or appeal process by the cabinet in accordance with 907 KAR 1:563, Section 12, if the cabinet processes complaints, grievances or appeals in a time frame that shall not place the enrollee at risk or seriously jeopardizes the enrollee's health or well being.

(b) By the cabinet or its agent, an enrollee or his parent or guardian shall be entitled to a complaint, grievance or appeal with the cabinet, to be conducted in accordance with 907 KAR 1:563, Section 12.

(2) A KCHIP enrollee or a parent or guardian of a KCHIP enrollee shall be informed, in writing, or in an alternative format he can understand, of his rights to, and procedures for due process by the:

(a) Cabinet, upon KCHIP application or, at any time there is a change in eligibility status;

(b) APO, at the time of enrollment and following any denial, reduction or termination of services; or

(c) APO or the cabinet, at other times as required by federal and state laws.

(3) The APO shall establish and maintain:

(a) A toll-free telephone number in accordance with Section 6(6) of this administrative regulation; and

(b) A procedure for logging and reporting to the cabinet, the management of complaints and grievances filed.

Section 9. APO Grievance Procedure. (1) The APO shall have a grievance procedure in place to resolve an enrollee's or parent's or guardian's complaint with respect to a health care service provided to him.

(2) The APO grievance procedure shall be subject to approval by the cabinet, and shall include established written policies and procedures for the receipt, handling and disposition of complaints and grievances which shall:

(a) Be approved by the APO's governance body or board of directors;

(b) Include individuals with authority to require corrective action in the process of complaint, grievance, and resolution process;

(c) Include a routine process for evaluation of patterns of complaints and grievances for impact on APO policy and procedures;

(d) Establish procedures for maintenance of records of complaints, grievances and appeals separate from enrollee medical records;

(e) Inform enrollees and subcontractors about internal and state agency complaint, grievance and appeal processes;

(f) Provide enrollees with assistance in filing complaints and grievances, if the enrollee requests assistance; and

(g) Include assurance that there shall be no discrimination against an enrollee solely on the basis that the enrollee filed a grievance or made a complaint.

Section 10. Quality Improvement. (1) The department shall:

(a) Establish a quality improvement program which measures performance, conducts performance improvement projects, and corrects significant systematic problems on a continuing basis for services provided, or arranged for, by an APO for its enrollees. The



quality improvement program shall be based on information related to the total KCHIP population of the APO and shall address the following areas:

1. Services and health care outcomes which shall be based on the performance indicators and standards established in the Health Plan Employer and Data Information Set (HEDIS) 3.0, incorporated by reference in 907 KAR 1:705, and shall include enrollees' risk factors, morbidity, mortality, readmission to health care facilities, and effects of education programs for at-risk families;
2. Utilization of covered health care services in settings provided by the APO and its subcontractors, based on type of disability and chronic illness, race, ethnicity, gender and age;
3. Access to and coordination of care by type of disability, chronic illness, race, ethnicity, gender and age. This includes provider ratios, points of access to specialists, distance to care and waiting periods for services as established in Section 4 of this administrative regulation and appropriate physical and language support in accordance with 20 USC Chapter 33;
4. Clinical treatments and procedures that have established practice guidelines or are considered to be high risk to an enrollee as demonstrated through morbidity and mortality data;
5. Adverse incidents, including complications and adverse conditions occurring as a result of treatment;
6. Enrollee and provider satisfaction information, including number, type and resolution of complaints, denials of service, grievances and appeals;
7. Health education participation by enrollees;
8. Preventive health services provided by the APO to enrollees;
9. Continuity of care, including coordination of physical and behavioral health services; and
- 10.a. The procedures and criteria to credential and recredential providers at least every two (2) years, including:
  - (i) Verification of an individual provider's license or certificate to practice;
  - (ii) The Drug Enforcement Administration (DEA) number or certificate;
  - (iii) Verification of graduation from professional schools and trainings;
  - (iv) Verification of board certification or eligibility;
  - (v) Employment history;
  - (vi) Professional liability claims history;
  - (vii) Limited or suspended medical staff privileges;
  - (viii) History of Medicaid or Medicare imposed penalties;
  - (ix) Information regarding a censure by the state or county professional association;
  - (x) Information regarding a provider's status in the national practitioner data bank and the state board of examiners; and
  - (xi) Information regarding a provider's status among professional peers, including statements from the applicant about physical or behavioral health conditions or illness, loss of license, felony convictions, loss or limitation of privileges or any disciplinary activity and attestation to correctness or completeness of the application to become an APO provider.
- b. The APO may utilize its existing credentialing procedures for providers serving the KCHIP population, if those procedures meet these standards.
- (b) Arrange for two (2) individuals representing the APOs to be voting members of the Department Quality Improvement Council established in 907 KAR 1:705;
- (c) Collect reports and encounter data from the APOs for quality improvement in the KCHIP population. These reports and data shall include the following:
  1. A written continuous quality improvement plan with short- and long-term goals and measurable objectives, designated staff with authority for carrying out the plan, and a schedule for routinely reviewing activities and findings, approved by the APO's governing body and the department at least annually and any time significant changes are made.
  2. Information on the items identified in paragraph (a) of this subsection;
  3. Clinical and nonclinical performance improvement projects; and
  4. Plans and progress for corrective actions initiated.
- (2) An APO shall:
  - (a) Establish a quality improvement program which meets the department's requirements, as established in subsection (1)(a) of this section;
  - (b) Submit to the department reports and encounter data as identified in subsection (1)(c) of this section;
  - (c) Establish and document the method for taking a corrective action relating to quality improvement;
  - (d) Integrate quality improvement with other management activities, including a change in access to an APO provider or a member service;
  - (e) Be accredited by a national accrediting agency of managed care organizations by the end of five (5) consecutive years of contracting with the department;
  - (f) Demonstrate meaningful improvement of clinical care and the quality of services to its enrollees;
  - (g) Assure oversight of delegated activity; and
  - (h) Meet federal standards required by the Health Care Financing Administration (HCFA) for State Children's Health Insurance Programs under 42 USC 1397aa et. seq. and as federally mandated.

Section 11. APO Payments. (1) The department shall provide an APO a per month, per enrollee capitation payment regardless of an enrollee's receipt of services.

(2) A capitation payment shall be based upon a standard rate setting methodology as established in subsection (3) of this section.

(3) The payment rate shall be based upon computations of a certified actuary using national actuarial standards, principles and appropriate actuarial factors representing the KCHIP benefit package.

(4) The department may contract with an APO for payment of a medical service provided to a recipient prior to the enrollment of a recipient in the APO on a capitated or other basis as part of the APO's contract.

Section 12. Incorporation by Reference. (1) "KCHIP Schedule of Benefits", Department for Medicaid Services, December 1998, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 6, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Uninsured children through age 18 between 100 to 200% federal poverty level; health insurers; health care providers

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: The accountable pediatric organizations and subcontractors will be required to submit encounter data to the department to support monitoring and accountability processes. These requirements are similar to current requirements and are no more onerous than current Medicaid reporting requirements, nor filing necessary paperwork for commercial



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

plans. Every state agency will be required to do outcome reporting to support the department's goals, develop baseline health status data for the department and develop strategies for improving the health status of the uninsured population.

2. Second and subsequent years: Same impact for second and subsequent years as additional geographic regions are affected in the second and third years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$64,122,500 (cost)

2. Continuing costs or savings: \$64,122,500 (cost)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Federal financial and service reporting as required by the Health Care Financing Administration (HCFA).

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. \*Federal matching funds of 79% equaling \$50,182,358 and state matching funds of 21% equaling \$13,940,142. State revenues will come from funds appropriated in the 1998-2000 Budget.

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

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

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Provides health insurance benefits to uninsured children through age 18 between 100 - 200% of the federal poverty level.

(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 uninsured children by preventing access to affordable and comprehensive health care coverage.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not 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 the Balanced Budget Act of 1997 the Commonwealth of Kentucky has exercised the option to establish the Kentucky Children's Health Insurance Program for children who are currently uninsured and have family incomes between 100 - 200% of the federal poverty level. Having elected to offer KCHIP coverage, the state must comply with federal requirements contained in the Balanced Budget Act of 1997.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

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

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

### STATEMENT OF EMERGENCY 921 KAR 2:015E

This emergency administrative regulation changes the standards for all levels of care for the State Supplementation Program due to the pass along of the 1999 supplemental security income cost of living increase. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in supplemental security income benefits to state supplementation recipients. The Social Security Administration notified this agency of the amount of the supplemental security income cost of living adjustment in October 1998. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to implement the change in the standards for all levels of care for the state supplementation applicant or recipient for January 1999. In order to implement the mandated 1999 cost of living increases for eligibility determinations made on or after January 1, 1999, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

VIOLA P. MILLER, Secretary

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

**921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.**

RELATES TO: KRS 205.245, 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641

STATUTORY AUTHORITY: KRS 194B.050 [194:050], 205.245, 42 USC 1382e-g, EO 98-731 [HB-321-(1998)]

EFFECTIVE: January 14, 1999

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certi-

fied personal care homes which accept state supplementation recipients and have [a] thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for individuals who were aged, blind or had a disability.

(2) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as defined in Section 1(11) [(10)] of 904 KAR 2:006.

(3) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ mental health professionals who have specialized training in the care of residents with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) Recipients include former Aid to the Aged, Blind and Disabled Program recipients who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled them to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless:

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation shall be available to a person who:

(a) Except as specified in Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for persons who are aged, blind, or have a disability as contained in 907 KAR 1:011, Sections 1(4), 5(5), 6(7), 12(13), 9, 10, and 11, 907 KAR 1:640, Sections 1(1), 5(6), 9(3), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), 3(4), (5), (7); and

(b) Requires special living arrangements; and

(c) Has insufficient income to meet their need for care.

(2) Special living arrangements shall include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) A situation in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult child who has a disability or a minor child; or

3. Adult child of a parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), 6(2), 2(1), (2)(b), (c), (e), 3(4), (5), (7).

(2) The individual or couple shall not be eligible if countable resources exceed the limit of:

(a) \$2000 for individual; or

(b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to policies for the medically needy in 907 KAR 1:640, Sections 1(1), (5), (6), (9), 3(3), 5(3), 907 KAR 1:645, 907 KAR 1:650, Sections 1(6), 3, and 907 KAR 1:660, Sections 1(1), (3), (5), (6), 2(1), (2)(b), (c), (e), 3(4), (5), (7).

(2) The optional supplementation payment shall be determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for payments for medical insurance or medical care and services, payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.

(3) Income of the ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

1. Himself; and

2. Each minor dependent child.

(4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the spouse maintains a home, income in the amount of the Supplemental

Security Income Program standard for one (1) shall be conserved for the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

Section 7. Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) 1. For an eligibility determination for a resident of a personal care home made on or after January 1, 1999, \$894 [1998, \$828].

2. [For an eligibility determination for a resident of a personal care home made between May 1, 1998, and June 30, 1999, \$888.

3. a. After June 30, 1999, if funds remain available, the standard shall remain at \$894 [888].

b. After June 30, 1999, if funds are not available, the standard shall be \$834 [828], plus an applicable cost of living adjustment.

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1999, \$639 [1998, \$633];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 1999, \$533 [1998, \$527];

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 1999, \$799 [1998, \$769];

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 1999, \$823 [1998, \$813].

(2) In couple cases, if both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs allowance which shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

1. A hospital;
2. A psychiatric hospital; or
3. A nursing facility;

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be:

- (1) A citizen of the United States; or
- (2) A qualified alien pursuant to Section 1(2) of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall not be a suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Community-Based Services.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

1. Bayley Scales of Infant Development;

2. McCarthy Scales of Children's Abilities;

3. Stanford-Binet;

4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);

5. Wechsler Intelligence Scale for Children-III (WISC-III);

6. Wechsler Intelligence Scale for Children - Revised (WISC-R); or

7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);

or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

(a) Under age twenty-one (21);

(b) Eligible for a supplemental payment based on blindness or disability; and

(c) Residing in the state; or

(d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

- (a) He returns to Kentucky; and
- (b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The personal care home shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding organic brain syndrome, senility, chronic brain syndrome, Alzheimer's, and similar diagnoses; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home shall not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home shall file an application with the Department for Community-Based Services by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The personal care home shall provide the Department for Community-Based Services with its tax identification number and address as part of the application process.

(7) The personal care home shall provide the Department for Community-Based Services with a monthly report.

(a) The report shall list:

1. All residents of the personal care home who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the personal care home shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Community-Based Services by the fifth working day of the month.

(8) The personal care home shall notify the Department for Community-Based Services if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care resi-

dents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) The personal care home licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side effects and adverse medication reactions with special attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bipolar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation.

(f) Instruction in providing necessary activities to meet the needs of residents who have a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Community-Based Services an exemption of the five (5) staff rule.

(b) The personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received the mental illness or mental retardation basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for personal care homes.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with residents who have a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for Persons with Mental Illness or Mental Retardation Supplement Program participants.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Community-Based Services of staff who completed the training workshop.

(7) The Department for Community-Based Services shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program certification may be separate from the annual survey;

(b) The initial Mental Illness or Mental Retardation Supplement Program certification shall be in effect until the next licensure survey that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program recertification may be completed during the annual licensure survey;

(d) The Department for Community-Based Services shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program certification process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home shall be responsible for notifying the Department for Community-Based Services, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a monthly statement to the Department for Community-Based Services identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Community-Based Services monthly of a personal care home which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 14. 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 921 KAR 2:055.

Section 15. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for Mental Illness or Mental Retardation Supplement", (6/98), Cabinet for Families and Children;

(b) "Monthly Report", (6/98), Cabinet for Families and Children;

(c) "Application for Supplement Program Certification", (6/98), Cabinet for Families and Children; and

(d) "Monthly Statement Certifying Personal Care Homes for the

Supplement Program", (6/98), Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Cabinet for Families and Children, 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: January 5, 1999

FILED WITH LRC: January 14, 1999 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: As of September, 1998, there are approximately 5,186 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandated cost of living adjustment.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: For increases in the state supplementation standards:

1. First year following implementation: The standards for state supplementation recipients increased by \$6 for recipients in personal care homes and family care homes, \$6 for recipients of caretaker services for single individual or individual with ineligible spouse, and \$10 for caretaker services for couple (one or both requiring care). Therefore, the standard of need is as follows:

Personal Care - \$894

Family Care - \$639

Caretaker:

Single - \$533

Individual with Ineligible Spouse - \$533

Eligible Couple, One Requiring Care - \$779

Eligible Couple, Both Requiring Care - \$823

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

(3) Effects on the promulgating administrative body: For increases in the state supplementation standards:

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

1. First Year (costs to agency in benefits): \$210,000

2. Continuing costs: \$420,000. The cost of living increase is funded in the SFY 1999 and SFY 2000 State Supplementation Program budgets. The first year fiscal impact is based on January 1, 1999 through June 30, 1999. The continuing fiscal impact is based on SFY 2000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: 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: To be determined after the publication of the Notice of Intent.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since state supplementation pass along provisions are set forth through an agreement with the Department of Health and Human Services.

(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 implements the mandated pass along of the 1998 supplemental security income cost of living increases for eligibility determinations made on or after January 1, 1999, for state supplementation applicants and recipients. The state supplementation recipients residing in personal care or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services.

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

(c) If detrimental effect would result, explain detrimental effect: Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any supplemental security income benefit increases to state supplementation recipients. This amended administrative regulation includes the 1999 cost of living increases to place Kentucky in compliance with federal supplemental security income guideline. In order to be in compliance, we must assure that the state supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Title XIX (Medicaid).

(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: 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: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any cost of living supplemental security income benefit increases to state supplementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all state supplementation recipients as set forth through an agreement with the Department of Health and Human Services.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 416.2096.

2. State compliance standards. This amended administrative regulation includes the 1999 cost of living increases to place Kentucky in compliance with federal supplemental security income guideline.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in supplemental security income benefits to state supplementation recipients.

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

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

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee

KENTUCKY LEGISLATIVE ETHICS COMMISSION  
(As Amended at ARRS, January 12, 1999)

~~2 KAR 2:010. Required forms. [Legislative agent or employer registration statement, legislative agent's updated registration statement, legislative agent's notice of termination of engagement, employer's updated registration statement, employer's notice of termination of engagement.]~~

RELATES TO: KRS 6.666(6) to (13), 6.807, 6.821, 6.824, 6.827  
STATUTORY AUTHORITY: KRS 6.666(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.807 requires each legislative agent and employer to file an initial registration statement, periodic updated registration statements, and a notice of termination of engagements. This administrative regulation incorporates by reference the required forms.

Section 1. Definitions. [(1)] "Personal expenses" means expenses ~~that [which] are not:~~

(1) ~~[neither]~~ Reimbursable to the legislative agent by the employer; or

(2) ~~[-nor]~~ Deductible as a business expense under the Internal Revenue Code.

Section 2. Employer's Forms. (1) The employer shall include the information specified by this section on the:

(a) "Employer's Updated Registration Statement"; and

(b) "Employer's Notice of Termination of Engagement".

(2)(a) Source of funds and financial resources ~~that [on the employer's updated registration statements (revised 7/15/96)] shall mean reporting such funds and resources which~~ are designated primarily for lobbying-related expenditures shall include [by] the name and address of the contributor.

(b) ~~[However,]~~ Lobbying-related funds obtained from a [deriving] pro rata assessment for [from] general membership dues [assessed] by an association ~~[by some standard method]~~ shall not require the reporting of the names and addresses of members.

(c) ~~[All other]~~ Funds and financial resources may be reported by types of categories, such as "membership dues", "contributions", "grants", "interest", and "scholarships".

(d) ~~[-and the like. In either case,]~~ Records shall be maintained in such a way that a more detailed accounting can be made if requested.

Section 3. [2:] The completed registration forms and termination forms required by KRS 6.807 shall be mailed or delivered to the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601.

Section 4. Incorporation by Reference. [3:] (1) The following documents are incorporated by reference:

(a) "Initial Legislative Agent/Employer Registration Statement (11/98)";

(b) "Legislative Agent's Updated Registration Statement (11/98)";

(c) "Legislative Agent's Notice of Termination of Engagement (11/98)";

(d) "Employer's Updated Registration Statement (11/98)"; and

(e) "Employer's Notice of Termination of Engagement (11/98)"; ~~are incorporated by reference on July 15, 1996].~~

(2) These documents may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman

PAULA K. PABON, Legal Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

KENTUCKY LEGISLATIVE ETHICS COMMISSION  
(As Amended at ARRS, January 12, 1999)

2 KAR 2:020. Statement of financial disclosure.

RELATES TO: KRS 6.787 [6.781 to 6.797]

STATUTORY AUTHORITY: KRS 6.666(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.781 requires [all] a member [members] of the General Assembly, [all] a candidate or nominee [candidates and nominees] for election to the General Assembly, and an individual with major management responsibility [personnel] in the legislative branch of state government to file statements of financial disclosure. This administrative regulation establishes the required form.

Section 1. The "Statement of Financial Disclosure" required by KRS 6.781 shall be mailed to the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, ~~[Room 318, Capitol Annex,]~~ Frankfort, Kentucky 40601.

Section 2. (1) The "Statement of Financial Disclosure (11/98)" is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, ~~[Room 318, Capitol Annex,]~~ Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman

PAULA K. PABON, Legal Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

KENTUCKY LEGISLATIVE ETHICS COMMISSION  
(As Amended at ARRS, January 12, 1999)

2 KAR 2:040. Updated registration short forms for employers and legislative agents.

RELATES TO: KRS 6.666(6) to (13), 6.807, 6.821, 6.827

STATUTORY AUTHORITY: KRS 6.666(5), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 6.807(3) requires an employer or legislative agent registered with the Legislative Ethics Commission to file periodic updated registration forms. This administrative regulation establishes the short forms to be used by an employer or legislative agent if there is no expenditure or expense to be reported. [that all] [employers and legislative agents registered with the Legislative Ethics Commission to file periodic updated registration forms. There are reporting periods in which there are no expenditures or expenses to be reported. This administrative regulation establishes the short forms to be used by employers and legislative agents if there are no expenditures or expenses to be reported.] [certain prerequisites are met.]

Section 1. (1) The "Legislative Agent's Updated Registration Statement, Short Form" may be filed by a legislative agent if, during a reporting period, he did not:

(a) Expend sums for lobbying activities during a reporting period; and

(b) Engage in a financial transaction governed by KRS 6.824.

(2) The "Employer's Updated Registration Statement, Short Form" may be filed by an employer if, during a reporting period, he:

(a) Did not:

1. Expend sums for lobbying activities during a reporting period;

and

2. Engage in a financial transaction governed by KRS 6.824;

and



(b) Paid only compensation to a legislative agent.

(3) The "Legislative Agent's Updated Registration Statement, Short Form" shall include:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Name of employer; and

(e) The bills or resolutions lobbied during the reporting period.

(4) The "Legislative Employer's Updated Registration Statement, Short Form" shall include:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Name and position of person completing the form;

(e) Source of funds and financial resources;

(f) Name(s) of legislative agent(s) and compensation accrued during reporting period;

(g) Bills or resolutions lobbied during the reporting period; and

(h) Names of legislative agents terminated since last reporting period.

Section 2. (1) The "Legislative Agent's Updated Registration Statement, Short Form" [Employer Short Form and Legislative Agent Short Form] shall be mailed to the Legislative Ethics Commission at 22 Mill Creek Park, Frankfort, Kentucky 40601.

(2) The "Legislative Employer's Updated Registration Statement, Short Form" shall be mailed to the Legislative Ethics Commission at 22 Mill Creek Park, Frankfort, Kentucky 40601.

Section 3. Incorporation by Reference. [2:] (1) The following forms are incorporated by reference:

(a) "Legislative Agent's Updated Registration Statement, Short Form (11/98)"; and

(b) "Employer's Updated Registration Statement, Short Form (11/98)". [Employer Short Form and Legislative Agent Short Form (1996) are incorporated by reference.]

(2) These documents may be inspected, copied, or obtained at the Kentucky Legislative Ethics Commission, 22 Mill Creek Park, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

JUDGE CHARLES B. LESTER, Chairman

PAULA K. PABON, Legal Counsel

APPROVED BY AGENCY: November 10, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

**SECRETARY OF STATE**  
(As Amended at ARRS, January 12, 1999)

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

RELATES TO: KRS 14.150, 355.2A-103, 355.9-105, 355.9-401A, 355.9-402, 355.9-403, 355.9-404, 355.9-405, 355.9-406

STATUTORY AUTHORITY: KRS 14.150, 355.9-105(1)(i), 355.9-401A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 14.150 establishes the Kentucky Lien Information System. This administrative regulation **establishes** [sets forth] the requirements for implementing KRS 14.150, 355.9-401A and 355.9-105.

Section 1. **Filing Requirements. A statement filed pursuant to KRS 355.9-401A shall be sent to the Secretary of State, UCC Filings, P.O. Box 1470, Frankfort, Kentucky 40602-1470.**

(1) **The financing statement**, [Form of Statements: The form of a financing statement,] amendment, assignment, continuation, release, or termination filed pursuant to KRS 355.9-401A shall be a file-stamped copy of the statement that has been filed with the county clerk pursuant to KRS 355.9-401, 355.9-402, 355.9-403, 355.9-404, 355.9-405 or 355.9-406.

(2) If the file-stamped copy does not indicate the location of filing, the secured party shall state the county of filing on a transmit-

tal letter accompanying the statement and filing fee.

(3) **If [When]** the proper place to file a statement under KRS 355.9-401, 355.9-402, 355.9-403, 355.9-404, 355.9-405 or 355.9-406 is the **Office of the** Secretary of State, a filing made with the Secretary of State shall serve as a filing pursuant to KRS 355.9-401A and the one (1) dollar filing fee shall not be required. [All statements filed pursuant to KRS 355.9-401A shall be sent to the Secretary of State, UCC Filings, P.O. Box 1470, Frankfort, Kentucky 40602-1470.]

Section 2. Identification Number of Individual. (1) The identification number for an individual shall be:

(a) The person's Social Security number; or

(b) Designation consisting of the first three (3) characters of the individual's last name and date of birth in the format mm/dd/yy. If an individual has only two (2) characters in his last name, the letter Z shall be used as the last character.

(2) An individual shall not be required to provide a Social Security number as an identification number.

Section 3. Time of Filing. A secured party shall have twenty (20) business days from the date the statement **was** [is] filed with the county clerk to file a file-stamped copy of the statement with the Secretary of State pursuant to KRS 355.9-401A.

Section 4. [Effective Date: The requirement to file statements pursuant to KRS 355.9-401A shall begin on January 4, 1999.]

Section 5: Penalty. A secured party shall be fined \$100 for failure to file a statement pursuant to KRS 355.9-401A within twenty (20) business days from the date the statement **was** [is] filed with the county clerk.

JOHN Y. BROWN III, Secretary of State

MARYELLEN B. ALLEN, General Counsel

APPROVED BY AGENCY: October 7, 1998

FILED WITH LRC: October 12, 1998 at 11 a.m.

**GENERAL GOVERNMENT CABINET**  
**Kentucky Commission on Military Affairs**  
(As Amended at ARRS, January 12, 1999)

**202 KAR 5:010. Criteria for allocation of grant money.**

RELATES TO: KRS 154.12-203(2), (9)

STATUTORY AUTHORITY: KRS 154.12-203(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 154.12-203(9) authorizes the Kentucky Commission on Military Affairs to promulgate administrative regulations [as prescribed by KRS Chapter 13A]. This administrative regulation establishes the purpose of the grant program, **and** [as well as] the criteria **for receiving** [which must be met to receive] a grant allocation.

Section 1. Definitions. [For the purposes of this administrative regulation:] (1) "Advocacy **project**" means a project that includes [projects]-projects which include] the scrutiny of, or the proposing of legislation which affects the military missions and commands of the Commonwealth;

(2) "Civilian service **project**" means a project that promotes:

(a) [projects]-projects which promote] Attracting military retirees and recently separated military personnel to locate in the Commonwealth;

(b) Tourism; or

(c) [-and] Historic preservation;

(3) "Commission" means the Kentucky Commission on Military Affairs;

(4) "Committee" means the Executive Committee of the Kentucky Commission on Military Affairs;

(5) "Community interface **project**" means a project that **promotes or enhances** [projects]-projects which promote or enhance] regional or local civic or [f] military relations;

(6) "Economic development **project**" means a project that

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

invests [~~projects~~ ~~projects which invest~~] in the qualified development of former military base properties, and helps [~~help~~] to attract new, or expand existing military missions and commands;

(7) [~~"Fiscal year"~~ means July 1 to June 30;

(8) "Infrastructure project" means a project that supports [~~projects~~ ~~projects which support~~] public infrastructure improvements such as roads, water, sewer, or utilities near military bases, commands, operations, or activities;

(8) [(9)] "Other project" means a project that:

(a) Does [~~projects~~ ~~these projects which do~~] not fit within economic development, infrastructure, community interface, civilian service, statutory, or advocacy projects; and

(b) Meets [~~but meet~~] the qualifications of KRS 154.12-203(2);

(9) [(10)] "Statutory project" means a project that:

(a) Addresses [~~projects~~ ~~projects that address~~] zoning actions to facilitate local land use planning; or

(b) Helps [~~and projects to help~~] effect environmental problems.

Section 2. Program Objective. The program objective shall be to promote community [~~and~~] or local government participation in preserving and enhancing military commands and missions in the Commonwealth of Kentucky.

Section 3. Eligible Applicant. An applicant shall:

(1) Be:

(a) A city, county, or urban county government;

(b) Nonprofit economic development organization;

(c) Chamber of commerce;

(d) Citizen group; or

(e) Another group that has demonstrated an interest in enhancing the public awareness of the economic importance of military activities in the Commonwealth; and

(2) Submit a completed "Community Grant Application Form" to the Kentucky Commission on Military Affairs. [~~Applicants. City, county, and urban county governments, nonprofit economic development organizations, chambers of commerce, citizens groups, and other groups that have demonstrated an interest in enhancing the public awareness of the economic importance of military activities in the Commonwealth.]~~

Section 4. Eligible Project. A project that seeks [~~Projects. Projects which are seeking~~] grant money shall [~~must~~] fall within one (1) of the following areas:

(1) Economic development project;

(2) Infrastructure project [~~projects~~];

(3) Community interface project [~~projects~~];

(4) Civilian service project [~~projects~~];

(5) Statutory project [~~projects~~];

(6) Advocacy project [~~projects~~];

(7) Other project [~~projects~~].

Section 5. Allocation of Grant Money. (1) On July 1 of each year, staff shall [~~will~~] mail the amount of grant money available for that fiscal year to all eligible applicants.

(2) The grant amount shall be allocated in an amount between [~~no less than~~] \$500 and [~~shall not exceed~~] \$50,000. An exceptional project [~~Exceptional projects~~] requiring greater than \$50,000 shall [~~will~~] be considered.

Section 6. Committee Meetings. The executive committee shall meet as necessary to allocate grant money. Special meetings may be held on the call of the committee chair.

Section 7. Method of payment. (1) An applicant shall enter into a memorandum of agreement with the commission prior to the transfer of grant money and after the project has been approved by [~~received approval from~~] the executive committee.

(2)(a) A grant approved in an amount under [~~not to exceed~~] \$5,000 shall be allocated in one payment of 100 percent upon the execution of the memorandum of agreement.

(b) A grant approved in an amount over [~~exceeding~~] \$5,000 shall be allocated in a payment of seventy-five (75) percent upon execution of a memorandum of agreement, with the remaining

twenty-five (25) percent upon submission of a progress report.

Section 8. Applicant Responsibilities. (1) An applicant shall [~~Applicant must~~] provide a progress report after fifty (50) percent of the project is complete.

(2) A final report shall [~~must~~] be filed upon completion of the project, which shall include financial documentation of project costs.

(3) Exceptional project [~~projects~~] receiving over \$50,000 shall [~~will~~] be required to submit monthly progress reports.

Section 9. Delegation of Functions. The committee shall review and allocate all requests for grant money. The committee shall not delegate authority to make allocations of grant money [~~to staff except in cases of surplus grant money. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.~~].

Section 10. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) Community Grant Program Application Form, January 1999, Kentucky Commission on Military Affairs [~~Grant application~~];

(b) Grant Memorandum of Agreement, January 1999, Kentucky Commission on Military Affairs.

(2) [~~Copies of~~] The forms may be inspected, copied or obtained at the Kentucky Commission on Military Affairs, Suite 66 Wilkinson Boulevard, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

ANNA CARYL GUFFEY, Chair

MICHAEL ALEXANDER, General Counsel

APPROVED BY AGENCY: October 13, 1998

FILED WITH LRC: October 14, 1998 at 1 p.m.

### JUSTICE CABINET

Kentucky Law Enforcement Council  
(As Amended at ARRS, January 12, 1999)

#### 503 KAR 1:060. Definitions for 503 KAR Chapter 1.

RELATES TO: KRS 15.330, 15.450(1)

STATUTORY AUTHORITY: KRS 15.330(1)(g), 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.560 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations. This administrative regulation defines terms used in 503 KAR Chapter 1. [~~KRS 15.330 authorizes the Kentucky Law Enforcement Council to prescribe standards for schools conducting law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992, and to approve law enforcement officers and other persons as having met requirements under KRS 15.310 to 15.510 and 15.990 to 15.992, [by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund.] This administrative regulation provides definitions of certain terms used in 503 KAR Chapter 1, which pertain [pertains] to council regulation of such training and certification.] [This administrative regulation also repeals the administrative regulations previously in this chapter.]~~

Section 1. Definitions. (1) "Applicant" means an individual seeking certification pursuant to KRS 15.380 to 15.402 from the council as a peace officer through a law enforcement agency.

(2) "Approval" means the act of the council in deciding that the requirements for a law enforcement officer, school, or instructor, pursuant to KRS 15.310 to 15.510 and 15.990 to 15.992, have been met.

(3) "Certification" means:

(a) Approval by the council; and

(b) Issuance of a certificate from the council as evidence of its approval.

(4) "DOCJT" means the Department of Criminal Justice Training.

(5) "Fund" means the Law Enforcement Program Fund of

the Kentucky Justice Cabinet as established in KRS 15.340.

(6) "Fund administrator" means the person responsible for administering the Law Enforcement Foundation Program Fund.

(7) "POPS" means the Executive Staff Advisor of the Office of Peace Officer Professional Standards, an administrative branch of the council, located at 415 Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102.

(8) "Recognized school" means a school that has not been certified by the council (e.g., an out-of-state school), but considered to provide training equal to or greater than similar training offered by the department.

(9) "Recruit" means a person attending the basic training course conducted by the basic training section of the Department of Criminal Justice Training.

(10) "Significant life change" means divorce, change in employment, death of a family member, change of residence, bankruptcy or other economic hardship, or other modification which has substantial impact on an individual.

(11) "Trainee" means a person attending a training course (other than the law enforcement basic training course) conducted by a training section of the Department of Criminal Justice Training. [The following definitions shall apply in this chapter:

(1) "Secretary" means the Secretary of the Kentucky Justice Cabinet.

(2) "Department" means the Department of Criminal Justice Training (DOCJT) of the Kentucky Justice Cabinet.

(3) "Council" means the Kentucky Law Enforcement Council (KLEC) as established in KRS 15.315.

(4) "Fund" means the Law Enforcement Foundation Program Fund of the Kentucky Justice Cabinet as established in KRS 15.430.

(5) "Fund administrator" means the person responsible for administering the fund. KRS 15.450(1) provides that the fund shall be administered by the secretary or his designated representative.

(6) "Approval" means the act of the council in deciding that requirements have been met. KRS 15.330(1)(a) and (b) authorize the council to "approve" the adequacy of schools, and of instructors at such schools, that provide courses for gaining or retaining eligibility to participate in the fund. KRS 15.330(1)(e) authorizes the council to "approve" persons as having met training requirements.

(7) "Certification" means "approval" of the council plus the issuing of a certificate as evidence of council approval. KRS 15.330(1)(d) authorizes the council to "certify" schools and instructors as meeting requirements for conducting courses for gaining or retaining eligibility to participate in the fund.

(8) "Certified school" means a school which the council has been approved by the council to conduct courses required to gain or retain eligibility to participate in the fund and which has been issued a certificate as evidence of the council's approval.

(9) "Recognized school" means a school which the council has not certified (e.g., the school is out-of-state), but which the council considers to provide training at least equal to the equivalent training offered by the department.

(10) "Certified instructor" means a person who has been approved by the council to instruct at certified schools and to whom the council has issued a certificate as evidence of its approval.

(11) "Trainee" means a person participating in training as a student.]

JOHN THORPE, Chair

DENNIS G. MILLS, Executive Director

STEPHANIE C. BINGHAM, Attorney

APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

JUSTICE CABINET  
Kentucky Law Enforcement Council  
(As Amended at ARRS, January 12, 1999)

503 KAR 1:080. Certification of schools.

RELATES TO: KRS 15.330(1)(a), (d)

STATUTORY AUTHORITY: KRS 15.330(1)(g), 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(a) authorizes the Kentucky Law Enforcement Council to prescribe standards for approval and continuation of approval of schools which conduct law enforcement training courses required under KRS 15.310 to 15.510 and 15.990 to 15.992, [by KRS 15.440 for police officers in order for them to gain or retain eligibility to participate in the Law Enforcement Foundation Program Fund.] KRS 15.330(1)(d) authorizes the council to issue certificates to a law enforcement training school [such schools]. This administrative regulation prescribes standards and procedures for [such] approval and certification [for certifying such approval].

Section 1. Application Procedures. (1) An [Any] agency, group or individual may apply [make application] to the council to establish:

- (a) A certified basic training school;
- (b) A certified in-service training school; or
- (c) Both.

(2) The application [All applications] shall:

- (a) Be [made] in writing on a KLEC Form 3 "School Certification Application"; and
- (b) Include information prescribed by the council regarding the:

- 1. Curriculum;
- 2. Instructors;
- 3. Facilities; and

4. Equipment. [shall set forth detailed facts as prescribed by the council and shall include, but not be limited to: the curriculum, the instructors, the facilities, and the equipment. [(The school certification application form, KLEC Form 3, is available from and should be submitted to, the Kentucky Law Enforcement Council;] [, Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.]]

Section 2. Review of Application. (1) Upon receiving a properly completed application for certification of a school, the council shall:

- (a) Conduct an on-site inspection of the facility and equipment; and
- (b) [shall] Thoroughly examine the curriculum and instructors of the applying school.

(2) [The council shall] In the course of its inspection, the council shall determine whether the applying school offers training at least equal to the equivalent training provided by the department based upon the following criteria:

- (a) Staff:
  - 1. Adequate administrative and supportive staffing;
  - 2. Number of full-time instructors;
  - 3. Number of part-time instructors; and
  - 4. Certification of all instructors, including guest instructors.

- (b) Curriculum:
  - 1. Type of training to be offered; and
  - 2. Certification of all curricula.

- (c) Training aids:
  - 1. Use of an outline, study guide, handouts, and similar class material;

- 2. Availability of training aids including:
  - a. Chalk or white board;
  - b. Flip chart and easel;
  - c. Charts;
  - d. Enlarged photographs;
  - e. Scale models;
  - f. Thirty-five (35) millimeter slide projector;
  - g. Screen;
  - h. Video projector;
  - i. Monitors;
  - j. Satellite dish capability; and
  - k. Distance learning capability.

- (d) Hours and capacity:
  - 1. Number of students that can be trained annually;
  - 2. Number of times annually that a course is offered;
  - 3. Maximum number of students per class; and
  - 4. Hours of operation.

(3) The council shall determine whether the applying school's personnel, facilities, and procedures meet minimum

standards for safety and quality based upon the following criteria:

- (a) Physical facilities:
    1. Type and age of buildings;
    2. Number of classrooms;
    3. Adequate heating, air conditioning, and ventilation;
    4. Adequate lighting;
    5. Adequate furniture;
    6. Available library with adequate number of copies of standard reference material necessary for subject matter taught;
    7. Available physical training facilities.
  - (b) Firearms range:
    1. Location;
    2. Distance from classroom;
    3. Travel time from classroom to range;
    4. Available transportation to range;
    5. Types of courses available (bullseye, silhouette, combat, or other practical shooting course);
    6. Range rules posted and enforced;
    7. Certified firearms instructor present at all training sessions;
    8. Established and enforced safety precautions for loading and storing of ammunition;
    9. Backstop which will contain slugs and prevent ricochets.
- (4) An applying school shall not be certified if found to be deficient in any of the above areas. [The council shall also determine whether the applying school's personnel, facilities, and procedures meet minimum standards for safety and quality. Applying schools which have been found to be deficient in any area shall not be certified.]

Section 3. Approval Procedure. The council, at its first regular meeting after the evaluation has been completed, shall vote whether to approve the applying school.

Section 4. Notification of Council Action; Certification. (1) [Within thirty (30) days of the council's vote,] The council shall notify [in writing] the applying school and [the] fund administrator within thirty (30) days whether the [applying] school is [was] approved.

(2) If an applying school is [has been] approved, the council shall issue a certificate stating:

- (a) That the [applying] school has been certified; and
- (b) That the school offers:
  1. Basic training;
  2. In-service training; or
  3. Both. [the type of training course(s) that shall be offered, basic or in-service or both.]

Section 5. Inspections. A [Any] school certified by the council shall be subject to inspection by the council to determine if the school is maintaining the standards required for certification.

Section 6. Revocation of Certification. (1) A school's certification shall be revoked by the council if [whenever] a school has been found not to have maintained the standards required for certification.

(2) If certification is revoked, the school and the fund administrator shall be notified of the revocation by the council within fifteen (15) days. The council shall not recertify a school until the deficiency has [only when the council has determined that all deficiencies have] been corrected.

**Section 7. Incorporation by Reference.** (1) KLEC Form 3 "School Certification Application", (eff. 8/12/98), Kentucky Law Enforcement Council, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Law Enforcement Council, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3137, Monday through Friday, 8 a.m. to 4:30 p.m.

JOHN THORPE, Chair  
DENNIS G. MILLS, Executive Director  
STEPHANIE C. BINGHAM, Attorney  
APPROVED BY AGENCY: August 14, 1998

FILED WITH LRC: August 14, 1998 at noon

**JUSTICE CABINET**  
**Department of Juvenile Justice**  
**Division of Quality Assurance, Evaluation**  
**and Program Development**  
**(As Amended at ARRS, January 12, 1999)**

**505 KAR 1:010. Definitions.**

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with KRS 15A.300, the Department of Juvenile Justice is required to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs therein. This administrative regulation sets forth definitions that apply to this chapter.

Section 1. Definitions. (1) "Commissioner" means the Commissioner of the Department of Juvenile Justice.

(2) "Community Juvenile Justice Partnership Grant Program" means the grant program utilizing state general funds for a local community to support the development of a prevention program.

(3) "Council" means the local juvenile delinquency prevention council whose members are appointed by the Commissioner of the Department of Juvenile Justice.

(4) "Department" means the Department of Juvenile Justice.

[(4) "Local community" means the area represented by the council.]

(5) "Juvenile Justice Advisory Board" means the board created by KRS 15A.065.

(6) "Juvenile Justice Advisory Committee" means the advisory committee created pursuant to executive order that is responsible for grant programs funded under the Juvenile Justice Delinquency Prevention Act of 1974.

(7) "Local community" means the area represented by the council.

(8) "Plan year" means the period beginning on the first day of the month in which the commissioner approves a council's comprehensive three (3) year plan, and ending on the last day of the month immediately prior to the month in which the plan year started.

(9) "Regional director" means the Department of Juvenile Justice Regional Director for the area in which the council is based.

[(9) "Community Juvenile Justice Partnership Grant Program" means the grant program utilizing state general funds for local communities to support the development of prevention programs.]

RALPH E. KELLY, Ed.D., Commissioner  
MICHAEL KEITH HORN, Office of General Counsel  
APPROVED BY AGENCY: November 12, 1998  
FILED WITH LRC: November 12, 1998 at 3 p.m.

**JUSTICE CABINET**  
**Department of Juvenile Justice**  
**(As Amended at ARRS, January 12, 1999)**

**505 KAR 1:040. Policy and procedures manual.**

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:95 CV-757-S (W.D.KY. 1995), EO 96-1576

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.50, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, EO 96-1576, *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:95 CV-757-S (W.D. 1995)

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-

# VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 15A.160 authorizes the Justice Cabinet to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the Department of Juvenile Justice in the implementation of a statewide juvenile services program, and to implement currently required provisions of a consent decree entered December 4, 1995, by the United States District Court of Kentucky in *United States of America v. Commonwealth of Kentucky*, et al., Civil Action No. 3:CV-757-S (W.D.KY. 1995) and EO 96-1576.

Section 1. Incorporation by Reference. (1) The "Department of Juvenile Justice Policy and Procedures, 1998 Edition" is incorporated by reference and includes the following:

102	<u>Professional Practices</u>
104	<u>Code of Conduct</u>
106	<u>On-call Staff Coverage</u>
106.1	<u>Attendance At professional Meetings</u>
106.2	<u>Staff Meetings</u>
106.3	<u>Criminal History Checks on All Personnel</u>
106.4	<u>Replacement of Damaged or Destroyed Personal Property</u>
106.5	<u>Duty Office/On-call</u>
106.6	<u>Equal Employment Opportunity</u>
106.7	<u>Tuition Assistance Program</u>
107	<u>Fiscal Management</u>
106.8	<u>Ombudsman</u>
109	<u>Employee Exit Interview</u>
110	<u>General Security Guidelines</u>
111	<u>Use of Vehicles</u>
112	<u>Volunteers</u>
113	<u>Weather Emergency</u>
119	<u>News Media Contacts</u>
121	<u>Interviews with Youth by Attorneys or Law Enforcement Officials</u>
123	<u>Quarterly and Annual Reports</u>
125	<u>Inventory Control</u>
127	<u>Research Projects</u>
132.1	<u>Open Records Law</u>
133	<u>Case Records</u>
139	<u>Use of Tobacco</u>
140	<u>Reporting of Special Incidents</u>
142	<u>Staff Involved in Abuse Allegations</u>
145	<u>Quality Assurance Monitoring Program</u>
146	<u>Investigations</u>
147	<u>Death of a Youth</u>
148	<u>Formulation and Revision of Operating Procedures</u>
149	<u>Management Information Systems</u>
200	<u>Criteria for Admissions</u>
201	<u>Placement</u>
202	<u>Waiting List</u>
204	<u>Daily Census and Population</u>
206	<u>Administrative Transfers</u>
208	<u>Youth Rights</u>
209	<u>Access to Outside Investigative Units</u>
210	<u>Interstate Referrals</u>
211	<u>Interstate Runaways, Escapees and Absconders</u>
212	<u>Interstate Out-of-state-purchase of Care</u>
213	<u>Interstate Travel</u>
214	<u>Interstate Revocations and Case Closure</u>
300.1	<u>Communication and Correspondence</u>
300.2	<u>Youth's Personal Belongings</u>
302	<u>Individualized Treatment Planning</u>
303	<u>Treatment Team Composition, Functioning and Responsibility</u>
304	<u>Individual Counseling</u>
305	<u>Group Counseling</u>
306	<u>Phase System</u>
307	<u>Treatment Techniques</u>

309	<u>Family Involvement in Treatment Process</u>
309.1	<u>Professional Oversight</u>
310	<u>Community Contacts</u>
314	<u>Youth Council</u>
315	<u>Use of Nongovernmental Funds and Youth Activity Funds</u>
316	<u>Youth Chore and Work Assignments</u>
317	<u>Recreation</u>
318	<u>Behavior Management</u>
318.1	<u>Discipline</u>
319	<u>Required Staffing for Supervision of Juveniles</u>
322	<u>Management of the Aggressive Youth</u>
323	<u>Isolation</u>
321	<u>Critical Incident Reports</u>
324	<u>Restraints</u>
325.1	<u>Searches</u>
327	<u>AWOL/Escape</u>
329	<u>Progress Notes</u>
331	<u>Grievance Procedure</u>
332	<u>Youthful Offender Parole</u>
333	<u>Youthful Offender Transfer</u>
400	<u>Health Services</u>
401	<u>Administration/Personnel</u>
401.1	<u>Medical Director</u>
402	<u>Access to Treatment; consultation; Health Records; Sharing Information and Notification</u>
404	<u>Health Maintenance Service Delivery</u>
407	<u>Pharmaceutical Services</u>
415	<u>OSHA Coordinator</u>
416	<u>Health Services: Blood-borne Pathogens/HIV/AIDS infection</u>
417	<u>Suicide Prevention</u>
420	<u>Log and Shift Reports</u>
421	<u>Youth Movement</u>
422	<u>Contraband</u>
423	<u>Bed Checks</u>
424	<u>Emergency Plans</u>
425	<u>Sanitation and Hygiene Inspections</u>
426	<u>Dietary Services</u>
427	<u>Maintenance</u>
427.1	<u>Control and Use of Tools</u>
428	<u>Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials</u>
429	<u>Safety and Emergency Procedures - Fire Safety Training</u>
430	<u>Specialized Training and Certification</u>
431	<u>Intake, Case Registration and Planning</u>
600	<u>Commitment</u>
600.1	<u>Conviction as a Youthful Offender</u>
600.2	<u>Transportation of Committed Youth</u>
600.3	<u>Predisposition/Presentence Investigation</u>
601	<u>Probation</u>
603	<u>Termination of Probation</u>
605	<u>Out-of-home Placements</u>
606	<u>Out-of-home Initial Case Planning</u>
606.3	<u>Placement with Relative</u>
608	<u>Private Child Care Referral</u>
609	<u>Independent Living</u>
610	<u>Residential Placement</u>
611	<u>Placement in Psychiatric Care</u>
611.1	<u>Detention</u>
611.2	<u>Youth Awaiting Placement</u>
612	<u>Youth in Placement</u>
613	<u>Authorized Leave</u>
614	<u>AWOL</u>
615	<u>Placement Planning</u>
616	<u>Supervised Placement/Aftercare</u>
617	<u>Youthful Offender Preparole Placement Evaluation</u>
617.1	<u>Supervised Placement Revocation</u>
620	<u>Juvenile Sex Offender</u>
626	<u>Sex Offender Tracking</u>
627	<u>Meritorious Good Time</u>
628	

**629 Discharge from Commitment**

(2) It may be inspected, copied, or obtained in any department field office, and at the Office of the Commissioner between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. [The Justice Cabinet Policy and Procedures Manual, 1998 Edition, is incorporated by reference.]

(2) Copies of the Department of Juvenile Justice Policy and Procedures Manual may be inspected, copied or obtained in any department field office or at the Office of the Commissioner, Department of Juvenile Justice, 320 West Main Street, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.]

RALPH E. KELLY, Ed.D.

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 11, 1998 at 2 p.m.

**JUSTICE CABINET  
Department of Juvenile Justice  
Division of Quality Assurance, Evaluation  
and Program Development  
(As Amended at ARRS, January 12, 1999)**

**505 KAR 1:050. Local juvenile delinquency prevention councils: formation procedure.**

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300(6)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.300 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs operated in conjunction with the local juvenile delinquency prevention councils. This administrative regulation sets forth the procedure for forming councils.

**Section 1. Council Membership. (1) A council encompassing a city of the first class or an urban county government shall include, in addition to those persons designated in KRS 15A.300(2):**

**(a) The county judge executive or his representative; and**

**(b) The mayor or his representative.** [A council may be formed by the department or by a county or by two (2) or more contiguous counties for the purpose of encouraging the initiation of, or supporting ongoing, cooperation and collaboration in addressing juvenile crime.]

**Section 2. Council Membership. (1) The membership of a council shall include, at a minimum, the following:**

**(a) A representative from a local law enforcement agency;**

**(b) A representative from the local school system;**

**(c) A representative from the Department for Social Services;**

**(d) A representative from the Court of Justice;**

**(e) The Commonwealth's Attorney or the Commonwealth Attorney's designee;**

**(f) The county attorney or the county attorney's designee;**

**(g) A representative from a county juvenile detention facility, if the area in which the council is being formed has a juvenile detention facility;**

**(h) A representative from the Department for Public Advocacy; and**

**(i) In cities of the first class and urban county governments, the county judge executive and the mayor or their appointed designees.]**

**(2) Councils may include members representing groups or individuals interested in juvenile delinquency and prevention not specified in KRS 15A.300(2) or subsection (1) of this section, including:**

**(a) Juvenile justice agencies;**

**(b) Religious organizations;**

**(c) Fraternal organizations;**

**(d) Nonprofit organizations;**

**(e) Social service organizations involved in juvenile crime prevention;**

**(f) The business community;**

**(g) Youth organizations;**

**(h) Local government;**

**(i) Mental health agencies; and**

**(j) Interested citizens.** [specifically listed above, including juvenile justice agencies, religious, fraternal, nonprofit, or social service organizations involved in juvenile crime prevention, the business community, youth, local government, mental health agencies, and interested citizens.]

(3) If the group seeking to establish or certify a council represents more than one (1) county, proposed council membership shall reflect representation from all participating counties. Representation from each participating county in each mandatory area **shall not be** [is not] required.

**(4)(a)** Council membership shall not exceed eighteen (18) members unless:

**1. [(a)]** The group seeking designation as a council is an existing group with existing membership that exceeds eighteen (18); **or**

**2. [members or]** The group demonstrates that additional members are needed to provide adequate representation of interested and involved individuals and entities.

**(b) A [Any]** group seeking to expand council membership beyond eighteen (18) [members] shall submit a letter to the commissioner explaining why the membership should be expanded.

**(c)** The commissioner shall:

**1. Grant a waiver if the group demonstrates that additional members are needed to provide adequate representation of interested and involved individuals and entities; and**

**2. Submit a written decision to the applicant group within thirty (30) days of initial application.** [determine whether to permit a waiver, and shall communicate his or her response to the group in writing.]

**(5)(a)** The Juvenile Justice Advisory Board and the Juvenile Justice Advisory Committee may appoint one (1) or more of their members to serve as ex officio members of a local council.

**(b) An** ex officio member [members] shall not be included in determining the size of the council under subsection (4) of this section.

**Section 2. [3:] Council Formation and Approval. (1)** Recommended names and addresses of individuals and entities who have agreed to serve on the council shall be submitted to the regional director.

**(2)** The regional director shall verify that the proposed council meets the representation requirements established by KRS **15A.300(2)** [Chapter 15A] and this administrative regulation, and shall submit the verified list of proposed council members to the commissioner for final approval.

**(3)** The commissioner shall certify approval of each council and its representatives. Individual council members approved by the commissioner shall receive a commission designating the term of appointment.

**(4) For a newly formed council,** [If the council is newly formed,] initial appointments shall provide for staggered terms of two (2), three (3), or four (4) years. Members appointed thereafter shall serve for a term to be determined by the commissioner, **in accordance with KRS 15A.300(2).** [however a term cannot be longer than four (4) years. Council members may be reappointed to successive terms.] The procedure for the appointment of individual council members after the initial certification of the council shall be the same as set forth in [this subsection and] subsections (1) and (2) of this section. Appointments for elected officials shall **expire if the term of office for which the official was elected expires during the term of his appointment to the council. For a newly formed council, the initial chairperson shall be appointed by the commissioner for a term of two (2) years. Thereafter, the chairperson shall be elected by the council membership.** [be for their term of office.]

RALPH E. KELLY, Ed.D., Commissioner

MICHAEL KEITH HORN, Office of General Counsel

APPROVED BY AGENCY: November 12, 1998  
FILED WITH LRC: November 12, 1998 at 3 p.m.

**JUSTICE CABINET**  
**Department of Juvenile Justice**  
**Division of Quality Assurance, Evaluation**  
**and Program Development**  
**(As Amended at ARRS, January 12, 1999)**

**505 KAR 1:060. Local juvenile delinquency prevention councils: operation and duties.**

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300(6)(b), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.300 requires the Department of Juvenile Justice to promulgate administrative regulations that relate to the formation, operation and duties of local juvenile delinquency prevention councils, as well as the administration and operation of the grant programs operated in conjunction with the local juvenile delinquency prevention councils. This administrative regulation relates to the operation and duties of these councils.

Section 1. The Operation of Councils. (1) Each council shall submit proposed [adopt] by-laws[which shall be submitted] to the commissioner for review and approval. The by-laws shall:

(a) Create offices [may provide for such officers] and committees as the council deems necessary;

(b) [and shall] Specify the qualifications, method of selection, and term for each office created; and

(c) Comply with state laws and local ordinances.

(2) The council shall meet at least four (4) times each calendar year.

(3) Meetings shall be open to the public and the council shall be subject to [all] open meetings and open records laws.

(4) Minutes shall be taken at [all] council meetings, and shall be forwarded to the commissioner within thirty (30) days of the meeting date.

(5) Each council shall submit the following to the commissioner:

(a) The resource identification and needs assessment and three (3) year plan, as required by Section 2 of this administrative regulation;

(b) By September 1 of each year, an annual report to include updates to the three (3) year plan and [shall be submitted by September 1 of each year] detailing the activities of the council for the prior fiscal year, as provided in Section 2 of this administrative regulation.

Section 2. Duties of Councils. (1) Each council shall:

(a) Conduct a resource identification and needs assessment every three (3) years. The assessment shall include the collection and analysis of data and a comprehensive review of services available to the community in order to identify local community strengths and needs. The analysis shall identify and discuss barriers to accessing services. The resource identification and needs assessment shall specifically address[at a minimum] the following areas:

1. The existence of or need for alternatives to secure detention;
2. The impact of gangs on the local community;
3. Educational and school related needs;
4. Gender specific services available for the prevention and treatment of delinquency;
5. Community safety needs;
6. Substance abuse education and treatment needs;
7. Mental health services needs;
8. Early childhood prevention programs; and
9. Overrepresentation of minority youth in the juvenile justice system.

(b) Develop a comprehensive three (3) year plan based upon the resource identification and needs assessment conducted under this subsection in order to capitalize on the local community strengths identified, and to address the needs and service gaps identified. The following information shall be included in the comprehensive plan for each identified need:

hensive plan for each identified need:

1. A statement of the identified need;
2. A proposed plan of action to address the identified need;
3. Expected outcomes;
4. Technical assistance needed to accomplish the proposed plan.

(2) [Notwithstanding the provisions of subsection (1) of this section,] If a newly certified council is a previously existing group that already has a comprehensive plan, the council may submit the existing plan to the commissioner for review. If the commissioner determines that the existing plan adequately addresses delinquency and prevention issues, and that it provides clear goals, action plans, and measurable outcomes, the commissioner shall [may] approve the existing plan, even though the plan does not meet the specific requirements established in subsection (1) of this section. A [Any] council submitting a plan for review under this paragraph shall also submit a status report that includes a proposed budget and funding sources for programs or plan elements already in operation. The [total] planning cycle for an alternative plan approved by the commissioner under this subsection [paragraph] shall not exceed three (3) years from the time of its initial adoption by the council. [Annual plan updates and status reports shall be filed by each council. All] Subsequent plans submitted by a council initially operating under an alternative plan shall meet the requirements established in [by] subsection (1) of this section.

(3) If the commissioner determines that it is in the best interest of the local community, he may authorize a council, in its first year of operation, to conduct an abbreviated resource identification and needs assessment and to file a plan covering less than three (3) years. A council that receives [Notwithstanding the provisions of subsection (1) of this section, the commissioner may authorize the council in its first year of operation to conduct an abbreviated resource identification and needs assessment and to file a plan covering less than three (3) years if the commissioner determines that it is in the best interest of the local community to do so. Councils that receive] written authorization to conduct an abbreviated assessment or file a plan covering less than three (3) years shall be eligible to apply for and receive grant funding in accordance with subsection (4) of this section.

(4) A council shall not be eligible to apply for or receive grant funding from the department until the resource identification and needs assessment and three (3) year plan or alternative plan has been filed with and approved by the commissioner. [Thereafter,] For the remaining two (2) years of each planning cycle, the council shall file an annual report with the commissioner, which shall include:

(a) A summary of the status of each plan of action identified in the three (3) year plan;

(b) Three (3) year plan revisions; and

(c) Technical assistance necessary to accomplish the goals established in the three (3) year plan.

(5) Councils shall enter into written local interagency agreements as specified in KRS 15A.300(3)(b), [specifying the nature and extent of contributions that each signatory agency will make in achieving the goals of the local juvenile justice plan and their commitment to the sharing of information useful in carrying out the goals of the interagency agreement to the extent authorized by law.] Copies of these agreements shall be included as a part of the comprehensive three (3) year plan.

(6) A council [Councils] may apply for and receive public or private grants in accordance with KRS 15A.300(3)(d), [to be administered by a local unit of government, that support one (1) or more components of the comprehensive three (3) year plan.]

(7) Councils shall foster the sharing of information in accordance with KRS 15A.300(3)(c), [as authorized by law.]

(8) Councils shall provide a forum as specified in KRS 15A.300(3)(e), [for the presentation of interagency recommendations and the resolution of disagreements relating to the contents of the interagency agreement or the performance by the parties of their respective obligations under the agreements.]

RALPH E. KELLY, Ed.D., Commissioner  
MICHAEL KEITH HORN, Office of General Counsel  
APPROVED BY AGENCY: November 12, 1998



FILED WITH LRC: November 12, 1998 at 3 p.m.

**JUSTICE CABINET**  
**Department of Juvenile Justice**  
**Division of Quality Assurance, Evaluation**  
**and Program Development**  
**(As Amended at ARRS, January 12, 1999)**

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

RELATES TO: KRS 15A.300

STATUTORY AUTHORITY: KRS 15A.300(6)(d)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 15A.300 requires** ~~[In accordance with, KRS 15A.300,]~~ the Department of Juvenile Justice ~~[is required]~~ to promulgate administrative regulations ~~for [that relate to]~~ the formation, operation and duties of local juvenile delinquency prevention councils, ~~and for [as well as]~~ the administration and operation of the grant programs operated in conjunction with the prevention councils. This administrative regulation relates to the administration and operation of the grant programs.

Section 1. The Community Juvenile Justice Partnership Grant Program. (1) To the extent funds are available, the department shall operate the Community Juvenile Justice Partnership Grant Program for the purpose of offering grant funding to local communities to support the development of prevention programs, projects and systems identified by a [the] council through the local community planning process.

(2) The department shall offer several types of grants, including formula grants, competitive grants, and grants of limited scope that focus on specific programs, issues, or geographic locations. ~~[Within the Community Juvenile Justice Partnership Grant Program, the department may offer several types of grant opportunities, including but not limited to formula grants, competitive grants, or grants of limited scope that focus on specific programs, issues or geographic locations. The department may require a local match as a condition for participation in a grant program.]~~

(3) In order to meet grant eligibility requirements, a council shall:

(a) Be in compliance with membership requirements established in 505 KAR 1:050;

(b) Have designated a public agency to administer the grant; and

(c) Have on file with the department:

1. Approved three (3) year or alternative plan, resource identification, and needs assessment;

2. Current required reports and filings; and

3. Copies of interagency agreements entered into pursuant to KRS 15A.300(3)(b). ~~[Specific criteria for each grant program solicitation shall be developed by the department and shall be disseminated by the department to councils that meet the following eligibility requirements at the time the solicitation is issued:~~

(a) ~~The council shall have its resource identification and needs assessment and three (3) year plan or alternative plan on file with and approved by the department;~~

(b) ~~The council shall be current on all required reports and filings with the department;~~

(c) ~~The council shall have designated a city or county government, or the Department of Juvenile Justice to administer the grant;~~

(d) ~~The council shall have on file with the department copies of interagency agreements entered into pursuant to the provisions of Section 4 of 98 HB 455; and~~

(e) ~~The membership of the council shall meet the requirements established by the department.]~~

(4) A solicitation ~~[All solicitations]~~ issued under the Community Juvenile Justice Partnership Grant Program shall be issued by the department. A solicitation ~~[All solicitations]~~ shall include:

(a) A complete description of the program;

(b) The problem or need to be addressed by the program;

(c) Program goals and objectives;

(d) The dollar amount available;

(e) ~~The~~ [and] duration of program;

(f) Eligibility criteria;

(g) Program application requirements;

(h) Procedures and criteria for selection;

(i) Audit requirements; and

(j) Submission requirements.

(5) A response to a solicitation ~~[All responses to solicitations issued by the department]~~ shall be submitted initially to the local council for review, unless the solicitation ~~[issued by the department]~~ specifically requires the proposal to be submitted directly to the department. The council shall review each proposal submitted to it to determine the extent to which the proposal addresses a need identified in the council's plan and the extent to which the proposal meets the requirements established in the solicitation ~~[issued by the department]~~.

(a) Each council shall develop a written process for reviewing and ranking proposals. The review shall include:

1. ~~[, at a minimum,]~~ The extent to which the proposal meets the needs identified in the council's plan;

2. The degree to which diverse groups are involved in the program;

3. The existence of interagency agreements;

4. The number of youth to be served by the program; and

5. The likelihood that the program ~~[, if successful,]~~ can be replicated.

(b) The council shall ~~[rank the proposals received and shall]~~ submit the ranked ~~[all]~~ proposals ~~[received,]~~ along with the ranked list, and a recommendation for funding to the department.

(c) Council members who are affiliated with an ~~[any]~~ agency, public or private, which is applying for Community Juvenile Justice Partnership Grant funds, shall not participate in the review, ranking, or funding recommendations for a group of proposals that includes ~~[include the consideration of]~~ a proposal submitted by the affiliated agency. A council member is affiliated if he or she or an immediate member of his or her family is an employee or board member of the agency submitting the proposal. ~~[funding request.]~~

(6) The department shall review the proposals submitted and the recommendations of the council. The department shall present the recommendations of the council and recommendations of the department to the Juvenile Justice Advisory Board for review. The final funding decision shall be made by the commissioner.

(7) ~~[All grants and subgrants shall be administered by a city or county government, or the Department of Juvenile Justice.]~~ The department shall monitor and audit ~~[all]~~ grants and subgrants awarded under the Community Juvenile Justice Partnership Grant Program.

(8)(a) The department shall make awards directly to the administering agency ~~[city, county]~~ or grant recipient.

(b) The award notification shall include a list of subgrants to be funded, and the amount of funding for each subgrant.

(c) The administering agency ~~[city or county government]~~ shall notify subgrant award recipients in writing of the subgrant within ten (10) days of the administering agency's ~~[city's or county's]~~ receipt of the grant award notification from the department.

(d) The subgrant award recipient shall accept the subgrant award in writing within ten (10) days of the receipt of the subgrant award notice from the administering agency.

(e) ~~[city or county:]~~ The administering agency ~~[city or county]~~ shall notify the department of its acceptance of the grant award within thirty (30) days of receipt of the grant award notice.

(9) A Community Juvenile Justice Partnership Grant or subgrant ~~[Grants and subgrants]~~ shall be awarded for an initial twelve (12) month period, ~~[, with overall project periods from twelve (12) months to thirty-six (36) months.]~~ To receive continuation funding, a grantee or subgrantee ~~[the grantees and subgrantees]~~ shall submit a continuation proposal. Funding after the initial year shall ~~[will]~~ be contingent upon the project meeting the goals identified in the proposal and the availability of funds. A project shall not be funded for more than thirty-six (36) months. ~~[satisfactory performance in the prior year and the availability of funds.]~~

(10) Local prevention programs funded by the department dur-

ing fiscal year 1998-99 ~~shall~~ **[must]** submit a proposal to the local council under the same terms and conditions as other local service providers applying for initial funding. These continuation programs will be evaluated and ranked along with proposals submitted by other local service providers. These continuation programs are eligible for up to ~~[an additional]~~ twenty-four (24) **additional** months of funding.

RALPH E. KELLY, Ed.D., Commissioner  
MICHAEL KEITH HORN, Office of General Counsel  
APPROVED BY AGENCY: November 12, 1998  
FILED WITH LRC: November 12, 1998 at 3 p.m.

**COMPILER'S NOTE:** The following administrative regulation, 601 KAR 1:115, was amended by the promulgating agency and the Administrative Regulation Review Subcommittee on January 12, 1999. This administrative regulation was deferred to the Subcommittee's February 9, 1999 meeting, and will not be referred to the appropriate jurisdictional subcommittee at this time.

**TRANSPORTATION CABINET**  
**Department of Vehicle Regulation**  
**Division of Motor Carriers**  
**(As Amended at ARRS, January 12, 1999)**

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

RELATES TO: KRS 186.276, 186.281, 186.286, Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 281.600 authorizes the department to promulgate administrative regulations regulating motor carriers. This administrative regulation establishes the procedures for operation of a city or county taxicab, city or county limousine, or a disabled person's carrier business and designates the information that must be filed with the cabinet or provided to the public.** [This administrative regulation provides general procedures for operation of a city or county taxicab, a city or county limousine, or a disabled persons carrier business. It further establishes [as it pertains to] information that must be filed with the cabinet or provided to the public.]

Section 1. Definitions. (1) "City limousine certificate" is ~~[means as]~~ defined in KRS 281.014.

(2) "City taxicab certificate" is ~~[means as]~~ defined in KRS 281.014.

(3) "County limousine certificate" is ~~[means as]~~ defined in KRS 281.014.

(4) "County taxicab certificate" is ~~[means as]~~ defined in KRS 281.014.

(5) "Disabled persons certificate" is ~~[means as]~~ defined in KRS 281.014.

(6) "Origin of operation" means the place at which the passenger is picked up by the taxicab, limousine, or disabled persons vehicle.

(7) "Suburban area" is ~~[means as]~~ defined in KRS 281.012.

Section 2. Procedure; Sale, [or] Transfer, or Lease of Taxicab, Limousine, or Disabled Persons [Taxi] Certificate. (1) Upon the filing of an application for approval of a sale, [or] transfer or lease of a city or county taxicab, city or county limousine, or disabled persons certificate or portion of one (1) of these certificates [thereof], the cabinet shall issue notice in accordance with 601 KAR 1:030 [1:070].

(2) If a [in the event no] protest is ~~not~~ filed in accordance with 601 KAR 1:030, the commissioner **shall** ~~[may]~~ approve the sale, [and] transfer, or lease without a hearing. This shall be construed to include the sale, [or] transfer, or lease of the right to operate one (1) or more taxicabs, limousines, or disabled persons vehicles. [Should the applicant receive no notification from the cabinet prior to the date set for hearing, an appearance shall be made at the time and place set forth in the notice thereof prepared to proceed with the case.]

Section 3. City [2:] Taxicab and City Limousine Operations. (1) A city taxicab or city limousine certificate shall ~~[All taxicab certificates will]~~ be issued to allow origin of operations in ~~[operate at]~~ a designated town or city and its suburban area. ~~[, and all operations must be at or from such]~~

(2)(a) Each trip of the certificate holder shall originate in the designated town or city and its suburban area.

(b) The destination selected by the passenger **shall not be required** ~~[does not have]~~ to be in the designated town or city and its suburban area.

(c) If a passenger **selects** ~~[selected]~~ a destination which is ~~[was]~~ not located in the certificate holder's designated town or city and its suburban area, at the passenger's request the certificate holder may return the passenger to a point within the certificate holder's designated town or city and its suburban area.

(3)(a) An operator who has secured a certificate to operate in ~~[at]~~ a designated town or city and its suburban area shall ~~[will]~~ not be permitted to change the place of origin of operations without applying for and receiving additional authority pursuant to KRS 281.620.

(b) Origination of an operation in ~~[Operations from]~~ any city or town or its suburban area other than designated in the certificate shall constitute a cause for suspension or cancellation of the certificate.

Section 4. County Taxicab, County Limousine, or Disabled Persons Carrier Operations. (1) A county taxicab, county limousine, or disabled persons certificate shall be issued to allow origin of operations any place within a designated county.

(2)(a) Each trip of the certificate holder shall originate in the designated county.

(b) The destination selected by the passenger **shall not be required** ~~[does not have]~~ to be in the designated county.

(c) If a passenger selected a destination which was not located in the certificate holder's designated county, at the passenger's request the certificate holder may return the passenger to a point within the certificate holder's designated county.

(3)(a) An operator who has secured a certificate to operate in a designated county shall not be permitted to change the county of origin of operations without applying for and receiving additional authority pursuant to KRS 281.620.

(b) Origination of an operation from any county not designated in the certificate shall constitute a cause for suspension or cancellation of the certificate.

Section 5. [3:] List of Drivers. (1) Each taxicab, limousine, or disabled persons certificate holder ~~[All taxicab operators]~~ shall maintain a complete list of the ~~[taxi]~~ drivers employed by the certificate holder ~~[such operator]~~.

(2) This list shall be on file at the office or cab stand of the ~~[such]~~ operator, and will be available for inspection by anyone at any time.

(3) This list shall contain the name, address, age, and the operator's license ~~[and driver or chauffeur's badge]~~ number of each driver. Any change in ~~[and all changes of]~~ drivers shall be promptly noted on the ~~[said]~~ list.

(4) Each certificate holder, prior to hiring a new driver, shall:

(a) Ensure that the driver has a valid operator's license; and

(b) Obtain and review the driving history record of the driver.

(5) Annually, the certificate holder shall obtain and evaluate an updated copy of the driving history record of each of his drivers.

Section 6. [4:] Decrease in Number of Taxicabs, Limousines, or Disabled Persons Vehicles [Cabs] Operated. (1) **If a taxicab, limousine, or disabled person's vehicle certificate holder decreases the number of vehicles from that authorized by his certificate of operation, he may replace in operation the vehicle dropped, if he notifies the cabinet and surrenders the identification tag of the dropped vehicle.** ~~[If a [Whenever any] taxicab, limousine, or disabled persons certificate holder has decreased [operator desires to decrease] the number of taxicabs, limousines, or disabled persons vehicles [cabs] which he has authorized by his certificate of operation [in operation, he may do so] by notifying the cabinet and surrendering the identification tag [or tags] issued to the taxicab, limousine, or disabled persons vehicle [such cab or cabs] by the Division of Motor Carriers, the certificate holder may [cabinet. The certificate holder may [Should~~

any taxicab operator,] at any time during the same year [; desire to] replace in operation the taxicab, limousine, or disabled persons vehicle [any cab so] dropped;]

(2) He shall do so [; he must do so] by notifying the cabinet and procuring the proper tag [or tags].

(3) If a taxicab, limousine, or disabled person's vehicle which is [was] dropped from service, pursuant to subsection (1) of this section, is not [properly] replaced in operation by June 30, 1999, the dropping of the [taxicab, limousine, or disabled persons] vehicle shall constitute a permanent forfeiture of the authority to operate it [the taxicab, limousine, or disabled persons vehicle] and the certificate of authority shall be reissued to reflect the reduction in the number of authorized vehicles.

(4) To request restoration of the use of the forfeited taxicab, limousine, or disabled persons vehicle, the certificate holder shall file a new application pursuant to KRS 281.620.

(5)(a) Effective July 1, 1999, if a taxicab, limousine, or disabled persons vehicle authorized by the certificate needs to be repaired or replaced, the certificate holder may request an escrow of the vehicle for a period not to exceed ninety (90) days.

(b) The written request to the Transportation Cabinet to escrow the vehicle shall be accompanied by the vehicle identification tag issued to the certificate holder by the Division of Motor Carriers and a detailing of the reason for the need for the escrow.

(c) If, after ninety (90) days, the certificate holder has not placed the vehicle back in service by retrieving the tag from the Transportation Cabinet, he shall permanently forfeit [have permanently forfeited] the authority to operate that taxicab, limousine, or disabled persons vehicle and the certificate of authority shall be reissued to reflect the reduction in the number of authorized vehicles.

(d) If, before the end of the ninety (90) days, the certificate holder discovers that additional time is needed to repair or replace the escrowed vehicle, he may request from the Commissioner of the Department of Vehicle Regulation, one (1) additional ninety (90) day escrow period.

(e) The commissioner shall [may] allow the one (1) additional ninety (90) day escrow period, if the certificate holder provides sufficient proof that the delay is unavoidable and if the certificate holder has not exhibited a pattern of abuse of the escrow period. [If the cabs which are dropped are not properly replaced in operation within three (3) years of the next renewal date of the taxicab certificate, such cabs so dropped and not replaced will constitute a forfeiture of such cabs, and an application will be necessary before the replacement of such cabs will be authorized;]

Section 7. [5:] Trip Records. (1) A taxicab, limousine, or disabled persons certificate holder [All taxicab operators certificated to operate one (1) or more taxicabs from a city of the first or second class within the Commonwealth or operating into such a city in intrastate commerce with a point of origin or destination outside this state;] shall maintain an accurate record of the origin, destination, driver, and date of each trip made by each licensed vehicle. [vehicle, and date of each trip [all trips] made by each of its licensed taxicabs, limousines, or disabled persons vehicles;]

(2) The daily log report of a driver shall be sufficient proof of the record required to be kept by subsection (1) of this section. [These records may be the daily log reports kept by the drivers;]

(3) An origin and destination report shall be:

(a) Kept by the certificate holder at least one (1) year; and

(b) Readily available for inspection by the:

1. Transportation Cabinet;

2. Another state agency; or

3. A law enforcement agency. [These origin and destination reports shall be kept by the certificate holder [operator] for at least one (1) year and shall be available for inspection by the Transportation Cabinet, other state government agency, or a law enforcement agency;]

Section 8. Taxicab, Limousine, and Disabled Persons Vehicle Identification Cards. (1) An application or renewal application for a Kentucky taxicab, limousine, or disabled persons vehicle identification card and plate shall be made on form TC 95-39, "Application for Kentucky Passenger Fee Receipt Card for Year" for each vehicle to

be operated as a taxicab, limousine, or disabled persons vehicle.

(2) If the vehicle is leased, the Kentucky license plate number and name of the lessor shall [also] be provided.

(3) Each taxicab, limousine, or disabled persons vehicle identification card and plate shall be renewed annually pursuant to KRS 186.281.

(4) A certificate holder who needs to transfer an identification plate from the motor vehicle for which it was issued to another shall complete and file with the Division of Motor Carriers, form TC 95-37, "Affidavit". The following information shall be sent with the completed form TC 95-37:

(a) A copy of the vehicle registration or title on the new motor vehicle needed to be placed in operation;

(b) Proof that the new vehicle has been added to the liability insurance policy of the certificate holder;

(c) The original fee receipt card issued with the identification plate. If the original is not available, a sworn statement shall be attached explaining why the fee receipt card is not available; and

(d) If the new vehicle is not registered to the certificate holder, a completed form TC 95-15, "Equipment Lease Agreement."

Section 9. Material Incorporated by Reference. (1) The following material is incorporated by reference [as a part of this administrative regulation]:

(a) Form TC 95-39, "Application for Kentucky Passenger Fee Receipt Card for Year" as revised by the Transportation Cabinet in January 1995;

(b) Form TC 95-37, "Affidavit" as revised by the Transportation Cabinet in September 1996; and

(c) Form TC 95-15, "Equipment Lease Agreement" as revised by the Transportation Cabinet in 1988.

(2) This material [The material incorporated by reference in this administrative regulation] may be viewed, copied, or obtained from the Division of Motor Carriers, P.O. Box 2007, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. through 4:30 p.m. [The telephone number of the division is (502) 564-4540. The hours of operation of the division are 8 a.m. through 4:30 p.m., weekdays, local prevailing time;]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: September 4, 1998

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#### FINANCE AND ADMINISTRATION CABINET School Facilities Construction Commission (As Amended at ARRS, January 12, 1999)

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

RELATES TO: KRS 157.615, 157.650, 157.655, 157.660, 157.665

STATUTORY AUTHORITY: KRS 157.615, 157.655(3), 157.660(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1) authorizes the commission to promulgate administrative regulations necessary for the orderly conduct of its affairs, which includes the education technology funding program. KRS 157.660(3) requires the commission to promulgate administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years. This administrative regulation establishes the procedures and guidelines for determining the eligibility and level of participation for a local public school district, for making an offer of assistance to a school district, for verifying a local public school district funding match, and for the accumulation of credits by a local public school district that maintains its eligibility.

Section 1. Sources of Local Matching Funds. A local public school

district shall match the state offer of assistance from:

- (1) Available state, local district, and federal funds not otherwise restricted by the appropriate governing agency; [its general fund;]
- (2) The proceeds of a revenue bond or note that is:
  - (a) Issued on behalf of a district to purchase technology equipment supported by the district's general fund; and
  - (b) To be retired within three (3) years from the date of issuance;
  - (3) A vendor or third party lender lease;
  - (4) A grant from a private source; or
  - (5) Interest earned by a district on a school building construction account, if the interest is not already committed for expenditure on the construction project; or
  - (6) Interest earned on the "Education Technology Fund" account.

Section 2. Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to a local school district for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by this section.

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify an eligible district in writing of:

- (a) The amount the district is entitled to receive; and
- (b) The conditions KRS 157.655(1) and 157.660(2) requires the district to meet if it accepts the offer of acceptance.

Section 3. Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance, it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance shall be granted by the executive director.

(2) The local school district shall provide to the commission a copy of its board's minutes reflecting acceptance of an offer of assistance. Upon acceptance of an offer of assistance, a local school district shall establish an "Education Technology Fund", which shall bear interest on the balance in the fund. The interest received on the fund shall be applied to meet educational technology needs in the school district. The district shall provide the commission evidence certifying that matching funds have been committed ~~[of a journal entry certifying local matching funds in the technology fund].~~

DR. ROBERT TARVIN, Executive Director

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: September 11, 1998

FILED WITH LRC: September 14, 1998 at 1 p.m.

**LABOR CABINET**  
**Department of Workers' Claims**  
**(As Amended at ARRS, January 12, 1999)**

**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 establishes ~~[is to establish]~~ the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability. ~~[This administrative~~

~~regulation covers the subject matter of 803 KAR 25:025, which is repealed.]~~

Section 1. Definitions. (1) "Administrator" means an individual or legal entity engaged by a group self-insurance fund board of trustees to carry out the policies established by the group self-insurance fund's board of trustees and provide day-to-day management of the self-insurance fund.

(2) "Aggregate excess insurance" means an insurance policy written on a claims incurred basis which insures claims to a stated limit in excess of a specified percentage of the earned premium ~~[or in excess of the group retention amount].~~

(3) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the state of Kentucky for at least two (2) years prior to its sponsorship of a group self-insurance fund.

(4) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(5) "Common interests" means that employers are engaged in similar activities, share common standard industrial classification codes and common risk factors.

(6) "Dividends" mean disbursements ~~[to group members]~~ from surplus funds to group members pursuant to a plan filed with the commissioner.

(7) "Earned premium" means the pro rated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.

(8) "Fiscal agent" means a person, or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest and disburse the self-insurance group's funds.

(9) "Group members" means employers who have joined a group self-insurance fund.

(10) "Group self-insurance fund" means the total contractual arrangement whereby eleven (11) or more employers or two (2) or more city, county, municipal or urban-county employers or their agencies associate to jointly self-insure their workers' compensation liability.

(11) "Insolvent" or "insolvency" means the inability of a group self-insurance fund to pay its outstanding lawful obligations as they mature in the regular course of business, or which holds insufficient assets to prospectively pay all incurred workers' compensation benefits when due.

(12) "Loss fund" means the total amount of the group self-insurance fund's retained liability for claims against the group members.

(13) "Premium" means the amount of money charged each member to fund the obligations and expenses of the group self-insurance fund.

(14) "Qualified actuary" means a member or fellow ~~[of the American Academy of Actuaries or a member]~~ of the Casualty Actuarial Society.

(15) "Service organization" means a person or entity which provides services which ~~[may]~~ include ~~[but is not limited to;]~~ claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports, or ~~[and]~~ other required self-insurance reports, administration of the fund, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, or ~~[and]~~ legal assistance.

(16) "Specific excess insurance" means an insurance policy which insures the amount of a ~~[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 an activity ~~[activities]~~ arising in the creation of a group self-insurance fund, a ~~[no]~~ person or entity shall not issue a binder or certificate ~~[binders or certificates]~~ of in-

insurance for workers' compensation coverage unless the group self-insurance fund has been certified to do so by the commissioner. A certification ~~[All certifications]~~ issued by the commissioner shall remain in effect until revoked or modified ~~[suspended]~~ by the commissioner pursuant to Section 11 ~~[+2]~~ of this administrative regulation.

Section 3. Initial Application. (1) An application for certification as a workers' compensation group self-insurance fund shall ~~[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) A copy of each instrument by which the applicant or its agent has made a commitment to pay for a past or future good or service; ~~[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 a [there exists no] [real or potential] pecuniary or personal [other] conflict does not exist between the official duties of the [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 10 ~~[+1]~~ of this administrative regulation;

(k) A proposed schedule of premium rates and the [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 not be ~~[no]~~ less than \$750,000. Verification shall ~~[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;

(d) The stability of the membership; and

(e) ~~[(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) A material change ~~[Any material changes]~~ in administration or the service organization;

(e) A plan by which premiums ~~[premium]~~ shall be determined, assessed, and collected if there is an ~~[in the event of]~~ insolvency or liquidation of the group self-insurance fund, unless ~~[such]~~ a plan has been previously submitted; and

(f) 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) If [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; and

(c) ~~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. Trustees; Duties.** (1) The Board of Trustees of the group self-insurance fund shall consist of between ~~no less than~~ three (3) and ~~no more than~~ eleven (11) ~~seven (7)~~ persons, who shall not:

(a) Be an owner, officer, employee or agent of a service organization; or

(b) Have a direct or indirect pecuniary interest in a service organization. [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) A [Any] contract with a service organization that includes the adjustment or [and] settlement of claims shall include a requirement that the service organization shall [will] adjust to final conclusion each claim that results [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. Excess Insurance.** (1) Except for a group self-insurance fund [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, if the [provided such] discounting is based upon the computation of a qualified actuary. The limit of liability of the aggregate excess insurance coverage shall not 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. 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) A disbursement [Disbursements] from the fund shall be for a purpose [only for those purposes] related to the group self-insurance fund. A dividend [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. A [Any] dividend plan shall specify whether past fund members are eligible for the [such] dividend.

(4)(a) A trustee [No trustees], fiscal agent or service organization shall not utilize an [any] asset [assets] of the group self-insurance fund for a [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 or reserves not needed for current obligations in: [-but such investments shall be limited to]

1.a. 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;

b. Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor;

c. [for] Obligations issued by a county, district, municipality or other legal authority within Kentucky [the Commonwealth] with a minimum rating of "AA" by Standard & Poor;

d. Investment share accounts in a [any] savings and loan association in Kentucky whose deposits are insured by a federal agency; or

e. [-and] Certificates of deposit if issued by a duly chartered commercial bank in Kentucky. [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.

a. An investment in an [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.

b. 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 if:

a. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;

b. The corporate bond investments do not exceed fifteen (15) percent of the total market value of the investment portfolio at the time of purchase; and



**c. The bond has a minimum rating of "A" by Standard and Poor;** ~~[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 paragraph (a) or (b) of this subsection [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; and

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) A group self-insurance fund [funds] shall have six (6) months from the effective date of this administrative regulation to restructure investments to conform to the requirements of this section [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, ~~an~~ 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 ~~an~~ 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 ~~a~~ 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 ~~an attempt by a~~ any attempt by any person as defined in KRS 342.0011 who knowingly, as defined in KRS 501.020, makes ~~a~~ any false representation, including misrepresentation of ~~a hazard, classification, payroll, or other fact [hazards, classifications, payrolls, or other facts]~~ of an employer or its agent that ~~is~~ 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 ~~shall be grounds [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 ~~a~~ 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) ~~A~~ 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. ~~A~~ No surety shall ~~not~~ expose itself to a ~~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. ~~[12- Suspension;]~~ Revocation or Modification of Certification. (1) The commissioner may ~~[suspend;]~~ revoke or direct remedial actions regarding ~~a~~ 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) ~~If [In the event] the commissioner [suspends or] revokes a [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 a [any] person or group aggrieved by an order of the commissioner or on his own volition [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 an [any] appeal or request for hearing, may utilize the surety deposit provided by the group self-insurance fund to make a [any] payment of workers' compensation benefits which is currently due.

(c) A hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. [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) The final order issued by the commissioner may revoke or modify a group self-insurance fund's certification. [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. Incorporation [Incorporated] by Reference. (1) The following material is incorporated by reference:

- (a) SI-03 (March 15, 1995 edition);
- (b) SI-04 (March 15, 1995 edition);
- (c) SI-05 (March 15, 1995 edition); and
- (d) SI-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.

## LABOR CABINET

### Department of Workers' Claims

(As Amended at ARRS, January 12, 1999)

#### 803 KAR 25:170. Filing of claims information with the Department of Workers' Claims.

RELATES TO: KRS [Chapter] 342.038, 342.039

STATUTORY AUTHORITY: KRS [Chapter 13A,] 342.039

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.039

requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations by which each insurance company writing workers' compensation policies in the Commonwealth, every group of self-insurers, and each employer carrying its own risk shall file detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC). This administrative regulation establishes the requirements for filing claims information with the department.

Section 1. Definitions. (1) "Carrier" is defined in KRS 342.0011(6).

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.

(3) "[2]" "Data collection agent" means a business or entity that keys information in an electronic format and transmits the resulting data to a value added network used by the Department of Workers' Claims.

(3) "Insurance company" means an insurer or where applicable, the Kentucky Insurance Guaranty Association.]

(4) "Value added network" means a business or entity that accepts electronic data transmissions and sorts the transmissions for delivery to various addressees.

Section 2. Reporting Requirements. (1) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier [insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator)] shall file the information required on the Form IA-1 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format, according to the time periods prescribed by KRS 342.038 [as soon as practicable and not later than one (1) week [three (3) weeks] from the date on which an employee has reported a work-related injury or occupational disease to the employer].

(2) Beginning with work-related injuries and occupational diseases reported to employers on or after January 1, 1996, each carrier [insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator)] shall file the information required on the Form IA-2 with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format:

(a) As soon as practicable and not later than one (1) week from the date [every sixty (60) days for as long as the disability of an employee continues and whenever] payments to an employee are commenced, terminated, changed, or resumed; and

(b) Every sixty (60) days during temporary total disability.

(3)(a) Beginning July 1, 1999 [April 22, 1996], for medical bills paid [or denied] on or after that date [January 1, 1996], each carrier [insurance company writing workers' compensation insurance policies in the Commonwealth of Kentucky, each group of self-insurers holding a valid certificate issued by the commissioner (or its third-party administrator), and each individual employer carrying its own risk and holding a valid certificate issued by the commissioner (or its third-party administrator)] shall file a medical report containing the information extracted from the standardized uniform health claim forms [pre-

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

scribed by the Health Policy Board of the Commonwealth of Kentucky pursuant to KRS Chapter 216 and the administrative regulations promulgated pursuant thereto).

(b) This information shall be filed with a data collection agent or a value added network designated by the Department of Workers' Claims, in electronic format[~~as soon as practicable and after April 22, 1995;~~] not later than three (3) weeks following [the] payment [or denial] of [the] [a] bill [submitted on a uniform health claim form in a workers' compensation case].

Section 3. Data Collection Agents. (1) If a carrier [an insurance company, group self-insurer (or its third-party administrator) or an individual self-insurer (or its third-party administrator)] is unable to transmit the information required under this administrative regulation to a value added network utilized by the Department of Workers' Claims using its own facilities and resources, it shall employ a data collection agent capable of transmitting the information to a value added network utilized by the Department of Workers' Claims.

(2) The Department of Workers' Claims shall maintain a directory of authorized data collection agents [businesses capable of providing this service that have asked to be listed as potential data collection agents].

Section 4. Acknowledgements. An acknowledgement of an accepted filing [Acknowledgements of accepted filings] made pursuant to this administrative regulation, or a request [and requests] by the Department of Workers' Claims for resubmission of a report [reports] due to incomplete or incorrect information, shall be made in electronic format through the same data collection agent or value added network used for the filing [filings].

Section 5. Incorporation by Reference. [Forms:] (1) The following forms are incorporated by reference:

(a) Form IA-1 (October 10, 1995 edition); and

(b) Form IA-2 (October 10, 1995 edition). [Forms IA-1 and IA-2 are filed herewith and incorporated by reference.]

(2) This material may be inspected, copied, or obtained at [Obtaining forms:

(a) Forms are available to the public at main and branch office of the Department of Workers' Claims, [Monday through Friday, 9 a.m. to 4 p.m. at] [

1. Frankfort -- Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 9 a.m. to 4 p.m.;

2. Louisville -- 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah -- 220 B. North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville -- 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m. local time, Monday through Friday inclusive, for this purpose.]

WALTER W. TURNER, Commissioner

STEPHEN B COX, General Counsel

APPROVED BY AGENCY: October 15, 1998

FILED WITH LRC: October 15, 1998 at noon

LABOR CABINET

Department of Workers' Claims

(As Amended at ARRS, January 12, 1999)

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. KRS 342.267 requires the commissioner [is required] to fine carriers for engaging in unfair

claims settlement practices under KRS Chapter 342 or 304.12-230. This administrative regulation establishes [provides] standards for the commissioner and carriers with regard to unfair claims settlement practices.

Section 1. Definitions. (1) "Agent" means a person or entity performing claims adjusting, case management, utilization review, or other service on behalf of a carrier.

(2) "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 designee [designees].

(2) Each carrier or [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 a carrier which does [those carriers which do] not maintain hard copy files, claim files shall be capable of duplication to legible hard copy.

(6) A claim file [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 a [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 established [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.

(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.

**PUBLIC PROTECTION AND REGULATION CABINET**

**Department of Insurance**

**(As Amended at ARRS, January 12, 1999)**

**806 KAR 17:210. Reporting requirements for the Kentucky Guaranteed Acceptance Program.**

RELATES TO: KRS 304.17A-460 [1998 Ky. Acts ch. 496, sec. 21]

STATUTORY AUTHORITY: KRS 304.17A-460(1) [1998 Ky. Acts ch. 496, sec. 21(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-460(1) [1998 Ky. Acts ch. 496, sec. 21(1)] mandates that the department define, by administrative regulation, reporting requirements for the Guaranteed Acceptance Program. This administrative regulation prescribes the form and the time schedule for submitting reports to the department for each calendar year.

Section 1. Definitions. (1) "Earned premium" means that portion of a premium paid by an insured that has been allocated to the insurer's loss experience, expenses, and profit year-to-date.

(2) "Electronic report format" or "ERF" means data submitted on a three and five-tenths (3.5) inch diskette or a ZIP disk in a Microsoft Excel spreadsheet format.

(3) "GAP" means the Guaranteed Acceptance Program.

(4) The definition of "Guaranteed Acceptance Program" shall be governed by KRS 304.17A-005(14) [1998 Ky. Acts ch. 496, sec. 1(14)].

(5) The definition of "GAP participating insurer" shall be governed by KRS 304.17A-005(12) [1998 Ky. Acts ch. 496, sec. 1(12)].

Section 2. GAP Participating Insurer Monthly Report. A GAP participating insurer shall submit ERF-1 to the Department of Insurance thirty (30) days after the end of each calendar month for data collected during that calendar month. A GAP participating insurer shall complete ERF-1 in accordance with the procedural instructions for ERF-1 as incorporated by reference into this administrative regulation.

Section 3. GAP Supporting Insurer Quarterly Reports. A GAP supporting insurer and a stop-loss insurer shall submit GAPQT-1 [ERF-2] to the Department of Insurance within thirty (30) days after the end of each calendar quarter for the data collected during that calendar quarter. GAPQT-1 is incorporated by reference in this administrative regulation. [A GAP supporting insurer and a stop-loss insurer shall complete ERF-2 in accordance with the procedural instructions for ERF-2 as incorporated by reference into this administrative regulation.]

Section 4. GAP Participating Insurer Annual Reports. A GAP participating insurer shall submit ERF-3 to the Department of Insurance within sixty (60) days after the end of each calendar year for the data collected during that calendar year. A GAP participating insurer shall complete ERF-3 in accordance with the procedural instructions for ERF-3 as incorporated by reference into this administrative regulation.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) ERF-1, "Electronic Report Format for Guaranteed Acceptance Program Participating Insurer - Monthly Report (9/1998 edition)";

(b) GAPQT-1 (12/1998 edition), Department of Insurance: ERF-2, "Electronic Report Format for Guaranteed Acceptance Program Supporting and Stop-loss Insurers - Quarterly Report (9/1998 edition)";

(c) ERF-3, "Electronic Report Format for Guaranteed Acceptance Program Participating Insurer - Annual Report (9/1998 edition)".

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: September 30, 1998

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

**CABINET FOR HEALTH SERVICES**

**Office of Certificate of Need**

**(As Amended at ARRS, January 12, 1999)**

**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 applica-

tion.

(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. Applications proposing to transfer surgical services shall not be reviewed for consistency with the state health plan but shall be reviewed under the nonsubstantive review provisions of Section 8 of this administrative regulation.

(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 the transfer of surgical services from one (1) licensed health facility to another licensed health facility or from one (1) licensed health facility to a newly established health facility.**

~~[(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;~~

~~(e)] Notice of appeal rights; and~~

~~(c) [(d)] The amount of capital expenditure authorized, where applicable.~~

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date

of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review. If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing. If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing. [An applicant may defer review of an application by notifying the cabinet of its wish to defer review of its application at any time prior to the entry of a decision to approve or deny the application.] If a hearing has been scheduled [or held on the application], the applicant shall also notify all parties to the proceedings in writing of the applicant's intent [decision] to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

(5) An application shall not be deferred more than one (1) time 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 [216B.061(5)].

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission provided that:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(4) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and such endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Service's Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area, via the CON newsletter when applicable not less than ten (10) days prior to the date of the hearing; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons [all persons] who requested the hearing withdrawn their request(s) by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled. [agree in writing to its cancellation; agreement of other affected persons shall not be required.]

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference are to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer may tape record the conference or if requested by a party to the proceedings arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters.

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of 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, pro-



vided 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 existing services that do not involve construction, renovation or the installation of equipment shall provide plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The

cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects [not] involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than three (3) additional [two (2)] extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements.

(20) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(22) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) The cabinet shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) If it is determined in the biennial review that a certificate holder has willfully failed to comply with the terms of the certificate of need, the cabinet shall institute disciplinary proceedings in accordance with KRS 216B.086 and 216B.990. [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,

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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, Relocation, 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

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, December 8, 1998 and**  
**As Amended at Interim Joint Committee on**  
**Health and Welfare, January 19, 1999)**

**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) [(1)] 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 [CSEP] 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. 5.]

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: August 12, 1998

FILED WITH LRC; August 12, 1998 at 11 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
Department for Community-Based Services  
Division of Policy Development  
(As Amended at ARRS, January 12, 1999)

**905 KAR 1:050. Approval of adoption assistance [subsidies].**

RELATES TO: KRS 194B.050, 199.555, 199.557, 42 USC 673  
STATUTORY AUTHORITY: KRS 194B.050 [194.050],  
199.555(10) [199.557(10)], 42 USC 673, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is required by KRS 194B.050 and 199.555(10) [199.557(10)]. It serves to set forth guidelines for the implementation of the law on state funded adoption assistance and federal [title IV-E] adoption assistance.

Section 1. (1) The Secretary of the Cabinet for Families and Children shall make the decision to pay adoption assistance for the adoption of a particular child.

(2) The decision to provide adoption assistance shall be made in the best interest of the child.

(3) Adoption assistance shall be:

(a) Primarily for the benefit of the child and not the adoptive parents; and

(b) Limited to a special needs child.

(4) A special needs child shall include a child for whom an adoptive home is difficult to find because of:

(a) Age;

(b) A sibling group of three (3) or more children;

(c) A physical disability;

(d) A mental condition;

(e) An emotional problem requiring counseling;

(f) Physical or sexual abuse; or

(g) A background that includes a mental illness which is hereditary in nature and the future impact is documented by a genetic evaluation.

Section 2. (1) A child considered for state-funded adoption assistance shall:

(a) Be committed to the Cabinet for Families and Children; and

(b) Not have a parent with a legal claim to his custody.

(2) A child considered for federal adoption assistance shall:

(a) Meet the eligibility criteria established in 42 USC 673 at the time the adoption proceedings are initiated; and

(b) Not have a parent with a legal claim to his custody. [The decision to pay adoption assistance [a subsidy] for the adoption of a

particular child shall be the responsibility of the Secretary of the Cabinet for Families and Children [Human Resources] or his designated representative and shall be made in the best interest of the child. Adoption assistance [An adoptive subsidy] shall be construed as being primarily for the benefit of the child and not the adoptive parents. Adoption assistance [An adoptive subsidy] shall be limited to special needs children. Special needs children include those children for whom adoptive homes are difficult to find because of age, a sibling group of three (3) or more children, a physical disability, a mental condition, emotional problems requiring counseling, children who have suffered physical or sexual abuse, and children whose background includes mental illness which has proven to be hereditary in nature and the future impact is documented by a genetic evaluation.

Section 2. The child considered for state funded adoption assistance shall be committed to the Cabinet for Families and Children [Human Resources] and have [has] no parents with a legal claim to his custody. The child considered for federal [title IV-E] adoption assistance shall meet the eligibility criteria established in 42 USC 673 at the time the adoption proceedings are initiated and have no parents with a legal claim to his custody.]

Section 3. Parents receiving a child for [subsidized] adoption assistance shall meet the same standards as those applied to other adoptive applicants; except as those standards relate to financial resources. Their financial situation shall be that they are able to meet the daily expenses of their existing family, but are unable to care for an additional child without a subsidy.]

Section 4. (1) An agreement [A contract] setting forth the scope and limits of the adoption assistance [subsidy] shall be signed by the adoptive parents and the Secretary of the Cabinet for Families and Children [Human Resources] or his designated representative. [The amount of the subsidy shall be determined according to the financial needs of the child and the ability of the adoptive parents to meet those needs:]

(2) The adoption assistance shall:

(a) Begin on the date the order of adoption is entered; and

(b) Continue until the child reaches:

1. The age of majority;

2. Age nineteen (19), if enrolled in a state or federal educational program; or

3. Age twenty-one (21), if disabled and receiving supplemental security income and enrolled in a state or federal educational program.

(3) If there is a change in the family situation or the needs of the child, the adoption assistance may be changed accordingly.

(4) The adoption assistance shall not exceed the amount which would be paid for foster care for the same child, including the medically fragile and family treatment home rates established by the Department for Community-Based Services.

(5) If the amount of adoption assistance is greater than the special needs rate, at each agreement renewal there shall be:

(a) A review of the child's needs to determine if the child would receive the higher rate, if still in foster care; and

(b) Verification that the adoptive parents meet the same training requirements as foster parents to receive the higher rate.

(6) The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country. [The adoption assistance [adoptive subsidy] shall begin on the date the adoption judgment is entered and shall continue until the child reaches the age of majority, age nineteen (19) and is enrolled in a state or federal educational program, or age twenty-one (21) for disabled children who receive supplemental security income and are enrolled in a state or federal educational program.] The adoption subsidy shall continue for disabled children who receive supplemental security income and are enrolled in a state or federal educational program until age twenty-one (21). The adoption assistance [subsidy] may be decreased or increased as changes occur in the family situation or in the needs of the child. The adoption assistance [but] shall not exceed the amount which may be paid for foster care for the same child, including the medically fragile and family treatment home rates established by the

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

~~Department for Community-Based Services. When the amount of adoption assistance is greater than the special needs rate, at each agreement renewal there shall be:~~

~~(1) A review of the child's needs to determine if the child would receive the higher rate, if he were still in foster care; and~~

~~(2) Verification that the adoptive parents meet the same training requirements as foster parents to receive the higher rates. [child and may include or consist entirely of payment for extraordinary medical care. The subsidy for disabled children who receive supplemental security income after age eighteen (18) is limited to extraordinary medical expenses not covered by Medicaid.] The adoption assistance [subsidy] shall not be altered by the adoptive parents moving out of the state or country.]~~

Section 5. Annual contact with the adoptive family shall be made by mail or home visit to determine if the level of adoption assistance continues to be appropriate to the needs of the child. [make appropriate adjustments in the amount of the subsidy.]

Section 6. The number of adoption assistance cases [subsidized adoptions] shall be limited by available funds for the adoption assistance program. [subsidy program.]

~~[Section 7. This material may be inspected, copied, or obtained at the Department for Community-Based Services, CHR Building, 3rd Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

VIOLA MILLER, Secretary

DIETRA PARIS, Commissioner

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 30, 1998

FILED WITH LRC: November 13, 1998 at 11 a.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(As Amended at ARRS, December 8, 1998 and**  
**As Amended at Interim Joint Committee on**  
**Health and Welfare, January 19, 1999)**

### 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 (f) [(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 (f) [(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) [(e)] 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) [(ff)] 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:

- (g) ~~[(h)]~~ Screen windows and doors used for ventilation;
- (r) ~~[(i)]~~ Have household pets vaccinated for rabies;
- (s) ~~[(j)]~~ Store indoor and outdoor garbage in waterproof containers with tight-fitting covers;
- (t) ~~[(k)]~~ Provide adequate space for a rest-time for each child in care for more than four (4) hours. Individual linens shall be:
  1. Provided for each child; and
  2. ~~[shall be]~~ Changed at least weekly or if they become soiled or wet;

(u) If overnight care is provided, shall:

1. Remain awake until every child in care is asleep;
2. Sleep on the same level as infants and toddlers; and
3. Provide comfortable, clean and safe bedding for each child.

(16) ~~[(+5)]~~ Program for children. A plan for daily activities and routines including opportunities for outdoor play and fresh air, shall be established.

(17) Visually supervise children who are awake and be able to respond to the children immediately; and

(18) Children are not permitted off of the premises without the caregiver except for school-aged children, as long as:

- (a) Their whereabouts are known; and
- (b) The parents have given written permission.

(19) Use of corporal physical discipline, pursuant to 1998 Ky. Acts ch. 524, sec. 2(14), is prohibited.

(20) ~~[(+6)]~~ Children shall be released from the family child care home to:

- (a) The child's custodial parent;
- (b) The person designated in writing by the parent to receive the child; and
- (c) A person in an emergency designated over the telephone by the parent.

Section 7. To assure a healthy environment, the provider shall:

- (1) Maintain current immunizations certificates for each child within thirty (30) days of enrollment;
- (2) Maintain for each child a health and emergency information form completed and signed by the child's parent or guardian. The completed form shall be on file on the first day the child attends and shall include the following information:
  - (a) The child's name, address, and date of birth;
  - (b) The names of individuals to whom the child may be released;
  - (c) The general status of the child's health;
  - (d) Allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
  - (e) The names and phone numbers of persons to be contacted in an emergency situation;
  - (f) The name and phone number of the child's physician and preferred hospital; and
  - (g) Authorization by the parent or guardian for the provider to seek emergency medical care in the parent's absence.
- (3) Provide a quiet, separate area which can be easily supervised for children too sick to remain with other children;
- (4) Prohibit prescription or over-the-counter medications [or aspirin] to be administered to a child except as authorized by a licensed physician and with written daily request of the parent or guardian;
- (5) Administer nonprescription medication to a child only with written daily request of parent or guardian; [and]
- (6) Be able to recognize symptoms of childhood illnesses;
- (7) Be able to provide basic first aid; and
- (8) ~~[The provider shall]~~ Maintain a child care program which assures affirmative steps are taken to protect children from abuse or 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-

belled and remain seated while the vehicle is in motion. A child under forty (40) inches in height shall be transported in the back seat, restrained in a federally-approved motor vehicle safety seat in good repair;

(4) Have a valid driver's license issued by the Division of Motor Vehicles;

(5) Have emergency and identification information about each child in the vehicle whenever children are being transported; and

(6) Conform to state laws pertaining to vehicles, drivers license and insurance as governed by KRS 281.600, 1998 Ky. Acts ch. 153, sec. 1, ch. 565, sec. 1, [186:020] and Chapters 189 and 189A.

(7) Never leave children in a vehicle unattended by an adult.

(8) Never use the back of pickup trucks to transport children.

Section 9. [Child] Records. The provider and the cabinet shall provide, upon request, public information pursuant to 1998 Ky. Acts ch. 524, sec. 2. ~~[shall not disclose or knowingly permit the use of information concerning the child or family directly or indirectly except to representatives of the Cabinet for Families and Children or as governed by this administrative regulation.]~~

Section 10. The program shall ensure ongoing communication with a child's parent by:

(1) Developing written information about the service which specifies the charge for child care and the expected frequency of payment for the program;

(2) Make available a copy of the certification standards to each parent;

(3) Give each parent the name and address and telephone number of the cabinet, to register complaints if he believes the family child care home provider is not meeting the standards; [and]

(4) Post and provide to each parent copies of children and parent rights pursuant to 1998 Ky. Acts ch. 524, sec. 3; and

(5) Allow parents to visit and observe the program during the hours of operation and communicate with each child's parent about his child's development, activities, likes and dislikes. [KRS 199.898.]

Section 11. Incorporated ~~[The provider shall comply with the following:~~

~~(1) Swimming or wading pools on the premises shall be maintained and supervised when in use in order to safeguard the lives and health of the children.~~

~~(2) Wash hands with soap and water before and after diapering a child.~~

~~(3) Use sanitary procedures when preparing and serving food.~~

~~(4) Assure that children shall not share cups, eating utensils, wash cloths or towels.~~

~~(5) The provider or other persons in the home shall not be under the influence of alcohol or drugs while children are in care except those drugs prescribed by a physician.~~

~~(6) Prohibit smoking in the presence of children in care.~~

~~(7) In the absence of the provider, a substitute provider shall be physically present at the family child care home during hours of operation. The provider shall not be employed outside the home during regular hours of operation. Children are not permitted off the premises without the caregiver. An exception may be made for school-age children, as long as their whereabouts are known, and the parents have given written permission.~~

~~(8) An infant's formula shall be prepared and provided by the parent. An exception may be made for providers that provide formula as a fringe benefit to the parent.~~

~~(9) Infants in care shall be held during feeding and bottles shall never be propped.~~

~~(10) If overnight care is provided, the provider shall:~~

~~(a) Remain awake until every child in care is asleep;~~

~~(b) Sleep on the same level as infants and toddlers; and~~

~~(c) Provide comfortable, clean and safe bedding for each child.~~

~~(11) Serve meals which include a food from each of the four (4) basic food groups and snacks appropriate in amount and type of foods served for the ages of the children in care.~~

~~(12) Provide opportunities for outdoor play or fresh air.~~

~~(13) Be able to recognize symptoms of childhood illnesses.~~

~~(14) Visually supervise children who are awake and be able to~~

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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.

# ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

## COUNCIL ON POSTSECONDARY EDUCATION (Amended After Hearing)

**13 KAR 2:020. Guidelines for [undergraduate] admission to the state-supported postsecondary [institutions-of-higher] education institutions in Kentucky.**

RELATES TO: KRS 156.160, 164.001, 164.011, 164.020(3), 164.030

STATUTORY AUTHORITY: KRS [19A-100;] 164.020(8) [(3); 164.030, 164.284]

NECESSITY, FUNCTION, AND CONFORMITY: [Admission requirements shall be established by the institutions in keeping with adopted policies of the Council on Postsecondary Education.] Pursuant to KRS 164.020(8) [(3)] the council sets [approves] the minimum qualifications for admission to the state-supported postsecondary [public institutions-of-higher] education institutions. It is the intent of the council that all Kentucky residents shall have available to them an opportunity for postsecondary [higher] education appropriate to their interests and abilities. This administrative regulation sets forth the minimum qualifications [standards and policies of the council] related to admission at state-supported postsecondary [institutions-of-higher] education institutions.

Section 1. Definitions. (1) [The term] "Adult student" means a student who is twenty-one (21) years of age or older.

(2) "Council" is the Council on Postsecondary Education established by KRS 164.011.

(3) "Institutions" is a state-supported postsecondary education institution as defined in KRS 164.001(10).

(4) "Program of Studies" is the document "Program of Studies for Kentucky Schools: Grades Primary-12" published by the Kentucky Board of Education. [The term "approved unit" means a course of study included in the "Program of Studies for Kentucky Schools: Grades K-12".

(3) The term "nontraditional student" means a student twenty-five (25) years of age or older.]

Section 2. [General. (1) Students from other states and countries will be accepted by Kentucky public institutions providing that nonresident enrollment does not inhibit the opportunities of Kentucky residents to benefit from the facilities provided. Public institutions of higher learning may establish additional admission criteria that are in compliance with council policy established pursuant to KRS 164.020(3):

(2) The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for the acceptance of transfer credits. Generally, a student dismissed from a college or university shall not be accepted at a Kentucky public institution for the semester following his dismissal. Failure to report enrollment at another institution may result in dismissal and loss of credits earned.

(3) The Council on Postsecondary Education is concerned that a student's transfer from one (1) institution to another be as smooth as possible. It shall be the responsibility of all public institutions to assure that the student is adequately counseled concerning transfer of credit. Consistent with the community college objective of a two (2) year curriculum, transfer from community colleges is normally expected at the completion of requirements for the associate degree. Transfer prior to that time, however, may be advisable in specialized programs:

Section 3. Minimum Qualifications for Institutional Admission as First-time Freshmen. (1) A Kentucky resident [residents] who has [have] graduated from a public high school [schools] or a certified nonpublic high school [schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education)], who has [have] taken the ACT Assessment Test [American College Testing Assessment (ACT)], and who will enroll in college classes for the first time following graduation from high school is [are] generally

granted admission to community and technical colleges and community college-type programs at each university. The Career Planning Program Level II (CPP-II), [or] the ASSET testing program, or the COMPASS testing program may be substituted for the ACT Assessment Test requirement for adult students, if the institution believes any [either] of these testing instruments is better suited to the needs of adult students. The Kentucky Community and Technical College System may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college.

(2) A Kentucky resident [residents] who has [have] graduated from a public high school [schools] or a certified nonpublic high school [schools (i.e., high schools adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education)], who has [have] taken the ACT Assessment Test, who has [have] completed the minimum academic [educational] preparation, and who will enroll in college classes for the first time following graduation from high school has [have] fulfilled the minimum requirements for admission to a baccalaureate program at a university. An [programs at each university. Each] institution may accept the Scholastic Aptitude Test (SAT) in lieu of the ACT Assessment Test. An institution [for resident and nonresident applicants in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs. Each university] may establish additional admission criteria to supplement these minimum requirements.

(3) A Kentucky resident [residents] who has [have] earned a high school equivalency certificate (GED) or who is a graduate [are graduates] of a noncertified nonpublic high school [schools (i.e., nonpublic high schools not adhering to the "Program of Studies for Kentucky Schools: Grades K-12" as approved by the State Board for Elementary and Secondary Education)] may be admitted to community or technical colleges or community college-type programs at an institution [each university] upon completion of the ACT Assessment Test. The Career Planning Program Level II (CPP-II), [or] the ASSET testing program, or the COMPASS testing program may be substituted for the ACT Assessment Test requirement for adult students. KOTCS may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college [if the institution believes either of these testing instruments is better suited to the needs of adult students]. These same individuals may be admitted to baccalaureate programs at each university by meeting the minimum requirements specified in subsection (2) of this section. Completion of the minimum educational preparation may be validated through the submission of ACT area scores which are deemed adequate by each university. A [Each] university may establish additional admission criteria to supplement these minimum requirements.

(4) An institution shall establish a policy for the admission of a student to a technical college, community college, or a university where a Kentucky resident student has attended a noncertified nonpublic school and completed a course of study. Noncertified nonpublic schools include home schools. Except for the high school graduation or high school equivalency certificate (GED) requirements, all remaining requirements of subsections (1), (2) and (3) of this section shall apply to a student who has attended a noncertified nonpublic school and completed a course of study.

(5) A nonresident [Nonresidents] must meet the same minimum qualifications for admission as a Kentucky resident [residents] as stated in subsections (1) through (4) [(3)] of this section and at least one (1) of the following conditions in order to be admitted to a state institution [institutions]:

- Graduate in the top fifty (50) percent of their high school class;
- Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants [in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs]); or

(c) Demonstrate through other accepted measures the ability to pursue the college academic program without substantial remedial education [aid].

(6) [(5)] If, under extenuating circumstances, a student is [students are] admitted conditionally without having fulfilled the testing requirement, the student [students] must take the ACT to fulfill this requirement during the first semester of enrollment.

Section 3. [4:] Minimum Academic [Educational] Preparation and the Precollege Curriculum. (1) Effective for the fall semester of 1998 an applicant who has satisfied the minimum qualifications for institutional admission as a first-time freshman and who has successfully completed twenty (20) or more approved high school units including the following precollege curriculum describing the minimum academic preparation requirements is eligible for admission to baccalaureate programs at each university. The precollege curriculum described in this section shall include the following categories and courses of study and is based on the Program of Studies published by the Kentucky Board of Education and herein incorporated by reference. An institution may establish additional requirements to supplement this minimum academic preparation.

(a) Four (4) units of high school study in English/language arts, specifically including English I, English II, English III, and English IV or AP English.

(b) Three (3) units of high school study in mathematics, including algebra I, algebra II and geometry. This mathematics requirement also may be met by completing the integrated mathematics series consisting of three (3) units.

(c) Two (2) units of high school study in science, biology I and either chemistry I or physics I. At least one (1) of the science courses must be a laboratory course.

(d) Two (2) units of high school study in social studies, specifically including world civilization and U.S. history or AP American history.

(e) A college-bound student is encouraged to take, as part of his elective course selection, additional coursework in mathematics, sciences, foreign languages, arts, and computer literacy. Substitutions cannot be made for any course which is identified unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.

(2) Effective for the fall semester of 2002, an applicant who has [1987, applicants who have] satisfied the minimum qualifications for institutional admission as a first-time freshman and who has [freshmen and have] successfully completed twenty-two (22) [twenty (20)] or more approved high school units including the following precollege curriculum describing the minimum academic preparation requirements is [are] eligible for admission to baccalaureate programs at each university. The precollege curriculum described in this section shall include the following categories and courses of study and is based on the Program of Studies. An institution [Each university] may establish additional requirements to supplement this minimum academic [educational] preparation.

(a) Four (4) units of high school study in English/language arts, specifically, including English I [(2301)], English II [(2302)], English III [(2303)], and English IV or AP English [(2304) or AP English (2307 or 2308)].

(b) Three (3) units of high school study in mathematics, [specifically] including algebra I, [(2710), (2722) or (both 2720 and 2721) or] algebra II, and [(2711 or 2723);] geometry. Provided, however:

1. A student may substitute for algebra I a mathematics course whose content is more rigorous than that described in the Program of Studies.

2. Algebra I may be taken prior to high school and counted as a mathematics required course if the academic content of the course is at least as rigorous as that listed in the Program of Studies.

3. Algebra II shall include the content and skills described in the Core Content for Assessment, published by the Kentucky Department of Education and incorporated herein by reference. [(2712 or 2735 or 2732), and one (1) additional mathematics elective. Beginning in 1990-91, the mathematics elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky

Schools: Grades K-12" published by the Kentucky Department of Education. Effective with admissions for the fall semester of 1995, the three (3) required units of high school study in mathematics shall include Algebra I (2710 or 2722 or 2751); Algebra II (2711 or 2723); and Geometry (2712 or 2732 or 2735). This mathematics requirement also may be met by completing the integrated mathematics series consisting of three (3) units (2756, 2757, and 2758).]

(c) Three (3) [Two (2)] units of high school study in science, to include physical science, life science, and earth/space science. At least one (1) unit shall be a laboratory course, [specifically including either Biology I (2517) or Chemistry I (2521) or Physics I (2532), and one (1) additional science elective. At least one (1) of the science courses must be a laboratory course. Beginning in 1990-91, the science elective will be limited to predetermined courses which are identified in the "Program of Studies for Kentucky Schools: Grades K-12". Effective with admissions for the fall semester of 1995, the two (2) required units of high school study in science shall include Biology I (2517) and either Chemistry I (2521) or Physics I (2532), at least one (1) of which shall be a laboratory course.]

(d) Three (3) [Two (2)] units of high school study in social studies, from the following content areas: United States history, economics, government, world geography, and world civilization.

(e) One-half (1/2) unit in health education.

(f) One-half (1/2) unit in physical education.

(g) One (1) unit in history and appreciation of visual and performing arts.

(h) Effective with the fall semester 2004 [2008], an applicant shall:

1. Complete two (2) units in a nonnative language where the academic content includes the spoken and written aspects of a non-native language as well as the culture associated with that language; or

2. Demonstrate linguistic competence and awareness of a non-native language and culture equivalent to two (2) years of high school language and the culture associated with that language. The council shall adopt a policy by 2003 for assessing nonnative language competence.

(3) Beginning with fall semester 2002 through the academic year 2003-2004, [(2)] a student is [also] required to take five (5) [seven (7)] electives. Three (3) of the five (5) [of the seven (7)] electives must be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements. Beginning with the fall semester 2004, a student is required to take five (5) electives. Three (3) of five (5) electives must be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements. Electives [and] must be in the approved areas of study:

(a) Social studies.

(b) Science.

(c) Mathematics.

(d) English/language arts.

(e) Arts and humanities.

(f) Physical education and health. A student is limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

(g) Nonnative language where the academic content includes spoken and written aspects of a nonnative language as well as the culture associated with the language.

(h) Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways. The academic content shall be more rigorous than the introductory level as described in 703 KAR 4:060, [specifically including World Civilization (2246) and U.S. History (2243) or AP American History (2244).]

(i) A [(e)-In addition,] college-bound student is [students are] encouraged to take, as part of his [their] elective course selection [selections], additional coursework in mathematics, sciences, and [foreign languages,] arts. [Two (2) elective courses in a nonnative language and an elective course that ensures computer literacy are strongly recommended.] [,-and computer literacy. Substitutions cannot be made for any course which is identified by a specific program of studies number unless the course in question has been deemed equivalent

lent in content by the Council on Postsecondary Education in consultation with the Department of Education:]

(4) [(3)](a) A student may substitute an integrated, applied, interdisciplinary, or higher level course within a program of study for a course listed in subsections (1) or (2) of this section, if the substituted course offers the same or greater academic rigor and the course covers or exceeds the minimum required content.

(b) Integrated math courses are intended to be taken as a sequence. A student shall choose either the algebra/geometry sequence or the integrated math sequence.

(c) An approved substitute course shall include an honors course, advanced placement course, dual credit course, or a course taken at an institution.

(5) [(4)] A waiver of a required precollege curriculum course may, however, be justified if:

(a) A student is physically unable to complete a course because of a physical handicap;

(b) [1:] A [given] student's handicapping condition is verified through appropriate documentation;

(c) [2:] The school district superintendent (or designee) verifies that a student's handicapping condition will prevent the student from completing the course in question; and

(d) [3:] Another course in a closely related area can be substituted for the course that cannot be completed.

(6) [(5)] [(2)] Course selections are tied to the Program of Studies [for Kentucky Schools: Grades K-12<sup>2</sup>] and the individual course descriptions contained in that document. Adjustments in the minimum academic [educational] preparation for college will occur as changes are made in the program of studies. For guidance in the selection of specific courses, counselors should consult the program of studies and Council [on Postsecondary Education] materials on the precollege curriculum.

(7) [(6)] [(3)] It is the responsibility of each institution [of higher education] to determine whether an applicant has met these minimum academic [educational] preparation requirements.

(8) [(7)] [(4)] Effective with admissions for the fall semester of 2002, a student [1992, all students] admitted to a baccalaureate degree program at an institution [with baccalaureate-degree status to universities] shall be subject to the precollege curriculum [as established in this section].

(9) [(8)] The following are exempted from the requirements of the precollege curriculum:

(a) An adult student;

(b) A student [Excluded from this requirement shall be nontraditional students and students] entering baccalaureate-degree status with twenty-four (24) or more semester credit hours applicable to a baccalaureate degree with a GPA (grade point average) of at least 2.00 on a 4.00 scale; [or]

(c) [-Also excluded from this requirement shall be] Active duty military personnel, their spouses, and their dependents; or

(d) A student enrolled in a community or technical college or a community college type program.

(10) [(9)] Specifically subject to this requirement are the following:

(a) A first-time freshman [freshmen] pursuing a baccalaureate degree with or without a declared major;

(b) A student [students] converting from nondegree status to baccalaureate-degree status;

(c) A student [students] changing from certificate or associate-degree level to baccalaureate-degree level; and

(d) A student [students] who, transferring from another institution, has [other institutions, have] been admitted to baccalaureate-degree status by the receiving institution. A [All] degree-seeking student [students] shall be assigned a degree-level code.

Section 4. [5:] Conditional Admissions Qualifications. (1) Subject to the requirements and limitations established by the council [on Postsecondary Education], an institution [each university] shall have the option of admitting conditionally a first-time freshman applicant [applicants] to a baccalaureate or associate degree program or diploma or certificate program [programs] who has [have] not met the minimum academic [educational] preparation qualifications for admission. A [Beginning in the fall semester of 1987, each university may grant exceptions to the minimum educational preparation qualifications

and admit conditionally each academic term a maximum of twenty (20) percent of the total number of applicants admitted to baccalaureate programs as first-time freshmen:] first-time [freshman] [freshmen] admitted conditionally shall remove or otherwise satisfy all deficiencies regarding the minimum academic [educational] preparation in a manner and time period established by the enrolling institution [university].

(2) An institution [Effective with the fall semester of 1994, each university] enrolling students in a baccalaureate degree program under the conditional admission provision of this policy in subsection (1) of this section shall admit conditionally each academic term not more than five (5) percent of a base figure. [The transition from twenty (20) percent to five (5) percent shall be initiated as follows: beginning with the fall semester of 1992, each university shall admit conditionally each academic term not more than fifteen (15) percent of a base figure; and, beginning with the fall semester of 1993, each university shall admit conditionally each academic term not more than ten (10) percent of a base figure:] The base figure shall be the average number of students reported as enrolled with baccalaureate-degree status over the preceding four (4) years. [Nonresident students who failed to take world civilization while in high school shall not be reported or treated as having a precollege curriculum deficiency and shall not be subject to conditional admission on this basis.]

(3) By January 1, 1992, each university shall submit to the Council on Postsecondary Education for review and approval its policy covering the removal of precollege curriculum course deficiencies for students admitted conditionally. These policies shall apply to admissions beginning with the fall semester of 1992 and shall include the following components and conditions:

(a) Precollege curriculum course deficiencies in English and mathematics should be removed as soon as possible after enrollment, and shall be removed before students earn twenty-four (24) hours of degree credit. Students failing to comply with this condition of admission shall be prohibited from enrolling in additional degree credit courses until the required corrective measures have been completed.

(b) Courses used to remove precollege curriculum deficiencies in English and mathematics shall not apply toward graduation credit.

(c) Students who have not completed the required courses in English and mathematics, but who score at or above the 60th percentile on the relevant portion of the ACT or SAT, shall be considered as having demonstrated a proficiency in the subject and shall not be assessed as deficient on this basis.

(d) Removal of precollege curriculum deficiencies in science and social studies shall be required before students complete twenty-four (24) hours of degree credit. The institutions shall stipulate the manner in which deficiencies shall be removed.

(e) University policies shall specify how the removal of deficiencies will be monitored and enforced.]

(3) [(4)] Although not subject to the precollege curriculum for admission purposes, students enrolled in technical colleges, community colleges or community college-type programs in universities shall be assessed and reported as to their precollege curriculum status [effective with admissions for the fall semester of 1992. Students with precollege curriculum deficiencies shall remove deficiencies subject to the same requirements and conditions as baccalaureate students who are admitted conditionally. By January 1, 1992, individual community colleges or the University of Kentucky Community College System shall submit their policies or its policy covering the removal of precollege curriculum course deficiencies to the Council on Postsecondary Education for review and approval. By January 1, 1992, universities shall submit their policies applicable to community college-type students to the Council on Postsecondary Education for review and approval, if these policies differ from their policies for baccalaureate students admitted conditionally].

Section 5. [6:] Special Students. (1) An applicant [Applicants] of superior ability, as demonstrated by exceptional academic achievement, a high ACT score [scores], and social maturity, may be granted early admission [to the freshman class].

(2) At the discretion of the institution, an applicant [applicants] unable to meet college entrance requirements may be admitted to a college class [classes] for which he is [they are] qualified.

(3) A Kentucky resident [residents] sixty-five (65) or older who is

[are] admitted to an institution [state-supported institutions] shall have all registration and tuition charges waived. However, an institution may limit admission under this subsection [of these students] if classes are filled, or if [their] admission necessitates creating additional classes.

Section 6. [7.- Admission with Advanced Standing.-] (1) Applicants who have attended another accredited college or university may be admitted with advanced standing in accordance with admission requirements established by each institution. An institution may have additional requirements for nonresidents.

(2) Lower division academic courses offered for undergraduate credit at any accredited Kentucky community college are transferable for academic credit to state-supported universities. Lower division academic courses are those offered for undergraduate credit at the freshman and sophomore level or normally counted toward requirements for an associate degree. Usually numbered 100 to 299, these are introductory in nature and require no significant prerequisites. Determination of course level shall be made by the governing boards of the public universities and filed with the Council on Postsecondary Education.

(3) The number of semester hours earned at the community college level which will be applied toward meeting requirements for a baccalaureate degree will depend upon the degree being pursued and the transfer practices of the receiving institution. In cases where educational objectives have changed, students may take additional courses at a community college after having completed the associate degree requirements. In this event, the college to which the student plans to transfer should be consulted.

(4) Although each public university has the responsibility for determining its degree requirements, it normally takes two (2) additional academic years for a community college transfer student to complete baccalaureate degree requirements.

(5) Credits presented from institutions not accredited may be accepted only when validated by advanced work at the receiving institution or by examination at the discretion of the institution.

Section 8.- General Policy on Nonresident Enrollment. (1) An institution providing a scholarship to a nonresident student, regardless of the source or nature of the scholarship, shall [institutions which waive the nonresident surcharge for nonresident students will continue to] count that student as a nonresident student [those students as nonresident students] for purposes of this policy and reporting to the council.

(2) A student from another state or country will be accepted by an institution provided that nonresident enrollment does not inhibit the educational opportunities of a Kentucky resident. An institution may establish additional admission criteria consistent with this administrative regulation.

Section 7. Transfer Students. (1) The council's general education transfer policy and baccalaureate program transfer framework policy shall provide the basis for institutional policies on the acceptance of transfer credits. The American Association of Collegiate Registrars and Admissions Officers' "Transfer Credit Practices of Educational Institutions" shall serve as a reference for admission of transfer students to an institution and for the acceptance of transfer credits. Generally, a student dismissed from a college or university shall not be accepted at an institution for the semester following his dismissal. Failure by a student to report enrollment at another institution may result in dismissal and loss of credits earned.

(2) The council is concerned that a student's transfer from one (1) institution to another be as smooth as possible. It shall be the responsibility of all state-supported institutions to assure that the student receives adequate academic counseling concerning transfer of credit.

Section 8. Remedial Placement. (1) The council shall adopt a policy on remedial placement by June 30, 1999, that provides minimum standards for placement of a student in a college-level course.

(2) An institution shall adopt [establish], no later than the end of calendar year 1999, a policy on placement of a student in a college-level course to be effective no later than the fall semester of the year 2000. The institutional policy shall use an assessment system

that:

(a) Meets or exceeds the minimum level of the policy developed by the council in subsection (1) of this section;

(b) Evaluates whether a student meets entry level standards in reading, English and mathematics;

(c) Requires a student who does not meet the entry level standards to enroll in appropriate remedial level courses and pass them with a grade of "C" or higher; and

(d) Requires an institution to use placement tests for assigning students to the appropriate level course; and

(3) The Kentucky Community and Technical College System also shall establish uniform placement policies for the two (2) branches, the Technical College Branch and the University of Kentucky Community College Branch.

Section 9. Incorporation by Reference. (1) The "Program of Studies for Kentucky Schools", published by the KDE in 1998 and the "Core Content for Assessment", Version 1, published by KDE in 1996 are incorporated by reference.

(2) This material may be inspected, copied or obtained at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LEONARD V. HARDIN, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 5, 1999 at 3 p.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of individuals, businesses, organizations, and state and local governments affected by the administrative regulation: 8 public universities, 16 private colleges, 28 public technical and community colleges, local school districts and the Kentucky Department of Education.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. Negligible impact on local schools or on institutions.

2. Second and subsequent years. Negligible

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year. None

2. Continuing costs or savings. None

3. Additional factors increasing or decreasing costs. Negligible on the promulgating body.

(b) Reporting and paperwork requirements. No additional requirements.

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

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

(6) Economic impact in Kentucky on:

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

(b) on Kentucky. Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected. None

(8) Assessment of expected benefits.

(a) Impact on public health and environmental welfare. Not applicable.

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

(c) If detrimental effect would result, explain detrimental effect. Same as (a).



- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication. None
- (a) Necessity of proposed regulation if in conflict. Not applicable.
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions. Not applicable.
- (10) Any additional information or comments. No additional comments are offered.
- (11) TIERING: Is tiering being applied? Tiering is not being applied and is not appropriate for this administrative regulation.

**COUNCIL ON POSTSECONDARY EDUCATION  
(Amended After Hearing)**

**13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.**

RELATES TO: KRS 158.070, 164.020, 164.7911, 164.7927

STATUTORY AUTHORITY: KRS 154A.130, 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889, EO 98-1592 [1998 Ky. Acts ch. 575]

NECESSITY, FUNCTION, AND CONFORMITY: The Council on Postsecondary Education has the responsibility to provide administrative oversight to the Kentucky Educational Excellence Scholarship (KEES) Program, adopted by the 1998 Kentucky General Assembly in 1998 Ky. Acts ch. 575 and renamed by EO 98-1592. The council is to exercise its administrative responsibilities [authority] through promulgation of an administrative regulation. Specifically, the council is to: administer all funds appropriated to the trust fund for the program; develop and implement standards for high school curriculum as they relate to eligibility for participation in the program; determine eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award; establish a table to convert an SAT score to an ACT standard; establish a method for local education agencies to calculate a grade point average; and establish a five (5) year postsecondary education program standard. The CPE will also establish the overall award levels for the program. The program was originally designated as The Commonwealth Merit Scholarship but was subsequently changed by EO 98-1592 [executive order] to the Kentucky Educational Excellence Scholarship (KEES) Program.

Section 1. Definitions. (1) "Academic term" means the fall or spring semester or their equivalence under a trimester or quarter system at a postsecondary education institution and shall not include summer sessions.

(2) "Academic year" is defined in KRS 164.7874(2) [1998 Ky. Acts ch. 575, sec. 2(2)] and [in KRS] 158.070.

(3) "ACT" means the test administered to students for entrance to Kentucky postsecondary education institutions that is owned by the ACT Corporation of Iowa City, Iowa.

(4) "Advanced placement" means a cooperative educational endeavor between secondary schools and colleges and universities administered by the College Board of the Educational Testing Service and recognized by KDE.

(5) "Authority" is defined in KRS 164.7874(4) [1998 Ky. Acts ch. 575, sec. 2(4)].

(6) "Award period" is defined in KRS 164.7874(5) [1998 Ky. Acts ch. 575, sec. 2(5)].

(7) "Award recipient" means an eligible student who subsequently enrolls in a participating institution.

(8) "Council" or "CPE" means the Council on Postsecondary Education established in KRS 164.011 and as referenced in KRS 164.7874(9) [1998 Ky. Acts ch. 575, sec. 2(9)].

(9) "Eligible student" is defined in KRS 164.7874(10) [1998 Ky. Acts ch. 575, sec. 2(10)].

(10) "Enrolled" or "enrollment" means the status of a student who has completed the registration requirements, except for the payment of tuition and fees, at a participating institution that the student is attending. [a student is enrolled and is attending a participating institution.]

(11) "GED" means a general educational development diploma awarded to a student.

(12) "High school" is defined in KRS 164.7874(13) and [1998 Ky. Acts ch. 575, sec. 2(13) and as defined in KRS] 156.160.

(13) "International baccalaureate course" means a course in a secondary education program sponsored by the International Baccalaureate Organization and recognized by the KDE in 704 KAR 3:340, Section 2(3)(b).

(14) "KDE" means the Kentucky Department of Education authorized and established pursuant to KRS 156.070.

(15) [(14)] "KEES" means the Kentucky Educational Excellence Scholarship Program approved by the 1998 Kentucky General Assembly in KRS 164.7871 through 164.7889 and 154A.130 [1998 Ky. Acts ch. 575], originally designated as the Commonwealth Merit Scholarship and subsequently renamed by EO 98-1592 [executive order].

(16) [(15)] "Participating institution" is defined in KRS 164.7874(15) [1998 Ky. Acts ch. 575, sec. 2(15)].

(17) [(16)] "SAT" means the Scholastic Assessment Test administered to Kentucky students seeking admission to Kentucky postsecondary education institutions.

(18) [(17)] "Scholarship curriculum" is defined in KRS 164.7874(7) [1998 Ky. Acts ch. 575, sec. 2(7)].

Section 2. High School Grade Point Average Calculation and Reporting. (1) [Beginning August 1, 1999, and no later than June 30 for each year thereafter, each Kentucky local board of education shall report to the KDE the grade point average for an eligible student for the preceding academic year.

(2) [(1)] An eligible student's grade point average, as defined in KRS 164.7874(12), for an academic year shall be calculated using each grade awarded for all courses [a course] taken during an academic year.

(2) [(3)] An eligible student's grade point average shall be calculated by:

(a) Taking the number of units in a course multiplied by the course grade as expressed on a 4.0 point grading scale where 4.0 is an "A" and 0.0 is an "F;" and

(b) Adding the total number of points accumulated for an academic year; and

(c) Dividing the total number of points accumulated in paragraph (b) of this subsection by the total number of units for the academic year.

(d) Except that, for a student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned in paragraph (a) of this subsection shall be calculated using a 5.0 point scale where 5.0 is an "A" and 1.0 is an "F."

(3) [(4)] The grade point average reported for each student for each academic year shall include all information as set forth in KRS 164.7885(1) [1998 Ky. Acts ch. 575, sec. 6(1)] and in such manner as the KDE or the KHEAA shall require.

(4) [(5)] The grade point average reported for each eligible student shall be based on the grade scale in place in that school during the 1997-98 academic year.

(5) [(6)] During the 1998-99 fiscal year, the council shall request the assistance of the Kentucky Board of Education to develop minimum threshold levels for letter grades to be used in 1999-2000 for the purposes of this program.

Section 3. Scholarship Curriculum. (1) In addition to the requirements of Section 5 of this administrative regulation, a student shall complete the scholarship curriculum to qualify for the base scholarship award.

(a) The scholarship curriculum shall be:

1. The curriculum required in 704 KAR 3:305, Section 1 or 2 as appropriate without any restriction on the type of electives taken for a student enrolled in high school during the 1998-99 academic year; or

2. For a student enrolled in high school during the 1999-2000 and 2000-01 academic years and who is required to meet the curriculum standards in 704 KAR 3:305, Section 1, the eight (8) electives required by 704 KAR 3:305, Section 1, shall be taken in the following areas and shall meet the standards enumerated in subparagraph 4b of this subsection.

3. For a student enrolled in high school during 1999-2000 and



for each year thereafter who is required to meet the curriculum standards in 704 KAR 3:305, Section 2, five (5) of the seven (7) electives required by 704 KAR 3:305, Section 2 shall be taken in the following areas and shall meet the standards enumerated in subparagraph 4b of this paragraph.

4. The following subject areas and standards are established for electives:

a. An elective in social studies, science, mathematics, English/language arts, and arts and humanities shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060.

b. Physical education and health shall be a course whose academic content is as rigorous as the content established for courses in this area in 703 KAR 4:060, and shall be limited to one-half (1/2) academic unit of credit for each area.

c. Nonnative languages shall be a course whose academic content includes teaching the spoken and written aspects of the language.

d. Agriculture, industrial technology education, business education, marketing education, family and consumer sciences, health sciences, technology education and career pathways shall be a course whose academic content is beyond the introductory level in the vocational education areas of study as established by 703 KAR 4:060.

(b) A **high school** [local board of education] may substitute an integrated, applied, interdisciplinary or higher level course for a required course or required elective if:

1. The course provides the same or greater academic rigor and the course covers the minimum required content areas or exceeds the minimum required content areas established in 703 KAR 4:060, and the document incorporated by reference titled, "Academic Expectations," dated July 1994; or

2. The course is an honors course, cooperative education course, advanced placement course, **international baccalaureate course**, dual credit course, or is a course taken at a postsecondary education institution.

(2) A **high school** [local board of education] annually shall provide written documentation to a student on whether the student's schedule of coursework meets the requirements of the scholarship curriculum.

Section 4. Eligible Postsecondary Education Programs. **(1) An eligible program shall be a certificate or degree program offered by a participating institution and recognized by the council.**

**(2)** Pursuant to **KRS 164.7881(6)** [1998 Ky. Acts ch. 575, Section 5(6)], the following academic programs shall be approved as five (5) year baccalaureate degree programs:

**(a)** [(1)] Architecture (04.0201);

**(b)** [(2)] Landscape architecture (04.0601); and

**(c)** [(3)] Engineering **(14.0101, 14.0301, 14.0701, 14.0801, 14.0901, 14.1001, 14.1201, 14.1701, 14.1801, 14.1901, 14.2101, 14.9999.01).**

Section 5. Base Scholarship Award. (1) Beginning after July 1, 1998, and thereafter, a Kentucky resident enrolled in a Kentucky

[public] high school [or a private, parochial, or church school that has been certified by the Kentucky Board of Education pursuant to KRS 156.160] shall be eligible for a base scholarship award under this program:

**(a)** Upon satisfying the [following] conditions of **KRS 164.7874(10); and**

**(b) Upon graduating [:**

**(a)** The student shall not be a convicted felon;

**(b)** The student shall have a grade point average of 2.5 or above on a 4.0 point scale at the close of any academic year of high school for all coursework taken at a Kentucky public high school or a private, parochial, or church school that has been certified by the Kentucky Board of Education pursuant to KRS 156.160;

**(c)** The student shall have completed the scholarship curriculum set out in Section 3 of this administrative regulation; and

**(d)** The student shall graduate] from a Kentucky certified high school.

**(2)(a)** A student satisfying the requirements of subsection (1) of this section shall be an eligible student and shall earn a base scholarship award for each academic year.

**(b) A student shall be limited to four (4) base scholarship awards.**

**(3)** The KHEAA shall calculate the base scholarship award amount for a student based on the schedule contained in **KRS 164.7879** [this administrative regulation].

**(4)** [For the academic year 1998-99, the base scholarship award amount shall be the amount specified in the 1998 Ky. Acts ch. 575, sec. 4(1);

**(5)]** For the academic year 1999-2000 and thereafter, the CPE annually shall determine the amount of the base scholarship award for each grade point average [and shall publish that schedule no later than June 30 of each year].

**(5) [(6)](a)** A base scholarship award shall be determined based upon the schedule in use for the academic year that the award is earned.

**(b)** A base scholarship award attributable to a past academic year shall not be increased **or decreased**.

Section 6. Supplemental Award for ACT and Equivalency; SAT Conversion Table. (1) An eligible student, as determined in Section 5(1) of this administrative regulation, shall receive a supplemental award if the student:

**(a)** 1. Takes the ACT by the date of graduation from high school; and

2. Scores fifteen (15) or higher on the ACT; or

**(b)** 1. Takes the SAT by the date of graduation from high school; and

2. Has a score equivalent to fifteen (15) or higher on the ACT.

**(2)** The highest ACT score or SAT score equivalency completed by the date of high school graduation shall be used for determining eligibility and the supplemental award amount due to an eligible student.

**(3)** The following SAT to ACT Conversion Table shall be used:

Table C-2 Concordance Between SAT I Recentered V+M Score and ACT Composite Score									
SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite	SAT I V+M	ACT Composite
1600	35-36	1370	31	1140	25	910	19	680	14
1590	35	1360	31	1130	25	900	19	670	14
1580	35	1350	30	1120	24	890	18	660	14
1570	35	1340	30	1110	24	880	18	650	13
1560	35	1330	30	1100	24	870	18	640	13
1550	34	1320	30	1090	24	860	18	630	13
1540	34	1310	29	1080	23	850	17	620	13
1530	34	1300	29	1070	23	840	17	610	13
1520	34	1290	29	1060	23	830	17	600	13
1510	34	1280	29	1050	22	820	17	590	13
1500	33	1270	28	1040	22	810	17	580	12
1490	33	1260	28	1030	22	800	16	570	12

# VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

1480	33	1250	28	1020	22	790	16	560	12
1470	33	1240	28	1010	21	780	16	550	12
1460	33	1230	27	1000	21	770	16	540	12
1450	32	1220	27	990	21	760	16	530	12
1440	32	1210	27	980	21	750	15	520	12
1430	32	1200	26	970	20	740	15	510	11
1420	32	1190	26	960	20	730	15	500	11
1410	32	1180	26	950	20	720	15		
1400	31	1170	26	940	20	710	15		
1390	31	1160	25	930	19	700	14		
1380	31	1150	25	920	19	690	14		

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

(4)(a) For the academic year 1998-99, the amount of a student's supplemental award shall be the amount contained in **KRS 164.7879(3)(a)** [the 1998 Ky. Acts ch. 575, sec. 4(3)(a) for the appropriate ACT score or SAT equivalency score].

(b) For the academic years 1999-2000 and 2000-2001, the amount of a student's supplemental award shall be the amount contained in **KRS 164.7879(3)(b)** [the 1998 Ky. Acts ch. 575, sec. 4(3)(b) for the appropriate ACT score or SAT equivalency score].

(c) For the academic year 2001-02, and annually thereafter, the CPE shall determine the amount of a supplemental award after considering the availability of funds [for each ACT score of fifteen (15) or higher and shall publish a schedule of those supplemental award amounts no later than June 30].

(5) The supplemental award amount shall be determined based upon the schedule in use for the academic year of a student's graduation from high school. The amount of a supplemental award shall not be increased or decreased because of an adjustment in the supplemental award schedule.

Section 7. Criteria for Supplemental Award to Noncertified, Nonpublic High School Students and to GED Students. (1) A Kentucky resident who graduates from a nonpublic Kentucky high school not certified by the Kentucky Board of Education shall be eligible for a supplemental award upon satisfying the following conditions:

(a) The student is not a convicted felon;

(b) The date of the student's graduation is May 1999 or thereafter;

(c) The student takes the ACT or SAT and has at least a minimum score as established by this administrative regulation; and

(d) The student enrolls in a participating institution within five (5) years after graduation from high school.

(2) A Kentucky resident who has not graduated from either a certified Kentucky high school or a nonpublic Kentucky high school that is not certified by the Kentucky Board of Education shall be eligible for a supplemental award upon satisfying the following conditions:

(a) The student is not a convicted felon;

(b) The student's eighteenth (18) birthday occurs during the 1999 calendar year or any year thereafter;

(c) A Kentucky resident [The student] takes and receives a GED diploma within five (5) years of attaining eighteen (18) years of age;

(d) A Kentucky resident [The student] takes the ACT or SAT and achieves a minimum score for eligibility as established by this administrative regulation; and

(e) The student enrolls in a participating institution after July 1, 1999, and within five (5) years of receiving the GED diploma.

(3) A student requesting a supplemental award under this section shall notify the participating institution where the student has or intends to enroll.

(4)(a) Residency shall be determined by a participating institution in accordance with 13 KAR 2:045.

(b) A participating institution shall determine a student's eligibility for a supplemental award under this section and shall notify KHEAA

of such eligibility.

Section 8. Eligibility Requirements for Continuation of a Base Scholarship Award or a Supplemental Award; Duration of Award. (1) An eligible student shall be eligible to receive a base scholarship award or a supplemental award for a period not to exceed eight (8) academic terms if the student meets the requirements of KRS 164.7881(3) and (4):

(a) Is enrolled in a participating postsecondary education institution in an eligible program;

(b)1. Has a 2.5 cumulative grade point average or higher at the close of the first academic award period that the award was granted as measured on a 4.0 point scale; or

2. Subsequent to the first academic award period, has a 3.0 cumulative grade point average on a 4.0 point scale at the close of each academic award period.

(c) Except that, an eligible student who has a cumulative grade point average between 2.5 and 3.0 on a 4.0 point scale after the first academic award period shall only be eligible to receive fifty (50) percent of the award in a subsequent award period.]

(2) Pursuant to **KRS 164.7881(6)** [the 1998 Ky. Acts ch. 575, sec. 5(6)], a student shall be eligible to receive a base scholarship award or a supplemental award for a period not to exceed ten (10) academic terms if a student is:

(a) enrolled at a participating institution and in an eligible five (5) year baccalaureate degree program as described in Section 4(2) of this administrative regulation]; and

(b) Meets the requirements of subsection (1)(b) and (c) of this section].

(3)(a) Eligibility to receive a base scholarship award or a supplemental award shall be limited to a maximum of five (5) years beyond a student's date of graduation from high school.

(b) Except that, a student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of attaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received.

(c) Except that, a student who enrolls in an eligible five (5) year baccalaureate degree program shall have a maximum of six (6) years of eligibility from the date of graduation from high school.

(4) A student's eligibility shall be extended by KHEAA if a student qualifies for an extension under the provisions of **KRS 164.7881(5)**, [the 1998 Ky. Acts ch. 575, sec. 5(5):

(5) A student who fails to maintain a 2.5 grade point average in any academic award period shall not be eligible for continuation of a base scholarship award or supplemental award in the subsequent academic award period.

(6) A student who is not eligible for continuation of a base scholarship award or supplemental award because of a failure to maintain a grade point average as stated in subsection (1) of this section shall have their award reinstated if, in the academic award period subsequent to the academic term resulting in the loss of the award, a student reestablishes a 2.5 grade point average or higher.

(7) A student enrolled part-time and who meets the requirements of subsection (1) of this section shall have the amount of an

~~initial base scholarship award or of an initial supplemental award, or the amount of a continuing base scholarship award or of a continuing supplemental award reduced on a proportionate basis as required by 1998 Ky. Acts ch. 575, sec. 5(4)(b) and in a manner set out in 11 KAR 15:040. Commonwealth Merit Scholarship Award Determination Procedure:~~

~~(8) Continuation of a base scholarship award or a supplemental award shall be subject to all provisions of the 1998 Ky. Acts ch. 575, sec. 6(6).]~~

Section 9. Administrative Responsibilities and Expenses of Program. (1) The CPE annually shall determine the level of funding for expenses associated with the program and shall allocate funds from the "Wallace G. Wilkinson Commonwealth Merit Scholarship Trust Fund" described in KRS 164.7877(1) and (3) [1998 Ky. Acts ch. 575, sec. 3(1) and pursuant to sec. 3(3)].

(2) The KDE and the authority annually, by April 1, shall provide to the CPE, in a format prescribed by the CPE, a budget proposal indicating the amount of funds that are necessary to operate the program.

(3) The CPE shall notify the KDE and the authority of the amount of funds available for the next fiscal year no later than April 30 of the fiscal year preceding the fiscal year that funds are to be made available.

(4) The CPE shall develop an allotment schedule for the release of the administrative funds and shall notify the KDE and the KHEAA of that schedule.

**Section 10. Incorporation by Reference. (1) "Kentucky's Learning Goals and Academic Expectations", July 1994, is incorporated by reference.**

**(2) This material may be inspected, copied or obtained at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.**

LEONARD V. HARDIN, Chair

DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: January 4, 1999

FILED WITH LRC: January 4, 1999 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: Eight public universities, sixteen private colleges, 28 public technical and community colleges, the Kentucky Department of Education and the Kentucky Higher Education Assistance Authority.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. Local school districts will have to report on grades of students to the Kentucky Department of Education. KDE will report student eligibility to KHEAA who in turn will notify students.

2. Second and subsequent years. Postsecondary education institutions will have to report on continuing eligibility of students receiving award.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year. None

2. Continuing costs or savings. None

3. Additional factors increasing or decreasing costs. Negligible on the promulgating body.

(b) Reporting and paperwork requirements. No additional requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. State general funds - appropriated funds through the Kentucky Lottery.

(6) Economic impact in Kentucky on:

(a) Geographical area in which administrative regulation will be implemented. College-going rate should increase. Some possibility of long-term impact on state economy if college graduation rate increases.

(b) On Kentucky. Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected. None

(8) Assessment of expected benefits.

(a) Impact on public health and environmental welfare. Not applicable.

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

(c) If detrimental effect would result, explain detrimental effect. Same as (a).

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

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

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

(10) Any additional information or comments. No additional comments are offered.

(11) TIERING: Is tiering being applied? Tiering is not being applied and is not appropriate for this administrative regulation.

#### PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

#### 415 KAR 1:060. Financial responsibility account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the Office of the Petroleum Storage Tank Environmental Assurance Fund to establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by state and federal administrative regulations for the payment of the costs of corrective action and third-party liability. This administrative regulation establishes the eligibility requirements for the financial responsibility account, and establishes the procedure for eligible storage tank owners and operators to receive a certification of eligibility for this account.

Section 1. Applicability. An owner or operator of a facility with petroleum storage tanks containing motor fuels in operation meeting the following requirements shall be eligible to participate in the financial responsibility account.

(1) The owner or operator of a facility for which a certification of eligibility was issued by the office [fund], pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:060 (1993), prior to the effective date of this administrative regulation may be eligible to participate in the financial responsibility account for costs of corrective action or third-party liability incurred at that facility if the requirements of subsection (2) of this section and Section 5 of this administrative regulation are met.

(2) The owner or operator of a facility that was not issued a certificate of eligibility prior to the effective date of this administrative regulation shall:

(a) Register the tanks with the cabinet as required by KRS 224.60-105;

(b) Have release detection as required by 401 KAR 42:040. Facilities that are permanently or temporarily closed in compliance with 401 KAR 42:070 must have maintained compliance with release detection requirements prior to the permanent or temporary closure of the system; [- or be permanently closed in compliance with 401 KAR 42:070 or temporarily closed in compliance with 401 KAR 42:070;]

- (c) Not have a release for which corrective action is required at the time of certification;
- (d) Have corrosion protection as required by 401 KAR 42:030;
- (e) Have paid all annual fees required to be paid pursuant to KRS 224.60-150;
- (f) Have tanks "in operation" on or after the compliance dates set forth in 401 KAR 42:090 and be mandated by 401 KAR 42:090 to demonstrate financial responsibility as specified under 401 KAR 42:090; and
- (g) Have demonstrated to the office financial responsibility[~~as required;~~] in the amount of the entry level [~~to the fund~~] established in Section 6 of this administrative regulation.

Section 2. Eligibility for Payment. (1) An owner or operator may be eligible for payment from the financial responsibility account if:

- (a) A certificate of eligibility for the facility is issued to the owner or operator pursuant to Section 3(2) of this administrative regulation; and
- (b) The owner or operator has maintained compliance with the provisions of 401 KAR 42:030 and 42:040; and
- (c) The owner or operator has a release into the environment from a petroleum storage tank that requires corrective action. The necessity for corrective action shall be established by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for reimbursement of corrective action cost [fund participation].
- (d) The owner or operator performs corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

(2) An owner or operator issued a certificate of eligibility pursuant to 415 KAR 1:020 (1991) or 415 KAR 1:060 (1993) may be eligible for payment of costs of corrective action and third-party liability incurred on or after April 9, 1990 upon reissuance of a certificate of eligibility pursuant to this administrative regulation. An owner or operator performing ongoing corrective action and participating in the financial responsibility account under a previously issued certificate of eligibility shall not be denied a certificate of eligibility, pursuant to this administrative regulation, if the requirements of Sections 1(2)(a), (b), (d), (e), (f), (g) and 5 of this administrative regulation are met;

(3) An owner or operator issued a certificate of eligibility pursuant to Section 3(2) of this administrative regulation may be eligible for payment of costs of corrective action and third-party liability incurred after the date of issuance of the certificate.

Section 3. Certificate of Eligibility. (1) Compliance with the requirements of Section 1(2) of this administrative regulation shall be demonstrated by an owner or operator by filing with the Office of the Petroleum Storage Tank Environmental Assurance Fund a completed Eligibility and State Financial Responsibility Affidavit form dated October 1998 [July 1998] [June 1996 hereby incorporated by reference. Copies of this form may be obtained and inspected at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday]. The owner or operator shall certify under oath that all of the requirements of Section 1(2) of this administrative regulation have been met.

(2) If an owner or operator demonstrates compliance with Section 1(2) of this administrative regulation, a certificate of eligibility for participation in the financial responsibility account shall be issued by the office [fund].

(3) A certificate of eligibility is valid after the transfer of the covered facility, provided the new owner of the facility submits to the office [fund] a completed Eligibility and State Financial Responsibility Affidavit form for that facility within sixty (60) days of the transfer of the facility. The current certificate of eligibility shall be valid until a final decision is issued by the office [fund] on the new certificate of eligibility, unless the new owner fails to submit a complete Eligibility and State Financial Responsibility Affidavit in accordance with this section.

Section 4. Maintenance of Eligibility. To maintain eligibility for participation in and reimbursement from the financial responsibility account, the owner or operator shall maintain compliance with the eligibility requirements established in Sections 2 and 5 of this administrative regulation.

trative regulation.

Section 5. Degree of Compliance After a Release is Detected. If a release is detected at a facility determined to be eligible for participation in the financial responsibility account, the owner or operator shall:

- (1) Report the release to the cabinet immediately after the discovery of the release as required by KRS 224.01-400. For the purpose of potential eligibility for participation in the financial responsibility account, in no event shall the report of the release be made to the cabinet more than seven (7) days after discovery; and
- (2) Implement initial abatement procedures required by 401 KAR 42:060 within twenty (20) days after detection of the release, or as directed in writing by the cabinet; and
- (3) Comply with the requirements of 401 KAR 42:060 as directed in writing by the cabinet.

Section 6. Entry Level to the Financial Responsibility Account. (1) The entry level for participation in the financial responsibility account for an owner or operator of five (5) or less tanks shall be established and maintained at \$500 [~~\$1,000~~] per occurrence for taking corrective action and \$500 for compensating third parties for bodily injury and property damage.

(2) The entry level for participation in the financial responsibility account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$2,500 [~~\$5,000~~] per occurrence for taking corrective action and \$2,500 [~~\$5,000~~] per occurrence for compensating third parties for bodily injury and property damage.

(3) The entry level for participation in the financial responsibility account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$12,500 [~~\$25,000~~] per occurrence for taking corrective action and \$12,500 [~~\$25,000~~] per occurrence for compensating third parties for bodily injury and property damage.

(4) These entry levels shall apply to all applicants who apply for fund assistance on or after July 16, 1998. For all other applicants, the entry level will be set in an amount prescribed by the administrative regulation in effect at the time of the discovery of a release requiring corrective action.

(5) If the corrective action at a facility is completed in a timely manner, as described in this paragraph, the office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section. "Completed in a timely manner" as used in this paragraph shall mean:

(a) For corrective actions involving only soil remediation - 180 days from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet that is approved without additional measures being required;

(b) For corrective actions involving remediation of both soil and groundwater, or only groundwater - twenty-four (24) months from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet that is approved without additional measures being required.

Section 7. Financial Responsibility for the Entry Level Amount. (1) The owner or operator shall certify financial responsibility in an amount equal to the required entry level amount by using one (1) or any combination of the options listed in subsection (2) of this section. This certification shall be provided to the office [fund] on the Eligibility and State Financial Responsibility Affidavit form.

(2) Financial responsibility for the amount of the entry level may be demonstrated by:

(a) Commercial or private insurance from a carrier within A.M. best rating of B+, or better, authorized to contract business in the Commonwealth of Kentucky;

(b) Participation in a risk retention group qualified to do business in the Commonwealth and who shall furnish any financial reports as may be required by the office [fund];

(c) A guarantor with a controlling interest in the owner or operator. The guarantor shall furnish proof as may be required by the office [fund] in order to demonstrate state financial responsibility;

(d) A surety bond from a surety company that is listed with the U.S. Treasury Department or the Kentucky Department of Insurance. Under the terms of the bond, the surety shall become liable under the bond when the owner or operator fails to perform;

(e) An irrevocable standby letter of credit by an entity that has authority to issue letters of credit in Kentucky, and whose letter of credit operation is regularly examined by a federal or Kentucky agency. The letter of credit shall be drawn to cover "taking corrective action" and indemnification of third parties for liability arising from owning or operating petroleum storage tanks; and

(f) Qualification as a self-insurer with prior approval of the office [fund] if the owner or operator has certified to the office [fund] the following:

1. The owner or operators' annual year-end financial statements; and
2. The owner or operators' net worth is in excess of the entry level amount required for participation in the financial responsibility account.

Section 8. Change of Eligibility. An owner or operator shall report any change in the eligibility requirements contained in this administrative regulation to the office [fund] within ten (10) days of the change.

Section 9. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the financial responsibility account.

(2) The costs of corrective action for releases from newly discovered tanks found during the performance of corrective action for registered tanks shall be paid from the financial responsibility account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the financial responsibility account.

Section 10. Loss of Eligibility. (1) If at any time, prior to a release, the office [fund] determines that an owner or operator has not maintained compliance with the eligibility requirements of this administrative regulation, the office [fund] shall notify the owner or operator of the noncompliance.

(2)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account under a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation and a release occurs during the period of noncompliance.

(b) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third-party liability. The owner or operator will be responsible for the payment of the entry level, notwithstanding 415 KAR 1:070, Section 5(4).

(3)(a) A facility shall be deemed ineligible to receive payment from the financial responsibility account, pursuant to a previously approved Application for Assistance or a certificate of eligibility issued pursuant to this administrative regulation, if the owner or operator failed to maintain compliance with the eligibility requirements of this administrative regulation during the ongoing corrective action and a release occurs during the period of noncompliance.

(b) An owner or operator may be determined eligible for payment of the costs of corrective action, from the petroleum storage tank account, 415 KAR 1:070, if the facility is brought into compliance with cabinet administrative regulations. The owner or operator shall not be eligible for payment of the costs of third-party liability.

(4) An owner or operator may be determined ineligible to receive payment from the financial responsibility account if the owner or operator has knowingly or intentionally submitted false or inaccurate information to the office, or knowingly made a false statement, representation, or certification in an application, payment request, or any other documentation submitted to the office. Any cost incurred by, or paid from, the fund which is based on false or inaccurate information, false statements, representations or certifications shall be recovered by the office from the person who asserted the false or inaccurate information, false statements, representations or certifications.

(5) Any person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 knowingly providing false or inaccurate information or making

false statements, representations or certifications on any application, payment request or other documentation submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery of payment by the office as provided for in subsection (4) of this section.

~~(6) [fund, and shall be required to repay any monies falsely received.~~

(5) The office [fund] shall have the right to recover the money paid to an owner or operator, or a contractor when:

- (a) The amount was paid due to an error of the office [fund]; or
- (b) The amount was paid due to a mistake, error, or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or
- (c) A person has obtained payment from the office [fund] by fraud or intentional misrepresentation.

(7) ~~(6)~~ An owner or operator issued or reissued a certificate of eligibility for the financial responsibility account pursuant to this administrative regulation may also be eligible to participate in the petroleum storage tank account.

(8) ~~(7)~~ Costs of corrective action incurred prior to April 9, 1990 shall not be paid from the financial responsibility account.

Section 11. Account Balance. (1) The unobligated balance of the financial responsibility account shall not be less than \$1,500,000 to ensure a \$1,000,000 reserve balance adequate to meet federal financial responsibility requirements for participants in the account and a \$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS 224.60-135. The \$500,000 reserved for the cabinet's emergency abatement actions shall be renewed in that amount annually. [When funds are withdrawn for emergency abatement actions by the cabinet, the fund shall replace the amount immediately.]

(2) If the unobligated balance of the financial responsibility account is \$1,500,000, or less, or the obligation of a claim shall cause the unobligated balance of the fund to be less than \$1,500,000, the office [fund] shall immediately suspend the obligation of claims until the unobligated balance is greater than \$1,500,000. Obligations submitted for approval by the office [fund] at the time of suspension shall be obligated in accordance with the date of initial submission of the obligation when the suspension is lifted.

Section 12. Incorporation by Reference. (1) The "Eligibility and State Financial Responsibility Affidavit". (October, 1998), Public Protection and Regulation Cabinet is incorporated by reference.

(2) This form may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the office are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary  
ROBERT E. NICKEL, Executive Director  
DAVID B. WICKER, ESQ., Staff Counsel  
APPROVED BY AGENCY: January 7, 1999  
FILED WITH LRC: January 8, 1998 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing motor fuels.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience the cost and savings outlined above savings include the cost of remediation and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with a certification of financial assistance that satisfies federal requirements.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The amendments made in the regulation are required by statutory changes brought about by HB 282 (1998).

Alternatives:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account which provides for reimbursement to facilities that are required by 40 CFR 280 Subpart H to demonstrate financial responsibility for corrective action and third party compensation resulting from petroleum contamination. The proposed amended regulation meets the requirements of 40 CFR 280 Subpart H. The amendments will allow for a more efficient administration of the account, which will result in increased reimbursement to the public and less waste.

(5) Geographical and environmental impact

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to \$1,000,000 for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute, as amended in 1998. The regulation reduces the entry level and will benefit applicants by reducing that expenditure.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the technical compliance level, the level of financial responsibility required, and the financial ability of the applicant.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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

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

## FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any entity that owns or operates an underground petroleum storage tank.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank, will be required to demonstrate financial responsibility for taking corrective action and for compensating third party damages. Excepting the required entry level imposed on the local government extensive savings will be realized by the local government.

## PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

### 415 KAR 1:070. Petroleum storage tank account.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The 1992 Kentucky General Assembly amended KRS 224.60-130 to direct the Office of the Petroleum Storage Tank Environmental Assurance Fund to establish a petroleum storage tank account within the fund which may be used to pay the costs of corrective action due to a release of contamination from a petroleum storage tank. This administrative regulation establishes the eligibility requirements for the petroleum storage tank account.

Section 1. Applicability. (1)(a) This administrative regulation does not apply to releases from petroleum storage tanks removed from the ground before January 1, 1974;

(b) Costs of corrective action for releases of motor fuel from petroleum storage tanks removed from the ground after January 1, 1974 or tanks closed in place after January 1, 1974 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 2 of this administrative regulation are met;

(c) Costs of corrective action for releases of motor fuel from petroleum storage tanks currently existing and closed after December 22, 1988 may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 3 of this administrative



regulation are met; and

(d) Costs of corrective action for releases of motor fuel from petroleum storage tanks currently in use which are not eligible for participation in the financial responsibility account may be eligible for payment by the petroleum storage tank account if the eligibility requirements of Section 4 of this administrative regulation are met.

(2) Prior to applying for payment from the petroleum storage tank account for corrective action costs incurred at a facility the owner or operator shall have:

(a) Registered the tanks at the facility with the cabinet as required by KRS 224.60-105;

(b) Paid all annual fees as required by KRS 224.60-150;

(c) Submitted a completed Eligibility and State Financial Responsibility Affidavit form to the office [fund] to certify eligibility for the petroleum storage tank account;

(d) Filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change-in-service to comply with the requirement of 401 KAR 42:020; and

(e) Confirmed by analytical sample results the need for corrective action at the facility. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for reimbursement of corrective action cost [fund-participation].

(3) Payment from the petroleum storage tank account shall only be made for the costs of corrective action required by law and shall not be made for costs to upgrade the facility.

Section 2. Eligibility Requirements for the Classes of Tanks Described in Section 1(1)(b) of this Administrative Regulation. An owner or operator of a facility of the class described in Section 1(1)(b) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of motor fuel is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet; and

(3) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed by the cabinet.

Section 3. Eligibility Requirements for the Class of Tanks Described in Section 1(1)(c) of this Administrative Regulation. (1) An owner or operator of a facility of the class described in Section 1(1)(c) of this administrative regulation may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(a) 1. A release of motor fuel is detected at the facility after April 9, 1990; or

2. Corrective action costs associated with a release are incurred after April 9, 1990;

(b) The release has been reported to the cabinet;

(c) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:050, 42:060 and 42:070, or as directed in writing by the cabinet; and

(d) The owner or operator has filed a notice of intent with the cabinet to permanently close the petroleum storage tanks at the facility or to make a change in service to comply with the requirements of 401 KAR 42:020.

(2) If the owner or operator elects to upgrade the facility, the petroleum storage tanks at the facility shall not be used to store a regulated substance until the upgrade is completed.

Section 4. Eligibility Requirements For the Class of Tanks Described in Section 1(1)(d) of this Administrative Regulation. An owner or operator of a facility currently in use which is not in compliance with the requirements of 401 KAR 42:011 through 401 KAR 42:070, and 401 KAR 42:090 may be eligible for participation in the petroleum storage tank account if the following eligibility requirements are met:

(1)(a) A release of motor fuel is detected at the facility after April 9, 1990; or

(b) Corrective action costs associated with a release are incurred after April 9, 1990;

(2) The release has been reported to the cabinet;

(3) The owner or operator is taking the actions necessary to bring the facility into compliance with applicable administrative regulations of the cabinet; and

(4) The owner or operator takes corrective action consistent with the requirements of 401 KAR 42:060 and 42:070, or as directed in writing by the cabinet.

Section 5. Entry Level For Participation in the Petroleum Storage Tank Account. (1) The entry level for participation in the petroleum storage tank account for an owner or operator of five (5) or less tanks shall be established and maintained at \$500 [\$1,000] per occurrence for taking corrective action.

(2) The entry level for participation in the petroleum storage tank account for an owner or operator of six (6) to ten (10) tanks shall be established and maintained at \$2,500 [\$5,000] per occurrence for taking corrective action.

(3) The entry level for participation in the petroleum storage tank account for an owner or operator of eleven (11) or more tanks shall be established and maintained at \$12,500 [\$25,000] per occurrence for taking corrective action.

(4) An owner or operator of a facility of the class described in Section 1(1)(b) or (c) of this administrative regulation is not required to pay an entry level for participation in the petroleum storage tank account if the facility is taken permanently out of service.

(5) The entry level payments contained in subsections (1), (2) and (3) of this section shall apply to all applicants who apply for fund assistance on or after July 16, 1998. For all other applicants, the entry level will be set in an amount prescribed by the administrative regulation in effect at the time of the discovery of a release requiring corrective action. [shall apply retroactively to any facility involved in corrective action that had not been issued a closure letter by the cabinet prior to July 14, 1994.]

(6) If the corrective action at a facility is completed in a timely manner, as described in this subsection, the office shall reimburse, upon final payment, twenty-five (25) percent of the entry level specified in this section. "Completed in a timely manner" as used in this subsection shall mean:

(a) For corrective actions involving only soil remediation: 180 days from the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet which is approved without additional measures being required.

(b) For corrective actions involving remediation of both soil and groundwater, or only groundwater: twenty-four (24) months from the time of the discovery of the release. Completion is achieved when the owner or operator has requested closure from the cabinet which is approved without additional measures being required.

Section 6. Ineligibility. (1)(a) The office [fund] may determine that an owner or operator is not eligible for participation in the petroleum storage tank account if the owner or operator, his agents, employees, or contractors willfully or recklessly violated the requirements of 401 KAR Chapter 42 at the facility for which a claim is made.

(b) The owner or operator of a facility placed in the petroleum storage tank account pursuant to 415 KAR 1:060, Section 10(2) shall be denied eligibility for reimbursement as delineated in 415 KAR 1:060, Section 10(2)(a) and (b).

(2) An owner, operator with an approved Application for Assistance may be determined ineligible to receive payment from the petroleum storage tank account if the owner or operator has knowingly submitted false or inaccurate information to the office, or knowingly made a false statement, representation, or certification in an application, payment request, or any other documentation submitted to the office. Any cost incurred by, or paid from, the fund which is based on false or inaccurate information, false statements, representations or certifications shall be recovered by the office from the person who asserted the false or inaccurate information, false statements, representations or certifications.

(3) Any person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 knowingly providing false or inaccurate information or making false statements, representations or certifications on any application, payment request or other documentation submitted to the owner, operator or the office shall be subject to the revocation of that certifi-

cation in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery of payment by the office as provided for in subsection (2) of this section.

(4) [fund, and shall be required to repay any monies falsely received:

(9) The office [fund] shall have the right to recover the money paid to an owner or operator, or a contractor when:

(a) The amount was paid due to an error of the office [fund]; or

(b) The amount was paid due to a mistake or inaccurate information in the claim submitted by the owner or operator or in an invoice submitted by a contractor; or

(c) A person has obtained payment by fraud or intentional misrepresentation.

Section 7. Permanent Closure of Tanks. Prior to receiving final payment from the petroleum storage tank account, an owner or operator of tanks being permanently closed shall demonstrate that each tank has been removed from the ground or filled with an inert solid material in conformance with the applicable administrative regulations of the cabinet, and that closure of the facility has been approved by the cabinet.

Section 8. Newly Discovered Tanks. (1) The discovery of unregistered tanks at a facility during the performance of corrective action due to a release from a registered tank shall not affect eligibility to participate in the petroleum storage tank account.

(2) The costs of corrective action for releases from newly discovered tanks during the performance of corrective action for registered tanks shall be paid from the petroleum storage tank account if the other eligibility requirements of this administrative regulation are met.

(3) The number of newly discovered tanks shall not increase the entry level to the fund.

Section 9. Applicable Costs. (1) Costs of corrective action incurred prior to April 9, 1990 shall not be payable from the petroleum storage tank account.

(2) Costs of corrective action incurred at a facility on or after April 9, 1990 may be payable from the petroleum storage tank account if the eligibility requirements of this administrative regulation are met.

(3) Costs incurred at a facility for site investigation or corrective action at the written direction of the cabinet may be payable from the petroleum storage tank account if contamination requiring corrective action is substantiated by analytical sample results and the eligibility requirements of this regulation are met.

LAURA M. DOUGLAS, Secretary  
ROBERT E. NICKEL, Executive Director  
DAVID B. WICKER, ESQ., Staff Counsel  
APPROVED BY AGENCY: January 7, 1999  
FILED WITH LRC: January 8, 1999 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for the remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (Note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Office of the Petroleum Storage Tank Environmental Assurance Fund receives operating expenses from the Petroleum Storage Tank Environmental Assurance Fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: These amendments incorporate the statutory changes made by HB 282 (1998). The entry level for the accounts have been reduced fifty percent and a provision concerning the fraudulent submission of documents has been added. These were statutory in nature and no alternatives existed.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation contains the eligibility requirements for this fund account. The account provides for reimbursement to facilities that are not eligible for reimbursement from the Financial Responsibility Account due to noncompliance with the applicable state and federal regulations pertaining to underground petroleum storage tanks. The amendments will allow for a more efficient administration of the account, by reducing the required entry level and making provision for action against fraud.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There are no statutes, administrative regulations or government policies in conflict with the proposed amendments of this regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(6) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to \$1,000,000 for corrective action. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(7) Source of revenue: The monies expended by the fund will come from the Petroleum Storage Tank Environmental Assurance Fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute by reducing entry levels and offering an incentive for the timely completion of corrective action. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The amended regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, and the financial ability of the applicant.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 Subpart H requires the owner or operator of petroleum

storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart H details the standards and compliance dates.

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

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

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? Local governments, like any owner or operator of an underground petroleum storage tank that are out of compliance or exempt from the requirements of 40 CFR 280 Subpart H, may be eligible for reimbursement of corrective action cost from this fund account. Excepting the required entry level imposed on the local government, extensive savings will be realized by the local government.

#### PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank

Environmental Assurance Fund

(Amended After Hearing)

#### 415 KAR 1:080. Claims procedures.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund to establish the procedures necessary to administer the fund. This administrative regulation establishes the procedures to be followed by a petroleum storage tank owner or operator who is certified as eligible to participate in the financial responsibility account or is eligible to participate in the petroleum storage tank account to make a claim to the office [fund] for reimbursement or payment of the costs of corrective action.

Section 1. Application for Assistance. (1) An owner or operator eligible to participate in the financial responsibility account or the petroleum storage tank account shall apply for assistance with the office [fund].

(2) Application shall be made on the Application for Assistance form dated October 1998 ~~[June 1996, hereby incorporated by reference. This form may be inspected and obtained at the Office of Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday].~~ The eligible owner or operator shall demonstrate:

(a) The eligibility requirements of 415 KAR 1:060 or 415 KAR 1:070 have been met; and

(b) A release requiring corrective action from an eligible facility has

occurred and has been reported to the cabinet. The necessity for corrective action shall be demonstrated by analytical sample results. If closure can be issued by the cabinet without the performance of corrective action, the facility is not eligible for reimbursement of corrective actions costs from the fund [participation].

(3)(a) If the owner or operator meets the requirements of subsection (2) of this section the office [fund] may approve the Application for Assistance and establish the amount to be obligated by the appropriate account.

(b) Reimbursement pursuant to an approved Application for Assistance is restricted to documented costs approved by the secretary or the secretary's designee.

(c) The approved Application for Assistance may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount obligated and approved by the secretary [fund].

(4) The office may amend an approved Application for Assistance to provide an additional obligation of funds to guarantee payment of eligible corrective actions costs if:

(a) A written request and supporting documentation is submitted to the office by the eligible owner or operator;

(b) It is demonstrated to the office that an additional obligation of funds is necessary to guarantee payment of eligible costs of corrective action;

(c) The office determines that the additional costs of corrective action are necessary to comply with the written directions and administrative regulations of the cabinet;

(d) The office notifies the eligible owner or operator in writing that an additional obligation of funds has been approved.

Supporting documentation shall fully explain the need for the additional corrective action and set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the additional corrective action including, but not limited to, the costs of personnel, sampling and laboratory testing, excavation, haulage, treatment or disposal of contaminated soil or water, and other expenses necessary to comply with the requirements of 401 KAR Chapter 42. The office may request additional information and documentation to determine that the additional costs of corrective action are eligible, necessary and reasonable. Additional requested information and documentation shall be provided to the office by the owner or operator within thirty (30) days of the receipt of request unless otherwise agreed to in writing by both parties within the thirty (30) day period. A request by the office for additional information and documentation shall be made by certified mail. If the owner or operator fails to provide the requested additional information and documentation, the office shall deny the owner's or operator's request for an additional obligation of funds. Payment shall not exceed the amount obligated by the office, and the office shall not reimburse any additional corrective action costs incurred prior to approval. [The fund may amend the approved Application for Assistance upon application by the eligible owner or operator, upon a demonstration that the amendment is necessary to guarantee payment of eligible costs of corrective action and that the additional costs are necessary to comply with the written directions and administrative regulations of the cabinet. Payment shall not exceed the amount obligated by the fund.]

(5) Payment under the terms of the approved Application for Assistance may be made when the eligible owner or operator submits a claim form, and a certification that the costs were reasonable ~~[consistent with the bid]~~ and necessary to comply with the administrative regulations of the cabinet at 401 KAR Chapter 42. The requirement for the use of a certified contractor shall be enforced after March 1, 1995 pursuant to 415 KAR 1:114 (1994).

(6) The office [fund] may request additional information and documentation from the applicant to verify eligibility or account placement. Failure by the applicant to provide the requested information and documentation within sixty (60) days of the receipt of the request shall cause the application to be denied. The office [fund] may grant an extension of thirty (30) days for good cause demonstrated by the applicant. Denial of the Application for Assistance under this subsection shall not prevent the owner or operator from reapplying once the requested information becomes available.

Section 2. Submittal of Claim. (1) A petroleum storage tank owner

or operator eligible for participation in the office [fund] shall submit a claim for reimbursement or payment from the fund for the costs of corrective action on the Claim Request form and Listing of Invoices form dated October 1998, [dated June 1996, hereby incorporated by reference. These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.] The claim shall contain:

- (a) Original invoices for all costs for which payment is sought;
- (b) A copy of the contract executed by the owner or operator and the person contracting to perform the corrective action;
- (c) Documentation that the release has been reported to the cabinet; and

(d) Laboratory analysis substantiating the necessity of the corrective action to be or having been performed except for initial abatement and free product recovery as required by 401 KAR 42:060 and laboratory analysis substantiating the necessity of off-site disposal of contaminated soil; and

(e) Documentation to establish that the owner or operator has complied with the administrative regulations or written directions of the cabinet.

(2) Reimbursement sought through the use of the Soil Disposal/Treatment Claim form, dated October 1998, shall be limited to the following:

(a) Cost for transportation and disposal of contaminated soil at a contained landfill or treatment facility, permitted by the cabinet's Solid Waste Branch; and

(b) Material cost, including transportation, for backfill material;

(3) Reimbursement sought through use of the Capital Equipment Claim form, dated October 1998, shall be limited to the purchase price, less determined salvage value, as approved under Section 8(1)(m) of this administrative regulation;

(4) The office [fund] may require additional information and documentation to determine the eligibility, necessity and reasonableness of a cost or costs contained in a request for payment.

(5)(a) Claims received by the office shall be reviewed in accordance with the following unless an extension of time is agreed to by the applicant and the office, and subject to Section 5(1) of this administrative regulation:

1. Claim Request forms shall be reviewed within ninety (90) days of receipt;

2. Soil Disposal/Treatment Claim Request forms shall be reviewed within thirty (30) days of receipt, if the costs have been obligated and preapproved, if necessary, prior to submittal;

3. Capital Equipment Claim Request forms shall be reviewed within thirty (30) days of receipt, if costs have been obligated and preapproved, if necessary, prior to submittal;

4. Soil Disposal/Treatment Claim Request or Capital Equipment Claim Request submitted prior to securing an obligation or preapproval shall be reviewed within ninety (90) days of the receipt of an obligation and, if necessary, a preapproval.

(3)(a) The fund shall review a claim requesting payment within ninety (90) days of its receipt by the fund, unless an extension of time is agreed to by the applicant, and subject to subsection (5) of this section;

(b) If the claim is determined to be deficient, the office [fund] shall notify the applicant, by certified mail, of the deficiencies. Supplemental information to correct the deficiencies shall be submitted by the applicant and received by the office [fund] within fifteen (15) days of the notice of receipt by the applicant. The office [fund] may grant the applicant a thirty (30) day extension if the written request is received within fifteen (15) days of receipt of the notice of deficiency;

(c) If the applicant fails to correct the deficiency or to supply the additional information required by the office [fund] staff, that portion of the claim shall be denied.

(6) [(4)] The office [fund] shall issue a determination pursuant to KRS 224.60-140(7) as to whether the costs submitted in the claim are eligible for payment.

(7) [(5)] The claim may be submitted with the application for assistance but will not be considered received for review until the application has been approved by the secretary or the secretary's designee. If a claim request exceeds the amount currently obligated for the

facility, the claim will not be considered received for review until a sufficient additional obligation has been approved by the secretary.

(8) [(6)] An owner or operator of a facility with an approved Application for Assistance shall submit to the office [fund], a copy of all reports required by administrative regulation or requested, in writing, by the cabinet detailing the status of remedial action at the facility, including site check, site investigation, corrective action plans, quarterly reports, closure assessment reports, site classification documents and any correspondence with the cabinet addressing remedial measures or regulatory requirements pertaining to the facility.

(9) Prior approval of certain cost may be required under the terms of 415 KAR 1:110. If prior approval of a cost is required pursuant to 415 KAR 1:110, and not received by the owner or operator, in writing, prior to that cost being incurred, the office shall not reimburse any portion of that cost.

Section 3. Contracts. (1) An owner or operator contracting for the performance of corrective action, including permanent closure, change-in-service, release investigation, site check, or site investigation, shall obtain a contract from a certified contractor or contracting company to be eligible for reimbursement or payment from the fund. The contract shall be obtained prior to commencing the activity except emergency response measures as directed by the cabinet. The contract shall set forth the unit costs, in compliance with the requirements of 415 KAR 1:110, for the performance of the activity, including, but not limited to, the costs of personnel, sampling, excavation, treatment or disposal of contamination, and other necessary expenses to comply with the provisions of 401 KAR Chapter 42.

(2) A copy of the contract shall be submitted with an Application for Assistance.

(3) An owner or operator who has submitted an application for assistance received prior to this administrative regulation shall be required to submit a copy of a contract setting forth the scope of the services to be performed and detailing the unit costs to be eligible for continued reimbursement or payment from the fund. If a contract is changed or revised, a copy of that contract must be submitted to the office.

Section 4. Signatures. (1) A claim form or an Application for Assistance shall be signed by an eligible owner or operator as follows:

(a) For a corporation by a principle executive officer of at least the level of vice-president or the duly authorized representative or agent of the executive officer if the representative or agent is responsible for overall operation of the facility, or a person whom the board of directors designates by means of a corporate resolution;

(b) For a partnership, sole proprietorship or individual, by a general partner, the proprietor or individual respectively; or

(c) For a municipality, state or federal agency by either a principle, executive officer or ranking elected official.

(2) The person certified pursuant to 415 KAR 1:114 who is responsible for overseeing the corrective action and an authorized representative of the contracting company certified pursuant to 415 KAR 1:116 shall also sign a Claim Request form or an Application for Assistance.

(3) The authorized representative shall make the following certification on a claim form:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that this submitted information, is true, accurate, and complete. I certify that all costs are necessary and were actually incurred in the performance of corrective action. I further certify that, if not the owner or operator, I am authorized by the owner or operator as an agent to make this certification, or I am the person certified under 415 KAR Chapter 1 and my (our) certification is in good standing.

(4) [(3)] The owner or operator signing the certification shall submit documentary evidence as requested by the office [fund] to substantiate the legality of the authorized representatives power of agency.

Section 5. Criteria For Approval of a Claim. (1) The office [fund]

shall review all claims with approved Applications for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account in accordance with Section 2(5)(a) of this administrative regulation [the order in which they are received].

(2) The claims shall be reviewed to determine whether:

(a) The corrective action activities comply with the administrative regulations of the cabinet;

(b) The costs are necessary, reasonable and consistent with the requirements of 401 KAR Chapter 42;

(c) The claim form is properly completed and accurate, and all necessary information has been supplied; and

(d) The applicant has complied with Section 11 of this administrative regulation.

(3) All claims from owners or operators for a facility eligible to participate in the petroleum storage tank account shall be ranked as provided in 415 KAR 1:090.

Section 6. Payment. (1) Claims shall be reviewed by the office [fund] to determine eligibility for payment and compliance with the administrative regulations of the office [fund].

(2) Requests for payment covering cost incurred by an owner or operator under an approved Application for Assistance may be submitted to the office [fund] thirty (30) days following initiation of corrective action required by law. Subsequent requests for payment may be made at thirty (30) day intervals thereafter until completion of the authorized activities. All requests for payment, except a final request for payment, must equal or exceed \$1,000 to be processed for payment. Claims shall not be submitted for reimbursement until the value of the claims meet or exceed the applicant's entry level. Any request not meeting the requirements of this section will be returned unprocessed to the applicant.

(3) All payments shall be subject to final recommendation by the executive director and approval by the secretary or the secretary's designee.

Section 7. Payment Procedures. (1)(a) When an owner or operator has submitted a claim for payment by the office [fund], payment shall be made by a check written to the eligible owner or operator, or to a designated third-party. A designation made by power of attorney may be revoked at any time by notice to the attorney-in-fact and to the office [fund].

(b) A request for an interim partial payment shall be accompanied by documentation required by Section 2(8) [(6)] of this administrative regulation;

(c) A request for final payment shall be accompanied by a closure letter issued by the cabinet; or

(d) A request for one (1) time payment in full shall be accompanied by a closure letter issued by the cabinet.

(2) Prior to payment being issued, the eligible owner or operator shall submit documentary evidence verifying that an amount equal to the entry level has been paid by the owner or operator.

Section 8. Eligible and Ineligible Costs. The office's [fund's] reimbursement for costs of corrective action shall be made in accordance with the requirements of 415 KAR 1:110 and limited to reasonable and necessary costs, expenses and other obligations incurred for corrective action or site investigation required by law under the provisions of KRS Chapter 224 and administrative regulations pursuant thereto, as the result of a motor fuel release into the environment from a petroleum storage tank. The office [fund] may require the submission of a report of analytical laboratory results to substantiate the need for corrective action and may require other information and documentation needed to determine the reasonableness and necessity of corrective action. For corrective action to be necessary for office [fund] purposes, contamination exceeding the levels for which the cabinet will allow closure must be established by the applicant.

(1) Eligible costs shall include:

(a) Testing to determine tightness of tanks and lines in response to a suspected release due to tank or delivery line failure if a release of motor fuel is detected or upon written direction of the cabinet;

(b) [Removal, treatment, and disposal of petroleum products from petroleum storage tank systems necessary to perform site investigation or corrective action;

(c) Performance of site checks, and site investigation to assess the extent of contamination caused by a motor fuel release from a petroleum storage tank system in compliance with the administrative regulations of the cabinet or pursuant to the written directions of the cabinet;

(c) [(d)] Preparation of corrective action plans;

(d) [(e)] Necessary monitoring of the environment performed pursuant to the written direction of the cabinet or in compliance with the administrative regulations of the cabinet;

(e) [(f)] Necessary laboratory services to analyze samples taken as part of the site check, site investigation, corrective action, or maintenance of the corrective action system where a release has occurred at the facility or at the written direction of the cabinet;

(f) [(g)] Restoration or replacement of a private or public drinking water supply;

(g) [(h)] Removal, treatment, and disposal of contaminated liquids, other than those liquids and sludges contained in the tank, and soils resulting from corrective action;

(h) [(i)] The costs of materials purchased to perform the site check, site investigation or corrective action, including but not limited to, bailers, sample containers, and similar equipment;

(i) [(j)] The costs of implementation of corrective action technologies such as soil venting or bioremediation, and groundwater treatment systems, if accepted by the cabinet for the facility and prior approval is received from the office pursuant to 415 KAR 1:110;

(j) [(k)] Costs for replacing blacktop or concrete if removal was necessary to perform the corrective action;

(k) [(l)] Attorney fees integral to the performance of off-site corrective action, such as preparation of off-site access agreements; and

(l) [(m)] Other costs requested by the applicant and approved by the office [fund], demonstrated to be necessary to the performance of a site check, site investigation or corrective action, or maintenance of the corrective action system.

(m) [(n)] Purchases of capital equipment in excess of \$1,000 if the lease or rental for the equipment will exceed the purchase price. Prior approval for purchases of capital equipment in excess of \$1,000 shall be obtained from the executive director of the office, in accordance with Section 12 of this administrative regulation.

(2) The following costs shall not be eligible for payment or reimbursement from the fund:

(a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

(b) New or replacement fill material for tanks and piping;

(c) Equipment such as drill rigs and earth moving equipment;

(d) Loss of business, income or profits;

(e) Attorneys fees related to:

1. Any judicial or administrative litigation;

2. Consultation on [regulatory] administrative regulations;

3. Consultation on office [fund] administrative regulations;

4. Preparation or submittal of office [fund] documentation; and

5. Any other services determined by the office [fund] not to be integral to the performance of corrective action.

(f) Decreased property values for the facility;

(g) Facility improvements;

(h) Payment of the owner or operator's personnel for overtime or staff time in planning or implementing a site check, site investigation or corrective action plan except as allowed under 415 KAR 1:116;

(i) Aesthetic improvements to the facility;

(j) Interest on overdue accounts and loans;

(k) Costs covered by insurance payable to the owner or operator;

(l) Contractor surcharges implemented because the owner or operator failed to act in a timely fashion;

(m) Any work performed that is not in compliance with safety codes;

(n) Any costs associated with releases from aboveground tanks or aboveground piping;

(o) Contractor markup expenses for normally expected overhead items and in-stock materials;

(p) Contractor markup expenses for personnel costs;

(q) Rush laboratory fees unless directed by the cabinet;

(r) Costs and cost recovery for governmental emergency services;

(s) Preparation and implementation of corrective action plans once a written notice of closure is issued by the cabinet;



(t) Payment from the fund shall only be made for the costs of corrective action required by the cabinet's administrative regulations or at written direction of the cabinet and shall not be made for costs to upgrade the facility. Payment from the fund will not be made for any work or portion of that work performed at a facility where the results of laboratory analysis do not confirm the need for corrective action;

(u) Cost of any party or parties employed to act as a surrogate or stand-in for the owner or operator of the facility;

(v) Preparation of fund documentation or client invoices that will be submitted to the office for reimbursement;

(w) Except as provided in 415 KAR 1:130, cost related to the removal, or actions incidental to the removal of a tank system. Those costs include, but are not limited to, those costs listed in 415 KAR 1:130(5);

(x) Cost of resampling and laboratory tests performed under Section 11(4)(b) of this administrative regulation and cost of resampling and laboratory tests performed as a result of an operational or methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become certified or accredited under the requirements of KRS Chapter 224.60-130(2)(a);

(y) Additional costs relating to compliance with a local program operating under KRS 224.60-105(4), to the extent that those costs are required to comply with corrective action standards more stringent than required by the cabinet; and

(z) Any other services or cost determined by the office to not be a reasonable and necessary cost of corrective action.

Section 9. Delegation to Executive Director. The secretary may delegate responsibility for the approval of a claim, an Application for Assistance, or the payment of a claim to the executive director.

Section 10. Subrogation. Prior to making payment of a claim, the office [fund] shall acquire by subrogation the rights of the person receiving payment to recover the amounts paid by the office [fund] for the performance of corrective action from the person responsible or liable for the release.

Section 11. Field Audits. (1) The office shall be authorized to enter and inspect any facility seeking or intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action.

(2) Refusal to allow office employees entry and inspection of a facility shall make the facility ineligible for fund participation. All monies previously paid to the owner or operator of the facility shall be repaid to, or recovered by, the fund.

(3)(a) After April 1, 1999, office personnel shall be present on site during all tank removal activities, except as provided in paragraphs (d) and (e) of this subsection;

(b) An owner or operator shall contact the office, through certified mail, to schedule a date to have a field auditor on site during tank system removal activities. The certified mail notice must be received at least fourteen (14) days prior to commencement of the removal;

(c) If the field auditor cannot be present on site on the day scheduled by the notice in paragraph (b) of this subsection, he may, by written notice, require the owner to reschedule the removal to a proposed date. This notice must be mailed by the office no later than ten (10) days prior to the date scheduled by the owner;

(d) If the field auditor fails to issue notice to reschedule the tank removal, or is not present on the day set by the notice, the removal may proceed without penalty; and

(e) This provision shall not apply to emergency removals ordered by the cabinet.

(4)(a) Office personnel may collect soil or water samples and shall have full access to all areas or wells to collect such samples. Office personnel may require the owner or operator splitting of samples with the office for analytical testing. Failure to allow sample collection, or to split samples, shall make the facility ineligible for fund participation.

(b) If analytical results taken by the office differ significantly from the analytical results submitted by the applicant, the office may require the applicant to resample the area or wells in question. Such resampling will not be reimbursed by the fund. Any remaining discrepancies in analytical results of the resampling will be resolved with the applicant having the burden to prove the validity of their analytical results.

(5) Venue for entry and inspection orders shall be in Franklin Circuit Court.

Section 12. Preapproval for Capital Equipment Rental or Purchase. (1) An owner or operator who has been directed by the cabinet to initiate remedial actions that will require the purchase of equipment costing in excess of \$1,000, must obtain prior approval of the purchase from the fund to be eligible for reimbursement. The request is to be submitted on the Capital Equipment Preapproval Purchase or Rental Request form, dated October, 1998;

(2) The office may approve the purchase or rental of remediation equipment and establish the amount to be reimbursed. The approved request may be used as a guarantee of payment by the owner or operator to a contractor performing corrective action to the extent of the amount approved by the office;

(3)(a) The request to purchase the equipment shall contain:

1. Three (3) bids obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment to be purchased and an anticipated salvage value provided by the supplier or manufacturer;

2. If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer's or supplier's decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

3. A cost benefit analysis substantiating purchase vs. rental of the equipment;

4. A copy of the warranty supplied by the equipment supplier or manufacturer;

5. Shipping, installation, training and start-up costs. These costs shall be separated from the actual equipment costs;

6. The purchase of new equipment will be considered by the fund at 100 percent of the invoice price for the most economical (least expensive life cycle cost) system bid received by the owner or operator. Reimbursement is limited to the original purchase price less the anticipated salvage value, including applicable sales tax. The office will not reimburse for markup. If an election is made to purchase the equipment with a greater life cycle cost, any cost above the most economical bid price will be the responsibility of the owner or operator. All unscheduled maintenance costs covered by the new equipment warranty supplied by the equipment supplier or manufacturer are the responsibility of the owner or operator;

(b) If the owner or operator chooses to begin remediation prior to acceptance of the Corrective Action Plan, three (3) bids must be submitted to the office prior to the purchase of the equipment, however, the cost of the equipment will not be reimbursable until such time as the cabinet accepts the Corrective Action Plan. The bids will remain on file at the office until the Corrective Action Plan is accepted, at such time, the owner or operator may request reimbursement for the purchase by submittal of a completed claim form;

(4)(a) The request to purchase used or reconditioned equipment shall contain:

1. Three (3) bids for new equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

2. If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer or supplier's decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

3. The name, address and phone number of the previous owner of the equipment proposed for installation;

4. A description of the equipment including all pertinent specifications necessary to compare the proposed equipment with the bids for the new equipment;

5. The remaining economic life of the used equipment;

6. A projected salvage value for the used or reconditioned equipment after the proposed usage;



7. Shipping, installation, training and start-up costs. These costs shall be separated from the actual equipment costs;

(b) The purchase of used or reconditioned equipment will be reimbursed at a lump sum rate of the sum of the purchase plus a maximum of fifteen (15) percent markup less the anticipated salvage value, not to exceed the reimbursement ceilings that follow. Reimbursement for the purchase, including markup, of used equipment shall not exceed sixty-five (65) percent of the most economical new system bid received by the owner or operator and submitted to the office for consideration. The economic life of reconditioned equipment shall be considered to be the same as new equipment. Reimbursement for the purchase of reconditioned equipment, including markup, shall not exceed eighty (80) percent of the most economical new system bid received by the owner or operator and submitted to the office for consideration. Reimbursement will not be considered for parts and labor associated with unscheduled maintenance or equipment component replacement for the duration of the expressed limited warranty period specified by the supplier and or manufacturer or for 180 days whichever is greater;

(5) Rental of remediation equipment may be approved by the office. This option may be suitable in circumstances where a lengthy remediation is not anticipated. The fund will only reimburse for the actual usage of the equipment. At no time will the rental rate exceed the purchase price. Usage is considered to be the actual active utilization of the remediation equipment and does not include idle equipment maintained at a fund covered facility for the convenience of the contractual parties. The request to rent the equipment shall contain:

(a) Three (3) bids for new equipment obtained from a supplier or manufacturer of remedial equipment. If the certified contractor or certified company wishes to be included in the bid process, four (4) bids are required. Each bid shall contain a description of the equipment and a salvage value provided by the supplier or manufacturer;

(b) If three (3) bids cannot be obtained, the owner must provide written documentation of the manufacturer or supplier's decline to bid. A minimum of two (2) letters of declination must be provided for each bid not submitted;

(c) Shipping installation, training and start-up costs. These costs shall be separated from the actual equipment.

Section 13. Incorporation by Reference. (1)(a) The Application for Assistance (October, 1998), Public Protection and Regulation Cabinet, is incorporated by reference;

(b) Claim Request (October, 1998), Public Protection and Regulation Cabinet;

(c) Invoice Listing (July 1996), Public Protection and Regulation Cabinet;

(d) Soil Disposal/Treatment Claim Request, (October 1998), Public Protection and Regulation Cabinet; and

(e) Capital Equipment Purchase and Rental Request, (October 1998), Public Protection and Regulation Cabinet;

(2) These forms may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the Office are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary  
ROBERT E. NICKEL, Executive Director  
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999  
FILED WITH LRC: January 8, 1999 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks. The

amended regulation will no longer reimburse for the cost of tank system removals. That cost will be borne by the applicant.

2. Continuing costs or savings: Tank owners or operators will continue to experience the cost and savings outlined above savings include the cost of remediation and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The office of the petroleum storage tank environmental assurance fund receives operating expenses from the petroleum storage tank environmental assurance fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits.

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 282 required these amendments. Additional changes were made to improve the efficiency of claims processing.  
Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows. Being less stringent would cause undue delays in the processing and payment of claims

2. More stringent: The fund cannot be more stringent than the statute allows. More stringent standards would cause fewer reimbursements and defeat the statutory goal of assisting the owners and operators of petroleum storage tanks.

3. Present proposal: The amended regulation contains the claims procedures to be followed by owners or operators eligible to participate in the fund. These procedures outline what cost are eligible and provide the proper balance of oversight and usability.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement mechanisms for payments up to \$1,000,000 for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no statute, administrative regulations, or government policy in conflict with the amended regulation

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the petroleum storage tank environmental assurance fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute and increases the fund's ability to protect its resources and provide more money to the regulated community.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No, the regulation applies the same procedures to all applicants. This is seen as fair and results in the same cost being eligible or non-eligible for all parties.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 subpart h requires the owner or operator of petroleum storage tanks to demonstrate financial ability to caused by a petroleum release to the environment.
2. State compliance standards. There are no standards in addition to the federal standards.
3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.
3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.
4. How does this administrative regulation affect the local government or any service it provides? This regulation will impose no different claim procedure from that imposed on a non-governmental entity.

#### PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

#### 415 KAR 1:090. Ranking system.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: The amendments to KRS 224.60-130 enacted by the 1992 Kentucky General Assembly required the Office of the Petroleum Storage Tank Environmental Assurance [require the] Fund to establish a ranking system to be used for the distribution of amounts from the petroleum storage tank account for the purpose of corrective action. In promulgating the administrative regulations the office [fund] shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by release into the environment from a petroleum storage tank. This administrative regulation establishes the criteria for ranking sites according to the extent of damage to the environment and the financial ability of the petroleum storage tank owner or operator to perform corrective action.

Section 1. Applicability. An owner or operator of petroleum storage tanks eligible to participate in the petroleum storage tank account 415 KAR 1:070 shall not be classified pursuant to this administrative regulation for reimbursement if:

- (1) The owner or operator is an individual, owning or operating five (5) or fewer tanks, whose average adjusted gross income for the five (5) year period, prior to applying for assistance from the office [fund], is

less than \$50,000; or

- (2) The owner or operator has tanks that were abandoned or closed prior to December 22, 1988. This subsection includes facilities under the direction of the implementing agency pursuant to 401 KAR 42:080 at the time the release is detected but does not include those owners and operators that are organizational units of the executive branch of the Commonwealth of Kentucky.

Section 2. Priority for Environmental Damage. (1) The ranking of a facility to determine priority for the distribution of amounts from the petroleum storage tank account based upon the extent of damage caused or threatened by a release of petroleum into the environment from a petroleum storage tank at the facility shall be based upon the Petroleum Underground Storage Tank System Facility Classification Outline (1994) incorporated by reference pursuant to 401 KAR 42:080 and the administrative regulations adopted by the cabinet establishing standards for corrective action for release into the environment from a petroleum storage tank.

(2) Priority for distribution of amounts from the petroleum storage tank account due to the extent of environmental harm shall be given to those facilities:

(a) First, where the release of petroleum to the environment has contaminated a domestic use well, domestic use spring, domestic use well head protection area, as defined in 401 KAR 42:080, a drinking water supply, or a utility conduit in amounts in excess of a maximum contaminant level for petroleum constituents, or a statistically significant increase over background for petroleum constituents which do not have a maximum contaminant level, or the facility has been determined to be the source of fumes in an occupied building;

(b) Second, where the facility has encountered groundwater and is required to meet the levels specified in Groundwater Table 1 of the Petroleum Underground Storage Tank System Facility Classification Outline, as established in 401 KAR 42:080, for releases of petroleum which pose a direct threat of contamination to a domestic use well, domestic use spring, domestic use well head protection area, a drinking water supply or a utility conduit; or

(c) Third, where areas outside the facility's property boundary have been impacted by a release, but has not contaminated a domestic use well, spring or well head protection area, does not pose a threat to a domestic use well, domestic use spring, domestic use well head protection area, drinking water supply, or a utility conduit and has not been determined to be a source of fumes in occupied buildings.

(3) The owner or operator of the facility shall submit information to the office [fund] to establish that the release from the facility is within a category established in subsection (2) of this section. The information shall be submitted on the classification guide contained in the Petroleum Underground Storage Tank System Facility Classification Outline, (October 1995), as established in 401 KAR 42:080 or its superseding administrative regulation.

Section 3. Priority for Financial Ability. (1) To determine the financial ability of an owner or operator to perform corrective action, the office [fund] shall consider the following factors:

(a) Whether the facility is owned by a public or private person;

(b) Whether the owner or operator liable for the cost of corrective action is an individual. Only individuals who own or operate a single facility shall receive consideration as to financial ability. Each individual shall certify that they do not have an ownership or operating interest in another facility;

(c) Whether the owner or operator is a partnership. Only a partnership that is the owner or operator of a single facility shall receive consideration as to financial ability. Each partner shall certify that they do not have an ownership or operating interest in another facility; and

(d) Whether the owner or operator of the facility is a corporation which is a subsidiary, affiliate or parent of another corporation. Only a closely held corporation which is not a subsidiary, affiliate or parent corporation and is the owner or operator of a single facility shall receive consideration as to financial ability. The officers, directors and shareholders of the corporation shall certify that they do not have an ownership or operating interest in another facility.

(2) An individual or partnership with an ownership or operating interest in more than one (1) facility may receive consideration as to

financial ability if it is demonstrated that the individual or partnership has no sources of income other than revenue from the ownership or operation of the facilities and is unable to pay the entry level for participation in the petroleum storage tank account.

(3) A corporation that is not a subsidiary, affiliate, or parent of another corporation that is the owner of more than one (1) facility may receive consideration as to financial ability if the profits of the corporation are the sole source of revenue of the shareholders of the corporation, and it is demonstrated that the corporation has insufficient revenue to pay the entry level for participation in the petroleum storage tank account.

Section 4. Demonstration of Financial Ability. (1) To demonstrate financial ability, the individual, partnership or corporation shall submit the last five (5) years of income tax returns for the person, partnership or corporation.

(2) Priority for reimbursement from the petroleum storage tank account on the basis of financial ability shall be given to:

(a) First, an individual partnership or corporation whose average adjusted gross income for the five (5) year period is less than \$50,000, a public entity with an annual revenue and income of less than \$100,000, or an entity registered and recognized by the federal government as a tax exempt nonprofit organization;

(b) Second, an individual, partnership, or a corporation whose average adjusted gross income for the five (5) year period is less than \$100,000 but more than \$50,000 or a public entity with annual revenue or income of less than \$250,000 but more than \$100,000;

(c) Third, an individual, partnership or a corporation whose average net income for the five (5) year period is more than \$100,000 or a public entity with an annual revenue and income of more than \$250,000.

(3) Partnerships who are applicants for consideration as to financial ability shall submit the name and Social Security number of all partners.

(4) Subchapter S or closely held C Corporations who are applicants for consideration as to financial ability shall submit the name and Social Security number of all officers, directors and shareholders in the corporation.

(5) A public entity who is an applicant for consideration as to financial ability shall submit its annual budget for the last five (5) years to demonstrate financial ability.

(6) The office [fund] may require that additional information be submitted to determine the financial ability of an applicant.

Section 5. (1) The office [fund] shall have the right to recover the amounts paid to persons receiving consideration for financial ability if the information submitted to the office [fund] is **knowingly** inaccurate or misrepresented, **or knowingly made based on a false statement, representation, or certification in an application, payment request, or any other documentation submitted to the office. Any cost incurred by, or paid from, the fund which is based on knowingly false or inaccurate information, false statements, representations or certifications shall be recovered by the office from the person who asserted the knowingly false or inaccurate information, false statements, representations or certifications.**

(2) Any person certified pursuant to 415 KAR 1:114 or 415 KAR 1:116 providing knowingly false or inaccurate information or making false statements, representations or certifications on any application, payment request or other documentation submitted to the owner, operator or the office shall be subject to the revocation of that certification in accordance with 415 KAR 1:114 and 415 KAR 1:116, in addition to the recovery by the office described in subsection (1) of this section.

Section 6. Priority For Payment or Reimbursement From the Petroleum Storage Tank Account. Reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid in order of priority according to the following:

(1) An owner or operator of a facility that meets the conditions of Section 1(1) of this administrative regulation shall have their claims paid first;

(2) An owner or operator of a facility that meets the conditions of Section 1(2) of this administrative regulation shall have their claims

paid second;

(3) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid third;

(4) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fourth;

(5) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(a) of this administrative regulation shall have their claims paid fifth;

(6) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid sixth;

(7) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid seventh;

(8) An owner or operator of facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(b) of this administrative regulation shall have their claims paid eighth;

(9) An owner or operator of a facility that meets the conditions of Section 2(2)(a) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid ninth;

(10) An owner or operator of a facility that meets the conditions of Section 2(2)(b) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid tenth;

(11) An owner or operator of a facility that meets the conditions of Section 2(2)(c) of this administrative regulation and whose financial ability is in the category listed in Section 4(2)(c) of this administrative regulation shall have their claims paid 11th;

(12) Claims in categories (1) through (11) of this section shall be paid in order of their category ranking. Within each category the claims shall be paid by the date of receipt of the claim;

(13)(a) All other claims of nongovernment entities for reimbursement or payment of the costs of corrective action from the petroleum storage tank account shall be paid based upon financial ability determined as provided in Section 4 of this administrative regulation, and in order of the date of receipt of the claim;

(b) An individual, partnership or corporation with an average net income more than \$100,000 is not required to submit income tax returns and shall be paid after the claims addressed by subsections (1) through (13)(a) of this section in order of receipt of the claim;

(14)(a) Claims from organizational units of the executive branch of the Commonwealth of Kentucky, as set forth in KRS Chapter 12 shall have their claims paid last in order of the date of receipt of the claim.

(b) A claim from a county, a municipality, or an administrative body that is not an organizational unit of the executive branch, shall be paid based upon financial ability as determined in Section 4(2) of this administrative regulation, in order of receipt of the claim, and shall be ranked in the same manner as a claim from a private person.

Section 7. Payment of Certain Classes of Claims. The office [fund] may determine that only specified classes of claims as described in Section 6 of this administrative regulation will be paid.

LAURA M. DOUGLAS, Secretary  
ROBERT E. NICKEL, Executive Director  
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1999 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 15,000 facilities with underground stor-

age tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for \$500, \$2,500 or \$12,500 depending on the number of tanks, rather than \$1,000,000 of financial responsibility for remediation of releases from underground petroleum storage tanks.

2. Continuing costs or savings: Tank owners or operators will continue to experience savings associated with payment of corrective action, and third-party liability expenses.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The office of the petroleum storage tank environmental assurance fund receives operating expenses from the petroleum storage tank environmental assurance fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: House Bill 282, amending KRS 224.60, required these amendments.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows.

2. More stringent: The fund cannot be more stringent than the statute allows.

3. Present proposal: The amended regulation delineates the method by which sites will be ranked and the order in which claims will be paid. Clarification of certain language will make the regulation easier to understand.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide ranking for reimbursement up to \$1,000,000 for corrective action. The ranking is based on financial ability and environmental harm. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the petroleum storage tank environmental assurance fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation conforms to the statute. The amendments should speed the process of determining fund placement and obligation.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: Yes. This regulation applies to all owners or operators of underground petroleum storage tank systems. The regulation is tiered dependant on the number of tanks owned or operated, the level of financial responsibility required, the potential environmental harm, and the financial ability of the applicant.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 subpart h requires the owner or operator of petroleum storage tanks to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by a petroleum release to the environment. 40 CFR 280.101 allows for a state fund to be created and administered which will fulfill the liability requirements.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart h details the standards and compliance dates.

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

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

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service provided by the local government which involves the storage of motor fuel in underground storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will delineate the priority of reimbursement of local government from the petroleum storage tank account.

#### PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

#### 415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Reimbursements and Payments by the Fund. (1) The fund shall not reimburse owners and operators more than the amounts specified in this administrative regulation for corrective action services performed by certified contractors and companies, except as provided in subsections (7) and (9) of this section. All cost items in this section are restricted to a maximum fifteen (15) percent

markup above actual cost, unless specifically excluded. The markup is allowed only on the costs of corrective action services performed by subcontractors and other vendors but only to the extent the actual cost, plus the markup, do not exceed the maximum allowable cost for that cost item. For the purpose of this administrative regulation, actual cost shall mean the cost charged by the person performing the activity or service, and not the cost charged by additional subcontractors. [Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund shall not pay more than the following amounts for the performance of corrective action by certified contractors, except as provided in subsections (2) and (4) of this section. All items in this section are subject to a maximum fifteen (15) percent contractor markup above actual cost, unless specifically excluded. The contractor markup is allowed only for subcontractor or vendor services. The markup is allowed only to the extent that the cost plus the markup do not exceed the maximum cost for that item:]

(2) The office is authorized to request additional information and documentation related to actual costs incurred by a certified contractor, certified company, subcontractor or other vendor providing corrective action services and related materials, instruments and equipment. Failure to provide the requested additional information and documentation shall result in the denial of the payment claim as provided for in 415 KAR 1:080, Section 2(4) and (5). All payment claims submitted to the office after the effective date of this administrative regulation shall be subject to the requirements of this subsection.

(3) The use or employment of a subcontractor, including a subsidiary company, or other vendor by a certified contractor or certified company to increase profitability on the cost of corrective action is prohibited. Payment claims denied by the office under this subsection may be appealed pursuant to 415 KAR 1:120 with the owner, operator, certified contractor, or certified company having the burden to prove the validity of the payment claim.

(4) If the combined cost of preresidential corrective actions will exceed \$15,000, all expenses beyond the \$15,000 level, for which the owner or operator will seek reimbursement from the fund, shall be preapproved by the office prior to the owner or operator incurring costs beyond the \$15,000 level. For the purpose of this subsection, preresidential corrective actions shall include initial responses pursuant to KRS 224.60-135, actions necessary to monitor, assess and evaluate a release, including site investigations, and the preparation of a corrective action plan if required by the cabinet. The following procedures shall apply to this requirement:

(a) The owner or operator shall submit a written request and supporting documentation to the office which explains the need for continuing preresidential actions and sets forth the unit costs, in compliance with the requirements of subsection (6) of this section, for continuing preresidential actions, including, but not limited to, the costs of personnel, initial response, sampling and laboratory testing and other expenses necessary to complete the preresidential actions. The supporting documentation must also include evidence that the cabinet has determined that the preresidential actions are necessary to protect human health and the environment, and that the continuation of the preresidential actions is necessary to comply with the requirements of 401 KAR Chapter 42;

(b) The office may request additional information and documentation if needed to determine if the costs of continuing preresidential corrective actions are eligible, necessary and reasonable. A request for additional information and documentation shall be made by certified mail or electronic mail, if available;

(c) The owner or operator shall provide the additional information and documentation within thirty (30) days of receipt of the request unless otherwise agreed to in writing by both parties within the thirty (30) day period. If the owner or operator fails to provide the additional information and documentation, the request for additional funds to continue the preresidential actions shall be denied by the office;

(d) If the owner or operator complies with the requirements of this subsection and the proposed cost are preapproved, the office shall obligate the additional funds to continue the preresidential actions, and shall notify the owner or operator of the obligation in writing;

(e) A denial by the office under the provisions of this subsection may be appealed by the owner or operator pursuant to 415 KAR 1:120; and

(f) Except for applications filed pursuant to 415 KAR 1:130, the requirements of this subsection shall apply to all Applications for Assistance filed with the office on or after the effective date of this administrative regulation;

**(g) This subsection shall not apply to cost incurred as a result of initial abatement, free product recovery, or other emergency action ordered by the cabinet pursuant to 401 KAR 42:060.**

(5) If the combined costs of remedial corrective actions will exceed \$35,000, all expenses beyond the \$35,000 level, for which the owner or operator will seek reimbursement from the fund, shall be preapproved by the office prior to the owner or operator incurring additional costs beyond the \$35,000 level. For the purpose of this subsection, remedial corrective actions include actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial preresidential corrective action is taken, actions taken to restore or replace potable water supplies, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred. The following procedures shall apply to this requirement:

(a) The owner or operator shall submit a written request and supporting documentation to the office which explains the remedial actions to be performed and the need for the additional costs beyond the \$35,000 level. This request may be incorporated into, or submitted as, part of the request for additional preresidential funds under subsection (4) of this section. Supporting documentation shall also set forth the unit costs, in compliance with subsection (6) of this section, for continuing remedial actions or increasing the obligation for remedial actions, including, but not limited to the costs of personnel, sampling and laboratory testing, excavation, haulage, treatment or disposal of contaminated soil or water, and other expenses necessary to comply with the requirements of 401 KAR Chapter 42. Evidence must also be provided that the cabinet has determined that the remedial actions are necessary to protect human health and the environment, and are necessary to comply with the requirements of 401 KAR Chapter 42;

(b) The office may request additional information and documentation if needed to determine if the costs of continuing remedial corrective actions are eligible, necessary and reasonable. A request for additional information and documentation shall be made by certified mail or electronic mail, if available;

(c) The owner or operator shall provide the additional information and documentation within thirty (30) days of receipt of the request unless otherwise agreed to in writing by both parties within the thirty (30) day period. If the owner or operator fails to provide the additional information and documentation, the request for additional funds to continue the remedial actions shall be denied by the office;

(d) If the owner or operator complies with the requirements of this subsection, and the proposed cost are preapproved, the office shall obligate the additional funds to continue the remedial actions, and shall notify the owner or operator of the obligation in writing;

(e) A denial by the office under the provisions of this subsection may be appealed by the owner or operator pursuant to 415 KAR 1:120; and

(f) Except for applications filed pursuant to 415 KAR 1:130, the requirements of this subsection shall apply to all Applications for Assistance filed with the office on or after the effective date of this administrative regulation;

**(g) This subsection shall not apply to cost incurred as a result of initial abatement, free product recovery, or other emergency action ordered by the cabinet pursuant to 401 KAR 42:060.**

(6) The range of amounts to be paid by the fund for the cost of corrective action are as follows:

(a) Pavement removal and replacement, including labor equipment and material costs:

Asphalt
Removal
Includes the cost of loading:

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

	Asphalt pad, for each 3 inches of thickness, per square yard	\$2.75 to \$3.25
	Asphalt curbing, per linear foot	\$2.40 to \$2.90
<b>Replacement</b>		
	Asphalt pad, for each 4 inches of thickness, per square foot	\$3.50 to \$4.25
	Cost of additional thickness to be prorated.	
	Asphalt curb and gutter, per linear foot	\$5.10 to \$6
<b>Concrete</b>		
<b>Removal</b>		
	Includes the cost of loading:	
	Concrete pad, per square yard	
	4 inches thick	\$2 to \$3
	6 inches thick	\$4 to \$5
	9 inches thick	\$8.20 to \$10
	10 inches or more thick	\$26 to \$31
	With rebar	add 15%
	Concrete curbing, per linear foot	\$4.50 to \$5.50
<b>Replacement</b>		
	Concrete, 4 inches thick, per square foot	\$2 to \$2.80
	With rebar	add 15%
	For each additional inch, per square foot	\$0.20 to \$0.30
[Transportation of the first 100 total tons of per one (1) way mile, per ton. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.]		\$0.20 to \$0.30
Transportation [after the first 100 total tons] of asphalt or concrete, to disposal facility[; per one (1) way mile, per ton]. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.		\$0.15 to \$0.20
Disposal fee, per ton		Actual cost at point of disposal plus maximum 8% markup, not to exceed \$32.50
If disposal fees are submitted for reimbursement using the Soil Disposal/Treatment Claim form, no markup shall be allowed		

(b) Disposal and replacement of contaminated soil, including labor and equipment costs:

Excavation and stockpiling or loading directly into trucks, per ton. Necessity of stockpiling must be demonstrated to justify reimbursement.	\$3.50 to \$4
For less than 100 total tons, add fifty (50) percent.	
Stone backfill material, per ton	Actual cost from quarry plus maximum 8% markup, total not to exceed \$10 per ton
Soil backfill material, per ton, includes excavation, loading, weighing, permitting and restoration of borrow site	Actual cost plus 8% markup not to exceed \$4
Install, [and] compact, and grade backfill, per ton [includes purchase of materials, equipment and labor]	\$1.50 to 2.50 [\$1+ to \$1+]
Transportation of backfill, per ton, per one (1) way mile.	Minimum \$3 per ton or \$0.15 to \$0.20

Transportation of [the first 100 total tons of] contaminated soil to disposal facility[; per ton, per one (1) way mile]. Mileage must be documented. If closest disposal facility is not used, reasonableness of cost must be justified.	Minimum \$3 per ton or \$0.15 to \$0.20 per ton, per one (1) way mile [\$0.20 to \$0.30]
[Transportation after the first 100 total tons of contaminated soil to disposal facility; per ton, per one (1) way mile. Mileage must be documented. If closest disposal facility is not used, reasonableness of cost must be justified.]	\$0.15 to \$0.20
Disposal fee per ton	Actual cost at point of disposal plus maximum 8% markup, not to exceed \$32.50
If disposal fees are submitted for reimbursement using the Soil Disposal/Treatment Claim form, no markup shall be allowed	

(c) Treatment of soils and disposal of drummed waste including labor costs:

Treatment of contaminated soil by thermal desorber, landfarming, or other methods, per ton. Cost includes design, permitting, monitoring, construction, transportation, environmental compliance, reporting, closure of facility, labor, equipment, markup, and all other costs necessary for treatment of the material. Quantity of material treated to be determined by survey, accurately measured dimensions, weight tickets or other method approved by the fund. Reimbursement for treatment shall not exceed that required for transportation and landfill disposal	Actual cost at point of treatment with a maximum 8% markup, not to exceed \$40 per ton [39]
If disposal fees are submitted for reimbursement using the Soil Disposal/Treatment Claim form, no markup shall be allowed	
Transportation and disposal of drummed tank waste, per drum	Disposal cost shall be actual cost at point of disposal plus a maximum 8% markup. Total transportation and disposal cost not to exceed \$575

(d) One (1) of the following methods shall be used to determine the total reimbursable cost for disposal of contaminated water removed prior to the implementation of an approved CAP:

Pumping, and treatment of contaminated water in a mobile facility and discharge, including all equipment, labor, mobilization, transportation permitting, and other associated charges, per gallon	\$0.55
Disposal of contaminated water or tank contents in wastewater treatment plant or a recycling facility, per gallon	Actual cost at point of disposal plus maximum 8% markup
Pumping and transportation of contaminated water or tank content to approved facility, including truck, driver and travel time, per gallon, minimum \$250 [200]	\$0.15 [0.07]

(e) Labor rates, per hour: Labor rates include all fringes and benefits, and contractor's overhead and profits. All labor rates include cost of standard office equipment and standard tools of the profession.

Carpenter	\$25 to \$35
Cement finisher	\$25 to \$35
Electrician	\$25 to \$30
Electrical contractor	\$30 to \$40
Equipment operator	\$20 to \$35
Laborer	\$15 to \$22



**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

Master plumber	\$30 to \$40
Journeyman plumber	\$20 to \$35
Apprentice plumber	\$20 to \$30

(f) Professional and technical labor rates, per hour: Labor rates include all fringes and benefits, and contractor's overhead and profits. Reimbursement of labor rates shall be based upon the task performed by an employee rather than the qualifications of the employee.

Certified contractor	\$75 to \$90
Professional engineer	\$70 to \$80
Engineer-in-training	\$45 to \$55
Geologist	\$45 to \$55
Registered geologist	\$70 to \$80
Drafting/CAD person including computer time	\$25 to \$35
Senior environmental technician, requires an associate degree in an environmental related field or a minimum of five (5) years of environmental experience	\$35 to \$45
Environmental technician, trained in sample collection	\$25 to \$30
Environmental specialist, must have a college degree in chemistry, biochemistry, biology, soil science, agronomy, or other appropriate college degree or experience as may be approved by the executive director	\$45 to \$55
Secretarial or clerical	\$15 to \$20
Mileage, per mile for automobile or pickup truck	\$0.27 [0-25]
Mileage, per mile for utility truck	\$0.30
Overnight lodging - must be demonstrated to be necessary	Actual cost at lodging facility, not to exceed \$60 [55] per night
Meals - when overnight stay is necessary	
Breakfast	\$6 [4]
Lunch	\$7 [5]
Supper	\$14 [11]
Soil gas analysis for VOC (equipment charge), per day	\$150

(g) Environmental exploration - includes equipment, material and labor costs unless otherwise stated. All drilling charges shall be based upon unit prices outlined in this section. Other charges for the drill rig or rig time are not reimbursable:

1. Mobilization and demobilization of drilling equipment (includes rig, two (2) man crew, labor for gathering of equipment, tools, travel time and initial off-site steam cleaning):

Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200	\$2 to \$3.
Air rotary rig, per mile, minimum of \$350	\$3.50 to \$4

2. Installation of PVC monitoring well, including decontamination of down hole materials and grout or backfill materials, and development of well. Construction using other materials, such as stainless steel screens may be reimbursed if the alternative construction was ordered by the cabinet.

Two (2) inch diameter well per linear foot	\$14 to \$16.
Four (4) inch diameter well per linear foot	\$15 to \$20.

Necessity for construction of a four (4) inch diameter well must be established.

3. Construction of monitoring well surface completion (includes concrete pad, protective casing or manhole, locking cap, lock, etc.) including any labor, equipment, and material costs. If any component listed is not installed, surface completion cost is not allowed: \$250 each.

4.a. Drilling in unconsolidated material per linear foot including decontamination, and labor for water supply as necessary, and backfill of the void with bentonite or bentonitic slurry. Backfill by other methods are not reimbursable unless determined to be in accordance with cabinet administrative regulations.

Hollow stem auger less than five (5) inch inside diameter	\$11 to \$15 [12 to \$16]
-----------------------------------------------------------	---------------------------

	[5 to \$9]
Greater than five (5) inch inside diameter	\$14 to \$17 [18 to \$21] [8 to \$11]
Continuous flight augers:	
Four (4) inch nominal outside diameter	\$12 to \$14 [9 to \$11] [5 to \$7]
Six (6) inch nominal outside diameter	\$13 to \$15 [12 to \$14] [6 to \$8]

b. Backfill of the soil boring void with bentonite or bentonitic slurry, per linear foot. Backfill by other methods are not reimbursable unless determined to be in accordance with cabinet administrative regulations.

Less than seven (7) inch outside diameter	\$3 to \$4
Greater than seven (7) inch outside diameter	\$4 to \$6

c. For continuous split spoon sample collection add five (5) dollars per linear foot.

d. [c:] For split spoon sample collection at five (5) foot intervals add three (3) dollars and fifty (50) cents per linear foot.

e. [d:] Random split spoon sampling, per sample: \$13 to \$20.

5. [Standby time: maximum \$150 per day:

6:] Drilling in rock (per linear foot): \$18 to \$25.

6. [7:] For all drilling costs, for depths greater than sixty (60) feet, add two (2) dollars and forty (40) cents per linear foot.

7. [8:] Well abandonment including all material, equipment and labor costs, per linear foot.

Overdrilling to depth of well and backfilling with concrete grout, per linear foot	\$17 to \$22
Removal of casing to below ground surface and backfilling of casing in place with cement grout, per linear foot	\$5 to \$7.50

8. [9:] Preparation and submittal of well records, per well - \$30 to \$40.

9. [10:] a. Direct push sampling including personnel, decontamination, materials, supplies, and backfilling of void: [-per day: \$900 to \$1100:]

Probing of less than 50 linear feet per day	\$700
Probing of 51-100 linear feet per day	\$1200
Probing of greater than 100 linear feet per day, add \$4 per linear foot for each foot over 100 feet	

b. Mobilization and demobilization of direct push sampler, including equipment, labor and supplies, per mile: \$0.27 [0.30 to \$0.40].

c. Installation and construction of direct push piezometers or monitoring wells including labor, decontamination, all down hole materials and development. Charges are in addition to allowable daily charges:

Well with constructed filterpack, per linear foot	\$6 to \$8
Well packed with prepacked screen, per linear foot	\$11 to \$13

d. Construction of surface completion for direct push well or piezometer. Surface completion shall consist of concrete pad, protective casing or manhole, locking cap, locks, including any labor, equipment and material cost. If any component listed is not installed, surface completion cost is not allowed: \$200 each.

10. [11:] Equipment, materials and supplies. Equipment charges are not reimbursable for the time before travel to the site begins or after return from the site:

Air compressor, less than 190 CFM, per day	\$65 to \$75
Air compressor, 190 CFM or greater, per day	\$140 to \$165
Backhoe, trailer and accessories, per hour	\$50 to \$55
Concrete saw, per day	\$25 to \$35
Concrete saw (push type), per day	\$70 to \$80
Conductivity meter, per day	\$15 to \$20
Disposal drum, each	\$30 to \$35
Explosimeter, per day	\$30 to \$35
FID, OVA, per day	\$80 to \$95
Generator, per day	\$50 to \$55
Grout unit, per day	\$45 to \$75
Jackhammer, per day	\$50 to \$75

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

PID/HNu, per day	\$60 to \$75
Power auger, per day	\$40 to \$50
Sampling supplies including gloves, spoons, tools, bailers, ropes, chain of custody, sample preservatives, decontamination and other materials or supplies incidental to the collection of samples	\$12 per well, \$2 per soil sample
Self-contained steam cleaning unit, per day	\$100 to \$125
Steam cleaner, per day	\$50 to \$75
Survey equipment, per day	\$30 to \$35
Trackhoe, trailer and accessories per day (hour)	\$80 to \$100
Water level indicator, per day	\$10 to \$12
Water trailer (500 gal.), per day	\$50 to \$75
Water truck (800 gallon capacity or greater), per day	\$125 to \$175
Copies, per page	\$0.05
Faxes, per page	\$1.25

11. [12.] The fund will only reimburse for one (1) environmental professional to assist during drilling activities in the collection of in visual inspection of samples, logging of boreholes or monitoring wells or other task.

13. Mobilization and demobilization of heavy equipment including backhoe, trackhoe and dump trucks, including labor, per event - \$200.

(h) Sampling analysis, not including labor to take sample; including sampling containers [materials, transportation of sample, and chain of custody]:

<b>Soil Sample</b>	
BTEX (benzene, toluene, ethylbenzene, xylene)	
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$45 to \$60 [75 to \$88]
Polynuclear Aromatic Hydrocarbons	
Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	\$155 to \$190 [215]
Total recoverable oil and grease	
Method SW 3540 or 3550 in conjunction with 846 9071	\$37 to \$46
Total lead	
Method SW 846 7421 or 6010	\$23 to \$30
<b>Water Samples</b>	
BTEX (benzene, toluene, ethylbenzene, xylene)	
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$45 to \$60 [72 to \$84]
Polynuclear Aromatic Hydrocarbons	
Method 3510 or 3520 in conjunction with SW 846, 8100, 8270 or 8310	\$161 to \$190
Total recoverable oil and grease	
Method 3510 or 3520 in conjunction with SW 846 1664 or 9070	\$35 to \$46 [48]
Total Lead	
Method SW 846 7420 7421 or 6010	\$23 to \$30 [29]
<b>Sludge and Cleaning Liquid Samples</b>	
Toxicity Characteristic Leading Procedure	
Metals	\$230 to \$265
Volatiles	\$290 to \$320
Acid/base/neutrals	\$375 to \$415
Pesticides and herbicides	\$290 to \$315
<b>Ignitability</b>	
SW846 Method 1010	\$25 to \$35
<b>Paint Filter Test</b>	
SW846 Method 9095	\$15 to \$28
pH	\$12 to \$20

(i) Mobile laboratory fees at unit cost exceeding those found in paragraph (g) of this subsection may be eligible for reimbursement in conformance with the criteria established in Section 4 of this adminis-

trative regulation.

(j) Legal services.

<b>Attorney:</b>	
Sole practitioner, per hour	\$40
Partner or principle in firm, per hour	\$75
Associate in firm, per hour	\$60
Paralegal, per hour	\$30

(7) [(2)] An amount in excess of the maximum amount set forth in subsection (6) [(1)] may be approved by the fund if the contractor demonstrates that the additional cost is necessary to the performance of corrective action and the services or materials are not available at a lower cost.

(8) [(3)] Original invoices and supporting documentation shall be submitted to the fund along with any payment request under this section to verify that the cost incurred is necessary and reasonable. The fund may require additional documentation, including invoices from any vendor providing services, equipment or materials as part of corrective action, when required to determine the reasonableness or necessity of a payment request.

(9) [(4)] Upon agreement of the owner or [f] operator and the office [fund], the office [fund] may reimburse for work, testing, [and] equipment and materials in a manner other than that prescribed in Section 1 of this administrative regulation. Approved methods shall be task orders, firm fixed price or pay-for-performance as provided in "Pay for Performance Cleanups", United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996. [This document is hereby incorporated by reference. This document may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the Fund are from 8 a.m. to 4:30 p.m. eastern time Monday through Friday.] Any such agreement shall be reflected in a memorandum of agreement and set forth the method of reimbursement, the amount to be reimbursed and the rate or schedule of payment.

(10) Beginning on January 2, 2000, and every two (2) years thereafter, [(5) At the beginning of each calendar year] the secretary shall direct the staff to review the appropriateness of the range of amounts established by this administrative regulation. The staff shall:

(a) Establish a mailing list of persons who want to comment on this issue;

(b) Solicit comments and information from interested persons and persons who contract to perform corrective action;

(c) Conduct a public hearing to receive comment on the cost of corrective action; and

(d) Submit a report to the secretary by July 1 of the [each] calendar year recommending changes or revisions to the ranges of amounts established by this administrative regulation.

Section 2. Range of Amounts to be Paid for Items Not Listed in Section 1 of this Administrative Regulation. (1) Items not listed in Section 1 of this administrative regulation are subject to the following qualifications:

(a) Original invoices from manufacturers or retailers shall be supplied to the fund, with supporting documentation, if required;

(b) Unlisted items shall be subject to a maximum reimbursable amount of fifteen (15) percent above actual cost, which includes rentals or purchases;

(c) No markups shall be allowed on any pass through costs such as utilities or employee expense accounts; and

(d) Out-of-state travel expenses, including but not limited to air fare, shall not be reimbursed unless demonstrated to be necessary for the performance of corrective action (example: expertise not available within state);

(e) The cost is eligible, reasonable and necessary to the performance of corrective action.

(2) Costs for alternative corrective action technologies, such as soil venting, bioremediation, and groundwater treatment systems, shall be subject to the range of costs set forth in Section 1 of this administrative regulation where appropriate. Additional costs associated with the technology shall be justified as to reasonableness and necessity.

(3) Costs of corrective action performed by an owner or operator as an initial response or an action to prevent or remedy an emergency situation, or as directed by the cabinet, shall be subject to the range of

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

costs set forth in Section 1 of this administrative regulation where appropriate. These costs shall be justified as to reasonableness and necessity.

Section 3. Eligibility Criteria for Persons who Contract to Perform Corrective Action. To be eligible for payment from the fund, persons who contract to perform corrective action shall be certified according to 415 KAR 1:114 and employed or contracted by companies certified according to 415 KAR 1:116.

(1) Personnel shall be categorized according to the applicable type of personnel described in Section 1 of this administrative regulation and the appropriate rate applied;

(2) Costs shall be itemized to comply with the cost items listed in Section 1 of this administrative regulation;

(3) Original invoices shall be submitted with a request for payment or reimbursement from the fund;

(4) Documentation and additional information to support the request for payment or reimbursement shall be supplied as requested by the office staff.

Section 4. Certification of Contractor Costs. (1)(a) The fund may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The fund shall establish the date by which the proposals are to be submitted.

(2) The fund shall specify in the notice of the request for proposals the information to be submitted by the individual or company. At a minimum, the information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the fund;

(3) The fund shall review all proposals received after the date established for submittal of proposals. Proposals are to be submitted for the purpose of assisting the fund in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the fund, since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) The staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the fund verifies that the individual or company complies with the requirements of subsection (4) of this section, the individual or company shall be placed upon a list of approved contractors that shall

be made available to owners or operators of petroleum storage tanks upon request. The list of approved contractors shall be sent to all fund applicants and owners or operators participating in the fund.

(6) If the fund verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the fund that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the fund by an owner or operator for the costs of corrective action performed by an approved certified contractor or certified company shall be reviewed by the office staff to determine that the costs were necessary.

Section 5. ~~[The provisions of]~~ This administrative regulation shall apply to all cost incurred ~~[at facilities where the tank system is removed or closed in place]~~ on or after the effective date of this administrative regulation.

Section 6. Incorporation by Reference. (1) The following document is incorporated by reference: "Pay for Performance Cleanups", United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996.

(2) This form may be obtained, inspected and copied at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1999 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The proposed regulation will affect approximately 15,000 facilities with underground storage tanks containing petroleum products.

(a) Direct and indirect costs or savings to those affected:

1. First year: The tank owners or operators are financially responsible for the corrective action cost resulting from a release into the environment. Amendments to reflect price adjustments in the industry will result in a more true reflection of necessary cost to achieve site closure.

2. Continuing costs or savings: Tank owners or operators will continue to experience a more accurate rate of reimbursement associated with corrective action.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Tank owners or operators will be required to complete, file, maintain and process application and claim forms.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The office of the petroleum storage tank environmental assurance fund receives operating expenses from the petroleum storage tank environmental assurance fund. The FY 97 administrative budget was \$1.45 million. The fund expects cost to increase as a result of the need to hire new field auditors and contracting to perform financial audits

2. Continuing costs or savings: The fund anticipates continuing costs associated with staff and general operation of the program.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that approximately 22 new staff members will be added.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process claim forms. The fund will provide eligible entities with state certification of financial assistance.

(3) Assessment of anticipated effect on state and local revenues: See fiscal note on local government.

(4) Assessment of alternative methods: reasons why alternatives were rejected: The fund contends these amendments reflect reasonable cost associated with corrective action for a release for a petroleum storage tank. Any alternatives would not meet the statutory mandate of the fund.

Alternative:

1. Less stringent: The fund could allow the owner or operator to set the amounts to be reimbursed, but such an arrangement contains the potential for abuse and the waste of taxpayer money.

2. More stringent: The fund could set more stringent cost amounts that do not reflect the current market for corrective action. To do so, however, would lead to a reduction in the number of available contractors willing to accept fund reimbursement to perform corrective action.

3. Present proposal: The amended regulation contains cost that represent the current reasonable cost for the performance of corrective action and reflect market prices. A recent reorganization and name change is also reflected in the regulation.

(5) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks.

(b) Environmental: The effect of this regulation is to provide reimbursement up to \$1,000,000 for corrective action and \$1,000,000 for third-party liability for releases from petroleum storage tanks. A positive effect on the environment is expected as tank owners who were not financially able to remediate their sites will have assistance.

(6) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: There is no conflict with statute, administrative regulations, or government policies in conflict with the amended regulation.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(7) Source of revenue: The monies expended by the fund will come from the petroleum storage tank environmental assurance fee, pursuant to KRS 224.60-145.

(8) Benefits of the regulation: The amended regulation represents changes in cost and accurately reflect the cost, per unit, to achieve site closure.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. Tiering was not applied since the cost of corrective action to be reimbursed under the amended regulation is on a per unit basis. Since the amount to be reimbursed depends on the amount expended, smaller businesses are not unduly effected.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 280 subpart h requires the owner or operator of petroleum storage tanks to demonstrate financial ability to perform corrective action on a release to the environment caused by a petroleum storage tank. A state assurance fund reimbursing the cost of corrective action is one method of making this demonstration.

2. State compliance standards. No standards in addition to the federal standards.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 280 subpart details the standards and compliance dates.

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

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

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect a local government or a division of local government that owns or operates underground petroleum storage tanks.

3. State the aspect or service of local government to which this administrative regulation relates. Any service that requires the agency to own or operate petroleum storage tanks.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will address local government cost reimbursement in the same manner as nongovernmental entities.

#### PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (Amended After Hearing)

#### 415 KAR 1:116. Certification of contracting companies.

RELATES TO: KRS 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement by the fund. In 1998, the General Assembly amended this provision to specifically allow the office to set criteria for the certification of partnerships and companies that engage in corrective action. This administrative regulation sets the criteria for the certification of companies that contract with eligible owners and operators to perform corrective action at petroleum storage tank facilities.

Section 1. Definitions. (1) "Certified company" means a person or partnership involved in the business of performing corrective action services for a release from a petroleum storage tank and employs or contracts with one or more individuals certified pursuant to 415 KAR 1:114.

(2) "Person" is defined by KRS 224.60-115(14).

Section 2. Applicability. (1) Any person who contracts with eligible owners or operators to perform corrective action shall be certified by the office. Failure of the owner or operator to contract with a certified person shall render cost for any corrective action performed by that person unreimbursable.

(2) To be eligible to contract with petroleum storage tank owners and operators seeking reimbursement from the fund, the person shall:

(a) Employ or contract with one (1) or more individuals certified by the office pursuant to 415 KAR 1:114;

(b) Hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(c) Demonstrate to the office the technical, administrative and financial capabilities to perform and manage corrective action at underground storage tank facilities; and

(d) Be approved in writing by the office as certified to perform corrective action services in Kentucky.

(3) This requirement shall apply only to applications for assistance submitted to the office on or after March 1, 1999.

(4) An officer or principal of the certified company shall sign all applications or claim payment requests submitted to the fund by, or on behalf of, the eligible owner or operator. The certified company

shall certify that all information or payment requests have been reviewed and are true and correct. For claim payments, the certified company shall certify that all costs are reasonable, necessary, and were performed in compliance with 401 KAR Chapter 42 and 415 KAR Chapter 1.

Section 3. Application Requirements. (1) An applicant for company certification shall:

(a) Submit a completed certified company and partnership application form;

(b) Submit verification of the employment or contracting of one (1) or more individuals certified pursuant to 415 KAR 1:114;

(c) Submit, as references, the names and addresses of three (3) previous clients for whom environmental remediation has been performed by the company. If none, the applicant shall provide the names and addresses of three (3) previous or current clients of the individual certified pursuant to 415 KAR 1:114; and

(d) Submit a list of officers and principals of the applicant, and addresses, and if applicable, a list of all stockholders.

(2) Office staff may inspect facilities of the applicant to verify information in the application or to assist in the evaluation of the applicant's capabilities.

(3) The office may require additional information and documentation to determine the applicant's capabilities. The request for additional information and documentation shall be made by certified mail. The applicant shall submit the additional information within thirty (30) days of receipt of the request.

(4) An application for certified company status shall be denied if:

(a) The applicant fails to provide the information required in the application or this administrative regulation;

(b) The applicant does not meet the requirements of subsection (1) of this section;

(c) The applicant does not hold, in good standing, all licenses, permits and training certifications required to perform corrective action services in Kentucky;

(d) The applicant fails to allow the office staff to inspect its facilities;

(e) The applicant fails to provide additional information and documentation requested by the office;

(f) The applicant fails to demonstrate to the office that it possesses the technical, administrative and financial capabilities to perform and manage corrective action at underground storage tank facilities;

(g) The applicant provides false or misleading information in the application;

(h) Any of the applicant's officers, directors, principals, or stockholders has ever had a certification, granted pursuant to 415 KAR 1:114, revoked or suspended; or

(i) The applicant has, as any of its officers, directors, principals, or stockholders, an individual who was an officer, director, principal, or stockholder in a certified company, previously having its certification revoked or suspended.

(5) An applicant whose application for company certification is denied may appeal the determination by requesting a reconsideration or hearing pursuant to 415 KAR 1:120.

(6) An applicant that meets the requirements of this administrative regulation shall be issued a certificate by the office indicating certification under this regulation. Certifications shall be renewed biannually.

Section 4. Revocation or Suspension of Certification. (1) A certification issued pursuant to this administrative regulation may be revoked or suspended if:

(a) The certified company, its employees, or agents **knowingly** submit false information, documentation, or payment requests to owners, operators, or the fund;

(b) The certified company has permitted an employee, agent or subcontractor to violate any provision of 415 KAR Chapter 1, or to perform corrective action in violation of the standards of the State Fire Marshal or the cabinet;

(c) The certified company has failed to comply with the terms set forth in 415 KAR 1:135;

(d) The certified company has negligently, incompetently, reck-

lessly or intentionally violated any provision of this chapter or any required federal, state or local regulation, code or standard relating to corrective action;

(e) The certified company has obtained the certification through fraud or misrepresentation; or

(f) The certified company fails to perform a corrective action in a manner consistent with state or federal laws and regulations for safety or corrective actions, or fails to perform a corrective action consistent with generally acceptable professional standards.

(2) The secretary shall have authority to revoke or suspend a certification. The secretary shall then cause a letter to be issued notifying the certified company of the fund's action.

(3) A person whose certificate is suspended or revoked may appeal the determination by requesting a hearing pursuant to 415 KAR 1:120.

Section 5. Incorporation by Reference. (1) The "Certified Company and Partnership Application Form (October 1998)" is incorporated by reference.

(2) This form may be obtained, inspected and copied at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leewood Drive, Frankfort, Kentucky 40601, (502) 564-5981, 8 a.m. to 4:30 p.m. eastern time, Monday through Friday.

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1999 at noon

#### REGULATORY IMPACT ANALYSIS

Agency Contact: David B. Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 50 contracting companies in the commonwealth of Kentucky that perform corrective action due to releases from petroleum storage tanks.

(a) Direct and indirect costs or savings to those affected:

1. Effect on cost of living and employment: None

2. Effect on cost of doing business: There will be an indirect cost to the contracting company due to being certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

3. First year: There will be an indirect cost due to the need to be certified by the fund to supervise corrective action. There will be an indirect cost due to the time necessary to fill out the necessary application for certification.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply biannually for renewal of the certification. By assuring qualified individuals are performing these tasks, the public saves money over time.

5. Additional factors increasing or decreasing costs: (note any effects upon competition): There are no additional factors increasing or decreasing costs.

(b) Reporting and paper requirements: Individuals will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fund will experience direct costs due to the need to prepare and administer the certification program; receive, review and maintain applications for certification; and to identify the proper materials for the certification process.

2. Continuing costs or savings: The fund anticipates continuing costs as described above.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process applications for certification and applications for renewal.

(3) Assessment of anticipated effect on state and local reve-

nues: None

(4) Source of revenue: The monies expended by the fund will come from the petroleum storage tank environmental assurance fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected: The proposed regulation is in response to HB 282 (1998) which give the fund the authority to certify companies. The proposed regulation does not require a test, but failure to become certified or loss of the certification will result in the cessation of fund reimbursement.

Alternative:

1. Less stringent: A less stringent standard would not protect the public.

2. More stringent: A more stringent standard would unduly limit the number of available contracting companies, slowing down the process of removal.

3. Present proposal: The present proposal does not prevent companies from performing corrective action, but gives the fund an avenue to remove problem contractors if necessary.

(6) Economic impact: None

(7) Benefits of the regulation: The proposed regulation will benefit the public by allowing additional oversight of remedial contractors.

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

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

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have petroleum storage tanks. More populated areas will likely contain more tanks and more certified individuals.

(b) Environmental: The effect of this regulation is to provide qualified companies to provide the services for which the fund reimburses. A positive effect on the environment is expected.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation applies to all companies contracting to perform corrective action for which reimbursement or payment will be sought from the fund.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

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

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

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified company in the performance of corrective action if reimbursement will be sought from the fund.

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

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified company in the performance of corrective action if reimbursement will be sought from the fund.

#### LABOR CABINET Department of Workers' Claims (Amended After Hearing)

#### 803 KAR 25:021. Individual self-insurers.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY KRS 342.260, 342.340, 342.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260

provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims and to carry out the provisions of KRS Chapter 342. This administrative regulation establishes minimum requirements for individual employers who self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR 2:020, which is repealed.

Section 1. Definitions. (1) "Cessation liability security" means the security covering liability associated with anticipated claims occurring upon cessation of all operations of an individual self-insurer in the state.

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(3) "Employer" means any employer subject to the Kentucky Workers' Compensation Act.

(4) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(5) "Service organization" means a person or entity which provides services which may include but is not limited to, claims adjustment, safety engineering, computation of statistics, preparation of loss or tax reports, purchase of excess insurance, and preparation of any other self-insurance reports as may be required by law. [Any contract with a service organization that includes the adjustment and settlement of claims shall include a requirement that the service organization adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.]

(6) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Certification. No person, party, or employer shall act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the commissioner. All certifications issued by the commissioner shall remain in effect on an annual basis, unless otherwise revoked or suspended pursuant to Section 11 of this administrative regulation.

Section 3. Application. (1) Every initial application for individual self-insurance shall be submitted to the commissioner on form SI-02 and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its fiscal year and federal identification number. Any subsidiaries [or contractors] which are to be covered under the application, or who are already self-insured are to be identified and their relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance must be received five (5) days prior to certification of self-insurance;

(d) Copies of the proposed surety deposit or letter of credit instruments required by Section 5 of this administrative regulation. The surety must be received by the commissioner prior to certification to self-insure;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;



(f) An estimate of annual payroll and a statement of loss runs on form SI-08;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on form SI-01;

(j) Any individual or service organization which will be responsible for administration and adjustment of workers' compensation claims must provide satisfactory evidence to the commissioner as to their qualifications to administer and adjust workers' compensation claims;

**(k) If a service organization is used, a statement from the service organization and self-insured employer stating that the contract between the two (2) parties meets the requirement set forth in subsection (4) of this section.**

(2) An applicant may perform, if qualified, any and all of the functions of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents must be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance. Upon receipt of a complete application and all required documents, the commissioner shall approve or reject status as a self-insurer within thirty (30) days.

**(4) A contract with a service organization shall include one (1) of the following provisions:**

**(a) The service organization shall adjust to a final conclusion any and all claims that result from an occurrence during the period for which the contract is effective unless a substitute service organization has been procured; or**

**(b) The service organization shall adjust any and all claims for a period of sixty (60) days following an order from the commissioner finding the self-insured employer in default unless a substitute service organization has been procured.**

**(5) Variation from the requirements of this section, for good cause shown, may be sought by application to the commissioner.**

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the commissioner shall consider all relevant factors including the following:

- (a) The financial strength of the applicant or guarantor;
- (b) The excess insurance policy and retention level;
- (c) The experience of the service organization;
- (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
- (e) Profit and loss history;
- (f) Workers' compensation loss history of the applicant;
- (g) The prospect of increased losses by the employer's cessation of operations in Kentucky;
- (h) The number of employees and degree of hazard to which employees are exposed;
- (i) Safety programs; and
- (j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor must have assets in excess of all liabilities of at least \$3,000,000. Variance from this requirement may be granted to those currently certified individual self-insurers who have demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted only if the commissioner finds the applicant has complied with all sections of this administrative regulation and is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

Section 5. Specific Excess Insurance and Surety Requirements.

(1) Specific excess insurance shall be purchased with a coverage limit of at least \$10,000,000 per occurrence.

(2) To be eligible to write specific excess insurance for individual

self-insurers in Kentucky, a casualty insurance company on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000. The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its obligations to policyholders over an extended period of time.

(3) Each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form SI-03 or by irrevocable letter of credit on form SI-04, in an amount specified by the commissioner, but not less than \$500,000. In fixing the amount of security the commissioner shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky. The commissioner may direct that separate cessation liability security be deposited pursuant to Section 8 of this administrative regulation. The amount shall be reviewed and recalculated at the same times as the primary security.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of SI-05 in an amount specified by the commissioner, but not less than \$500,000. To be acceptable any securities which are deposited shall be eligible under the laws of Kentucky for investment by insurance companies.

Section 6. Coverage of Subsidiary or Related Corporations. A corporation having wholly owned subsidiaries may submit one (1) joint application to the commissioner, provided the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and its subsidiaries. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) written notice to the commissioner.

Section 7. Examination and Review of Filings. A certified public accountant or other qualified individual may be employed by the Department of Workers' Claims for the purpose of reviewing and analyzing the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review.

Section 8. Cessation Liability Security. (1) Cessation liability security is distinct from the primary security required in Section 5 of this administrative regulation.

(2) Upon cessation of all operations of an individual self-insurer in the state of Kentucky, cessation liability security will be called for payment of claims only after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security may be issued in one (1) or more of the following forms:

(a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 5 of this administrative regulation;

(b) An escrow account; or

(c) An irrevocable letter of credit.

(4) In the event that an individual self-insurer secures its workers' compensation obligation by obtaining standard workers' compensation insurance or by joining an approved self-insurance group, the commissioner may release the cessation liability security, effective as of the date of the employers acquiring other coverage.

Section 9. Annual filings. (1) **All individual self-insured employers shall file with the commissioner on or before 120 days from the end of the self-insured's fiscal year [Sixty (60) days prior to the end of each self-insurance year, the following information and reports shall be filed with the commissioner]:**

**(a) The statement of financial condition required by KRS 342.347(2) [A certified audited financial statement of the individual self-insured and any guarantor];**

**(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information requested by the commissioner, including relevant claim data;**

**(c) If a service organization is used, a statement from the service organization and self-insured employer stating that the**

**contract between the two (2) parties meets the requirement set forth in Section 3(4) of this administrative regulation.**

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the commissioner;

(3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) In the event of a change in majority ownership of a parent company, the individual self-insurer shall notify the commissioner within thirty (30) days of that change. A new application to self-insure shall be filed upon such a change in ownership.

(2) If any employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, ~~[or if contractors or subcontractors are brought within the coverage]~~ the individual self-insured shall notify the commissioner within thirty (30) days and the adequacy of the surety bond will be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during any quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the commissioner and the surety bond requirements may be reviewed and the bond shall be increased accordingly.

Section 11. Revocation or Modification of Certification. (1) Should the commissioner receive information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 or this administrative regulation, a show cause order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for hearing.

(2) The commissioner may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insurer is operating in contravention of its submitted application or is in material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor is no longer of such financial stability as to assure its ability to meet its obligations for the payment of workers' compensation benefits;

(3) In the event the commissioner ~~[suspends or]~~ revokes any individual self-insurer's certification, the commissioner shall notify either the Kentucky individual self-insurance guaranty fund or the Kentucky coal employers' self-insurance guaranty fund ~~[may appoint one (1) or more individuals or professional corporation as a receiver to conduct the ongoing workers' compensation affairs of the individual self-insured]~~.

(4) Self-insurance certification may be revoked by the commissioner after an issuance of a show cause order setting forth as grounds of revocation and setting a hearing date in not less than ten (10) days. The hearing shall be conducted pursuant to Section 12 of this administrative regulation. ~~[a hearing in compliance with the following procedures:~~

(a) ~~The commissioner may issue a show cause order setting forth the grounds of revocation and setting a hearing in not less than ten (10) days:~~

(b) ~~The commissioner;~~ During the pendency of any hearing or appeal the commissioner ~~[appeal or request for hearing;]~~ may utilize the surety deposit provided by the individual self-insurer to make any payments of workers' compensation benefits which are currently due for which payments are not being made by the individual self-insurer or its service organization. ~~[The application for hearing shall briefly state the grounds on which the individual self-insurer is relying and the basis for relief to be sought at the hearing. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, setting the date, time and place for the hearing, and specify the matters to be considered.~~

(c) Any party to the hearing shall have the right to appear in person or by counsel; to be present during the giving of all evidence; to have a reasonable opportunity to inspect all documentary and other evidence; to examine and cross-examine witnesses; to present evi-

dence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may be taken orally or by deposition, and the parties shall have right of inducing evidence by interrogatories or by deposition. Formal rules of pleading or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) No later than thirty (30) days after the termination of the hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.]

Section 12. Aggrieved Parties. (1) Any person aggrieved by an action of the commissioner ~~[a failure of the individual self-insured employer to meet those requirements of Section 11(2) of this administrative regulation]~~ may request a hearing by filing a written request with the commissioner setting forth the basis ~~[of the purported failure]~~. Upon receipt of a request the commissioner shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty (30) days after such notice.

(2) No later than thirty (30) days after the termination of the hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

(3) The ruling of the commissioner may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140.

**Section 13. Individual self-insureds shall comply with the contractual requirements with service organizations as set forth in Sections 3(4) and 9(1)(c) of this administrative regulation by July 1, 1999.**

**Section 14. Incorporation by Reference.** (1) The following material is incorporated by reference:

- (a) Form S1-01 (March 15, 1995 edition);
- (b) Form S1-02 (March 15, 1995 edition);
- (c) Form S1-03 (March 15, 1995 edition);
- (d) Form S1-04 (March 15, 1995 edition);
- (e) Form S1-05 (March 15, 1995); and
- (f) Form S1-08 (October 1998 edition).

(2) This material may be inspected, copied, or obtained at the Department of Workers' Claims, Monday through Friday, 8 a.m. to 4:30 p.m. at 1270 Louisville Road, Frankfort, Kentucky 40601.

[Section 13. Forms. (1) Forms, SI-01, SI-02, SI-03, SI-04, SI-05 and SI-08, (all revised 3/15/95), are hereby adopted and incorporated by reference:

(2) Obtaining forms:

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims:

- 1. Frankfort -- Perimeter Park West -- Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
- 2. Louisville -- 410 West Chestnut Street, Louisville, Kentucky 40202;
- 3. Paducah -- 220B North 8th Street, Paducah, Kentucky 42001; and
- 4. Pikeville -- 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive for this purpose.]

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

APPROVED BY AGENCY: December 23, 1998

FILED WITH LRC: December 23, 1998 at 11 a.m.

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 224 individual self-insureds.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The Department does not anticipate an effect on the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on the cost of doing business.

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

1. First year following implementation: The self-insured must file a statement of financial condition as required by KRS 342.347(2).

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No effect in costs or savings on agency.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will receive statement of financial condition as required by KRS 342.347(2).

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The normal budget for Department of Workers' Claims.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. No economic impact is anticipated.

(b) Kentucky: See response to 6(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department must amend this regulation to adequately carry out its statutory. To not amend this regulation would be neglecting our duty.

(8) Assessment of expected benefits: Individual self-insureds will be in better financial situations to provide wc coverage for its employees.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: If self-insured employers are not financially sound, employees who do not have adequate protection by workers' compensation coverage would suffer.

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

(c) If detrimental effect would result, explain detrimental effect: If individual self-insurers are not held to certain standards, employees may be detrimentally affected if proper workers' compensation is not provided.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because the regulation applies to all individual self-insureds.

CABINET FOR HEALTH SERVICES  
Department for Public Health  
Division of Adult and Child Health  
(Amended After Hearing)

902 KAR 4:110. Abortion information.

RELATES TO: KRS 194A.030, 211.090, 211.180, 311.720

STATUTORY AUTHORITY: KRS 194A.050, 311.725

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050

requires the cabinet to adopt such administrative regulations necessary to protect and maintain the health, welfare and personal dignity, of the citizens of the Commonwealth. KRS 311.725 requires the secretary of the cabinet to publish printed materials to inform the pregnant woman who is seeking an abortion concerning the probable anatomical and physiological characteristics of the embryo or fetus at appropriate gestational increments. Materials to inform the pregnant woman concerning public and private agencies and services to assist her through pregnancy, childbirth and while the child is a dependent and the support obligations of the father of the child who is born alive will be published.

Section 1. Definitions. (1) "Cabinet" means Cabinet for Health Services.

(2) "Department" means Department for Public Health.

Section 2. Informational Materials. (1) The cabinet shall develop and publish materials to be offered to pregnant women seeking an abortion at least twenty-four (24) hours in advance of the abortion. The materials are:

(a) The "Information About Fetal Development" pamphlet shall provide the following information:

1. Probable anatomical and physiological characteristics of the embryo or fetus;

2. Photographs depicting the embryo or fetus; and

3. A scale or explanation to aid in determining the actual size of the fetus.

(b) The "Available Resources for Pregnant Women" provides the following information:

1. A list of available public and private agencies with toll free numbers to assist women both during and after pregnancy;

2. A description of the services offered by the agencies; and

3. A description and toll free number of the Division of Child Support which shall provide information on the support obligations of a father of a child who is born alive.

(2) [(3)] The cabinet shall make available the requested number of materials.

(3) [(4)] The hospital, physician, medical facility, or entity requesting the materials shall be charged a fee of four (4) dollars.

(4) [(a)] The fee shall be paid by check made payable to the Kentucky State Treasurer.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Information About Development" dated January 1999 [12/1998]; and

(b) "Available Resources for Pregnant Women" dated January 1999 [12/1998].

(2) This material may be inspected, copied or obtained at the Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 7, 1999 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trisha Mullins

(1) Type and number of entities affected: All pregnant women seeking abortions, physicians, medical facilities and hospitals are

affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue. Cost of living and employment in Kentucky will not be impacted by this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue. Physicians, medical facilities, hospitals and individuals will pay the required fee to cover the costs of producing this publication to obtain the printed informational materials to be provided to a pregnant woman who is seeking an abortion, if she chooses to view the materials. Minimal fiscal impact on 9 billion dollar health care delivery system.

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

1. First year following implementation: The Department for Public Health will incur the cost of obtaining copyrights, developing, publishing, collecting the fees, storing and distributing the materials. The cost will include staff time spent in these activities. Individuals, medical facilities, hospitals and physicians will realize a fee for obtaining the informational materials to be provided to a pregnant woman who is seeking an abortion, if she chooses to view these materials.

2. Second and subsequent years: With the exception of the cost of obtaining the copyrights, the cost to the department individuals, hospitals and medical facilities will remain the same as the first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department for Public Health will incur the cost of obtaining copyrights, developing, publishing collecting the fees, storing and distributing the materials, as well as staff time for these activities.

2. Continuing costs or savings: The Department for Public Health will incur the cost of revising, publishing, collecting the fees, storing and distributing the materials, as well as staff time for these activities.

3. Additional factors increasing or decreasing costs: The Department for Public Health will experience an increased cost at anytime a copyright release is sought for the informational booklet, or anytime the cost for printing the materials, storing or distribution increase.

(b) Reporting and paperwork requirements: The department will experience increased staff time and paperwork associated with the collection and tracking of fees and the distribution of the material.

(4) Assessment of anticipated effect on state and local revenues: No effect on local revenues. State revenue generated will be used to recover the costs associated with the production and distribution of the informational materials.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration will be financed by the collection of the fees for the informational materials.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue. Individuals, hospitals, physicians and medical facilities will pay a fee to obtain the informational materials.

(b) Kentucky: Individuals, hospitals, physicians and medical facilities will pay a fee to obtain the informational materials.

(7) Assessment of alternative methods; reasons why alternatives were rejected: HB 85 of the General Assembly is specific as to the requirements of the materials to be provided to the pregnant women who seek an abortion.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To comply with the provisions of HB 85 of the 1998 General Assembly.

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

health would result if not implemented: Yes, the Cabinet for Health Services would be out of compliance with the mandates of HB 85 of the 1998 General Assembly.

(c) If detrimental effect would result, explain detrimental effect: The cabinet must comply with the provisions of HB 85 of the 1998 General Assembly.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because HB 85 of the General Assembly applies to all pregnant women seeking an abortion.

**CABINET FOR HEALTH SERVICES**  
**Office of Inspector General**  
**Division of Licensing and Regulation**  
**(Amended After Hearing)**

**902 KAR 20:360. Abortion facilities.**

RELATES TO: KRS 213.101, 216B.010 to 216B.130, 216B.990, 311.710 to 311.830, 314.011(8), 314.042(8)[, 1998 Ky. Acts ch. 614, sec. 2]

STATUTORY AUTHORITY: KRS 216B.0431 [1998 Ky. Acts ch. 582, sec. 4]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.0431 [1998 Ky. Acts ch. 582, sec. 4] requires that the Cabinet for Health Services regulate abortion facilities. This administrative regulation establishes the licensure requirements for abortion facilities.

Section 1. Definitions. (1) "Abortion" is defined in KRS 311.720(1).

(2) "Abortion facility" is defined in KRS 216B.015 [1998 Ky. Acts ch. 582, sec. 1].

(3) "Cabinet" means the Cabinet for Health Services.

(4) "Volunteer" means a person involved in the provision of abortion facility services who has direct patient contact within the abortion facility and who is not an employee of the abortion facility.

Section 2. Licenses. (1) A license to operate an abortion facility shall not be required for a health facility licensed to perform the services regulated by 902 KAR 20:016 or 902 KAR 20:106. That health facility shall:

(a) Comply with the requirements of its respective licensure category and provide written notice of its intent to perform abortions to the Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621;

(b) Comply with the reporting requirements of KRS 216B.0431 [1998 Ky. Acts ch. 582, sec. 4]; and

(c) Be exempt from any other licensure requirements of this administrative regulation.

(2) The license required by KRS 216B.0431 [1998 Ky. Acts ch. 582, sec. 4] shall be conspicuously posted in a public area of the facility.

(3) An applicant for licensure shall file with the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, an application for license to operate an abortion facility.

(4) An applicant for a license shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable administrative regulations relating to an abortion facility:

(a) Compliance with licensure administrative regulations shall be ascertained through an on-site inspection of the facility. A licensure inspection may be unannounced.

(b) A representative of the inspecting agency shall have access

to the facility during the hours that the facility operates.

(c) A regulatory violation identified during an inspection shall be transmitted in writing to the facility by the inspecting agency.

(d) The facility shall submit a written plan for the elimination or correction of the regulatory violation to the inspecting agency within ten (10) days.

1. The plan shall specify the date by which each violation shall be corrected.

2. Following a review of the plan, the inspecting agency shall notify the facility in writing of the acceptability of the plan.

3. If a portion or all of the plan is unacceptable:

a. The inspecting agency shall specify the reasons for the unacceptability; and

b. The facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(5) A licensee shall, as a condition of licensure or relicensure, be in compliance with the reporting requirements of KRS 213.101.

(6) An unannounced inspection shall be conducted:

(a) On a complaint allegation; and

(b) Utilizing the procedures established in subsection (3) of this section.

(7) A license shall remain in effect for one (1) year from the date of issuance unless otherwise expressly provided in the license certificate.

(8) A license shall be renewed upon payment of the prescribed fee and compliance with the licensure administrative regulations.

(9) Each license to operate shall be issued for the person or persons and premises named in the application.

(10) A new application shall be filed in the event of change of ownership.

(a) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period.

(b) An additional fee shall not be charged for the remainder of the licensure period.

Section 3. Fee Schedule. (1) Annual fees. The annual licensure fee (including a renewal) for abortion facilities shall be \$155 for each licensed facility.

(2) Fees shall be paid by check made payable to Kentucky State Treasurer and sent to Cabinet for Health Services, Division of Licensing and Regulation, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

Section 4. Appeals. (1) If the cabinet denies, suspends or revokes licensure, it shall issue and serve by certified mail or by personal service on the licensee of the facility, or its agent for service of process, a written notice of denial, suspension or revocation of licensure. Said notice shall set forth the specific findings of the cabinet alleged to have resulted in the action taken and shall advise the licensee of the facility of his right to appeal such denial, suspension or revocation at a hearing before the cabinet.

(2) Within twenty (20) days of the receipt of the written notice of action by the cabinet, the licensee of the facility may file a written request for hearing with the Secretary of the Cabinet for Health Services. Upon receipt of the written request for hearing, the secretary shall designate a hearing officer in accordance with KRS 13B.030 and 13B.040.

(3) A hearing shall be scheduled and commenced as soon as practicable after receipt of the request for hearing. Notice of the hearing shall be served by certified mail, return receipt requested, to the last known address of the parties, or by personal service, not less than twenty (20) days in advance of the hearing date. The notice of the hearing shall include the legal authority for the hearing, together with reference to the statutes, regulations and administrative action by the cabinet involved, and shall comply with KRS 13B.050(3).

(4) The hearing officer may hold a prehearing conference to consider simplification of the issues, admissions of facts and documents which will avoid unnecessary proof, limitations of the numbers of witnesses and such other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference, by stipulation, agreed settlement, or consent order.

Prehearing conferences are to be open to the public. A written prehearing order shall be part of the record.

(5) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090.

(6) Within sixty (60) days of the closing of the record or hearing, the hearing officer shall make written findings of fact, conclusions of law, and a final decision based upon the official record of the proceeding. The record shall consist of those items listed in KRS 13B.130, including:

(a) The notice of denial, suspension or revocation of licensure which was forwarded to the licensee;

(b) Any staff reports, memoranda, or documents prepared by or for the cabinet regarding the matter under review which were introduced at the hearing;

(c) Any information provided by the parties which was introduced at the hearing;

(d) Any other evidence admitted during the hearing with respect to the matter under review;

(e) Upon its completion, the prehearing orders, if any, and the report of the hearing officer containing the findings of fact, conclusions of law and final decision.

(7) Any party aggrieved by the final decision may appeal that decision to the Franklin Circuit Court in accordance with KRS 13B.130.

Section 5. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the abortion facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the abortion facility.

(b) The licensee shall establish written policies for the administration and operation of the abortion facility.

(c) The licensee shall establish lines of authority and designate the person who shall be principally responsible for the daily operation of the abortion facility.

(2) Policies.

(a) Administrative policies. The abortion facility shall have written administrative policies covering all aspects of the operation, including:

1. A description of organizational structure, staffing and allocation of responsibility and accountability;

2. A description of referral linkages with inpatient facilities and other providers;

3. Policies and procedures for the guidance and control of personnel performances;

4. A description of services included in the program;

5. A description of the administrative and patient care records and reports;

6. Procedures to be followed in the storage, handling and administration of drugs and biologicals; and

7. A policy to specify the provision of emergency medical services.

8. Procedures to be followed in obtaining the voluntary and informed written consent of the pregnant woman, as required by **KRS 311.725 [1998 Ky. Acts ch. 614, sec. 2]**.

(b) Patient rights policies. The abortion facility shall adopt written policies regarding the rights and responsibilities of patients. These patients' rights policies shall assure that each patient:

1. Is informed of these rights and of a procedure for handling patient grievances.

2. Is informed of services available at the abortion facility and of related charges including any charges not covered under third-party payor arrangements.

3. Is informed of her medical condition, unless medically contraindicated (as documented in her medical record), and is afforded the opportunity to participate in the planning of her medical treatment and to refuse to participate in experimental research.

4. Is encouraged and assisted to understand and exercise her patient rights; to this end she may voice grievances and recommend changes in policies and services. Upon the patient's request the grievances and recommendations will be conveyed within a reasonable time to an appropriate decision making level within the organization which has authority to take corrective action.

5. Is assured confidential treatment of her records and is af-

forded the opportunity to approve or refuse their release to any individual not involved in her care except as required by Kentucky law or third-party payment contract.

6. Is treated with consideration, respect, and full recognition of her dignity and individuality, including privacy in treatment and in the care of her personal health needs.

(3) Personnel.

(a) A facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to the patients.

1. The licensee shall obtain written applications for employment from all employees. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate licensure, if applicable, and health and personal background of each employee.

2. Prior to performing job duties, all employees and volunteers who have direct patient contact within the abortion facility, shall have tuberculin skin testing conducted unless a previously positive reaction is documented in millimeters. The intradermal (Mantoux) method, using five tuberculin units of stabilized purified protein derivative (PPD) is to be used. For employees or volunteers who have no documentation of a negative PPD result during the preceding twelve (12) months, then the two (2) step procedure (one (1) PPD test with negative result followed one (1) to three (3) weeks later by another PPD test) is required to establish a reliable baseline. If employees or volunteers have complete documentation of a negative PPD during the preceding twelve (12) months (may be a single PPD or a two-(2) step PPD), then a single PPD is acceptable to establish the baseline for current employment.

a. A person with negative tuberculin skin tests who has direct contact with patients shall have an annual tuberculin skin test.

b. An initial or routine chest x-ray shall not be required for an employee or volunteer with negative tuberculin test results who is asymptomatic.

c. Personnel with a positive reaction to the skin test shall have no patient contact until certified noncontagious by a physician.

d. A chest x-ray shall be required to determine whether TB disease is present for an employee or volunteer:

(i) With reactions of 10mm and over to the preemployment tuberculin test;

(ii) Who has previously documented positive reactions;

(iii) With newly converted skin tests; and

(iv) With symptoms suggestive of TB (e.g., cough, weight loss, night sweats, fever, etc.)

e. If TB disease is diagnosed, appropriate treatment shall be given and patient contacts examined.

f. Personnel who are known or suspected to have TB shall be required to be evaluated by a physician and shall not be allowed to return to work until they have been certified noncontagious by the physician.

g. Preventive treatment of personnel with new positive reactions is essential, and shall be considered for all infected employees or volunteers who have patient contact, unless specifically contraindicated.

(i) An employee or volunteer who completes treatment, either for disease or infection, may be exempt from further routine chest radiographic screening unless he has symptoms of TB.

(ii) Positive reactors who are unable or unwilling to take preventive treatment shall not receive an annual chest x-ray. These individuals shall be informed of their lifelong risk of developing and transmitting TB to individuals in the institution and in the community. They shall be informed of symptoms which suggest the onset of TB, and the procedure to follow should such symptoms develop.

h. Postexposure skin tests shall be provided for tuberculin negative employees or volunteers within twelve (12) weeks after termination of contact for any suspected exposure to a documented case of pulmonary TB.

i. A person shall be designated in writing at each facility to coordinate TB screening of personnel and any other TB control activities.

3. All professional and allied health professional staff members shall be currently certified with American Red Cross or American Heart Association to perform cardiopulmonary resuscitation and capable of recognizing symptoms of distress. [A clinical staff mem-

ber who is legally qualified to perform advanced cardiac life support shall be present while patients are undergoing abortion procedures and recovery in the facility.]

4. No employee or volunteer of the facility while afflicted with any infected wounds, boils, sores, or an acute respiratory infection, or any other contagious disease or illness, shall work in any capacity in which there is a likelihood of such person transmitting disease to other individuals.

5. Each facility shall have and execute a written orientation program to familiarize each new staff member with the facility and its policies and procedures, to include fire safety and other safety measures, medical emergencies, and infection control.

6. In-service training programs shall be planned and provided for all employees and volunteers to ensure and maintain their understanding of their duties and responsibilities. Records shall be maintained to reflect program content and individual attendance. The following training shall be provided at least annually:

a. Infection control, to include as a minimum, universal precautions against blood-borne diseases, general sanitation, personal hygiene such as hand washing, use of masks and gloves, and instruction to staff if there is a likelihood of transmitting a disease to patients or other staff members;

b. Fire protection, to include evacuating patients, proper use of fire extinguishers, and procedures for reporting fires;

c. Confidentiality of patient information and records, and protecting patient rights; and

d. Licensing regulations.

7. Job descriptions.

a. Written job descriptions that adequately describe the duties of every position shall be maintained.

b. Each job description shall include: position title, authority, specific responsibilities and minimum qualifications.

c. Job descriptions shall be reviewed at least annually, kept current and given to each employee and volunteer when assigned to the position and when revised.

8. A personnel file shall be maintained for each employee and for each volunteer. The records shall be completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information. The file shall contain a current job description that reflects the individual's responsibilities and work assignments, and documentation of the person's orientation, in-service education, appropriate licensure, if applicable, and TB skin testing.

(b) Clinical staff.

1. Physicians, nurses, and allied health professionals shall constitute the clinical staff.

2. The clinical staff shall meet at least quarterly to review and analyze their clinical experiences; minutes shall be maintained of such meetings.

3. Physicians.

a. Abortions shall be performed only by a physician who is licensed to practice medicine in Kentucky and who is properly qualified by training and experience to perform pregnancy termination procedures.

b. A physician shall remain on the premises until all patients are **discharged** [stable, and are ready for discharge].

(c) Nursing.

1. [a.] Nursing care shall be under the supervision of a registered nurse currently licensed in Kentucky.

2. [b.] A registered nurse shall be on duty to provide or supervise all nursing care of patients in preparation, during the termination procedure, the recovery period and until **all patients leave the facility** [discharge by the attending physician].

3. [c.] Licensed practical nurses, working under appropriate supervision and direction of a registered nurse, may be employed as components of the nursing staff.

(d) Allied health professionals, working under appropriate direction and supervision, may be employed to work only within areas where their competency has been established.

[~~(e) If ultrasonography is conducted, the procedure shall be conducted by a physician or by an ultrasound technician who shall have documented evidence of completion of a training course in ultrasonography.~~]



Section 6. [Dissemination of Information. Abortion facilities shall comply with the requirements of 1998 Ky. Acts ch. 614, sec. 2 and maintain an adequate supply of current printed material from the Division of Adult and Child Health, Department for Public Health, Cabinet for Health Services, which has not been altered in content.

Section 7.] Patient Care. Abortion facilities shall not serve patients whose needs exceed the resources or capabilities of the facility. The facility shall formulate and adhere to written patient care policies and procedures designed to ensure professional and safe care for patients, to include:

- (1) Admission criteria;
- (2) Physician and nurse responsibilities for the services offered;
- (3) Specific details regarding the preoperative procedures performed, to include history and physical examination, including verification of pregnancy, estimation of gestational age, identification of any preexisting conditions or complications;
- (4) The actual abortion procedure, to include the use of:
  - (a) IVs;
  - (b) Fluids;
- (c) Analgesia/anesthesia. General anesthesia shall be administered only by personnel acting within the limits of their statutory scope of practice; and
- (d) Tissue examination and disposal.
- (5) Postprocedure care and recovery room procedures to include emergency care;
- (6) Provisions for the education of patient, family and others, as appropriate in pre- and postprocedure care;
- (7) Plans for follow-up patient care after discharge from the facility;
- (8) Management and appropriate referral of high-risk conditions;
- (9) Transfer of patients who, during the course of pregnancy termination are determined to need care beyond that of the facility; and
- (10) Infection control and sanitation procedures to include duties and responsibilities of the infection control committee that shall include the development and implementation of specific patient care and administrative policies aimed at investigating, controlling and preventing infections in the facility.

Section 7. [8:] Pharmaceutical Services. Pharmaceutical services shall be provided in accordance with accepted professional practice and federal, state and local laws.

(1) Emergency drugs:

(a) Emergency kit or emergency drugs: Each facility shall maintain an emergency kit or stock supply of drugs and medicines for use in treating the emergency needs of patients. This kit or medicine shall be stored in such a manner as to prohibit its access by unauthorized personnel. A listing of contents by drawer or shelf shall be placed on the cabinet or emergency cart to allow quick retrieval. Contents shall correspond with the inventory list. Drugs and equipment shall be available within the facility to treat, as a minimum, the following conditions:

1. Cardiac arrest;
2. Seizure;
3. Asthmatic attack;
4. Allergic reaction;
5. Narcotic toxicity;
6. Hypovolemic shock;
7. Vasovagal shock.

(b) Drug Reference Sources. Each facility shall maintain reference sources for identifying and describing drugs and medicines.

(2) Administering drugs and medicines. Drugs and medicines shall not be administered to individual patients or to anyone within or outside the facility except by those authorized by law under orders of a physician or other ordering personnel acting within the limits of their statutory scope of practice. Such orders shall be in writing and signed personally by the physician or other personnel who prescribes the drug or medicine.

(3) Medicine storage. Medicines and drugs maintained in the facility for daily administration shall not be expired and shall be properly stored and safeguarded in enclosures of sufficient size that are not accessible to unauthorized persons. Refrigerators used for

storage of medications shall maintain an appropriate temperature as determined by the requirements established on the label of medications. A thermometer accurate to  $\pm$  three (3) degrees Fahrenheit shall be maintained in these refrigerators. Only authorized personnel shall have access to storage enclosures. Controlled substances and ethyl alcohol, if stocked, shall be stored under double locks and in accordance with applicable state and federal laws.

(4) Medicine preparation area. Medicines and drugs shall be prepared for administration in an area that contains a counter and a sink. This area shall be located in such a manner as to prevent contamination of medicines being prepared for administration.

(5) Records. Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered.

(6) Poisonous substances. All poisonous substances shall be plainly labeled and kept in a cabinet or closet separate from medicines and drugs to be prepared for administration.

Section 8. [9:] Laboratory Services. (1) Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under 42 CFR 493.

(a) Facilities for collecting specimens shall be available on site.

(b) If laboratory services are provided on site they shall be directed by a person who qualifies as a director under KRS Chapter 333 and 42 CFR part 493 and shall be performed in compliance with KRS Chapter 333 and 42 CFR 493 standards.

(2) Prior to the procedure, laboratory tests shall include a recognized urine pregnancy test unless the physician identifies fetal heart beats or fetal movements on physical examination. If positive, the following additional tests are required:

(a) Urinalysis including albumin and glucose examination;

(b) Hematocrit or hemoglobin; and

(c) Determination of Rh factor with appropriate medical intervention [(including the Du variant when the patient is Rh negative); Rh (D) immune globulin (human) shall be administered, prior to discharge, to patients who are determined to be Rh negative].

(3) Aspirated tissues shall be examined to verify that villi or fetal parts are present; if villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy.

(4) A written report of each laboratory test and examination shall be a part of the patient's record.

(5) If a patient is bleeding profusely and a transfusion of red blood cells is necessary, she shall be administered fluids and transported immediately to an acute care hospital.

(6) All laboratory supplies shall be monitored for expiration dates, if applicable.

Section 9. [10:] Medical Waste Disposal. (1) Sharp wastes.

(a) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(b) Needles shall not be purposely bent or broken, or otherwise manipulated by hand as a means of disposal, except as permitted by Centers for Disease Control and Occupational Safety and Health Administration guidelines.

(c) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous.

(2) Disposable waste.

(a) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(b) The abortion facility shall establish specific written policies regarding handling and disposal of all wastes.

(c) Pathological waste [which includes all tissue specimens from surgical or necropsy procedures] shall be incinerated.

(d) The following wastes shall be disposed of by incineration, or be autoclaved before disposal, or be carefully poured down a drain connected to sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(e) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment administrative regulations.

(f) Any incinerator used for the disposal of waste shall be in compliance with 401 KAR 59:023 or 401 KAR 61:013.

**Section 10. [11:] Emergency Care.** (1) An abortion facility shall enter into written agreements with a licensed acute-care hospital and a local ambulance service for the transport and treatment of patients when hospitalization becomes necessary, as required by **KRS 216B.0435** [1998 Ky. Acts ch. 582, sec. 5].

(2) These written agreements shall be filed with the cabinet.

**Section 11. [12:] Equipment and Supplies.** There shall be appropriate equipment and supplies maintained for the patients to include:

- (1) A bed or recliner suitable for recovery;
- (2) Oxygen with flow meters and masks or equivalent;
- (3) Mechanical suction;
- (4) Resuscitation equipment to include resuscitation bags and oral airways;
- (5) Emergency medications, intravenous fluids, and related supplies and equipment;
- (6) A clock with a sweep second hand;
- (7) Sterile suturing equipment and supplies;
- (8) Adjustable examination light;
- (9) Containers for soiled linen and waste materials with covers;
- (10) Refrigerator; and
- (11) Appropriate equipment for the administering of general anesthesia, if applicable.

**Section 12. [13:] Consultation.** Arrangements shall be made for consultation or referral services to be available as needed.

**Section 13. [14:] Quality Improvement.** (1) The facility shall establish and implement a written plan for a quality improvement program for patient care. The plan shall specify the individual responsible for coordinating the quality improvement program and shall provide for ongoing monitoring of staff and patient care services.

(2) There shall be an ongoing process for monitoring and evaluating patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services.

(3) Evaluation of patient care throughout the facility shall be criteria-based, so that certain actions are taken or triggered when specific quantified, predetermined levels of outcomes or potential problems are identified.

(4) The quality improvement process shall incorporate quarterly review of a minimum of five (5) percent of medical records of patients undergoing procedures during a given quarter, but not less than five (5) records shall be reviewed.

(5) The quality improvement process shall include evaluation by patients of care and services provided by the facility. If the families of patients are involved in the care and services provided by the facility, the quality improvement process shall include a means for obtaining input from families of patients.

(6) The administrator shall review the findings of the quality improvement program to ensure that effective corrective actions have been taken, including as a minimum, policy revisions, procedural changes, educational activities, and follow-up on recommendations, or that additional actions are no longer indicated or needed.

(7) The quality improvement program shall identify and establish indicators of quality care, specific to the facility, that shall be monitored and evaluated.

(8) The results of the quality improvement program shall be submitted to the licensee for review at least annually and shall include at least the deficiencies found and recommendations for corrections or improvements. Deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee.

**Section 14. [15:] Medical Records.** (1) Medical records shall be maintained for all patients examined or treated in the abortion facility. The records shall be completely and accurately documented,

readily available, and systematically organized to facilitate the compilation and retrieval of information. All information shall be centralized in the patient's medical record. All entries shall be legibly written or typed, dated and signed.

(a) The record shall include the following information:

1. A face sheet with patient identification data, to include: name, address, telephone number, Social Security number, date of birth, and name, address and telephone number of person to be notified in the event of an emergency;

2. Signed consent for the procedure;

3. Date of initial examination;

4. Date of abortion;

5. Referring and attending physicians' names and phone numbers, if applicable;

6. Complete medical history to include medications currently being taken;

7. Physical examination, to the extent necessary to determine the health status of the patient, within fifteen (15) days of the procedure, including detail of findings of pelvic examination and estimated gestational age, according to the first day of the last menstrual period;

8. Results of diagnostic tests and examinations, e.g., x-ray, electrocardiography, clinical laboratory, pathology, consultations, ultrasound;

9. Preoperative diagnosis;

10. Counselor's notes if applicable;

11. Physician's orders;

12. Complete record of abortion procedure to include:

a. Vital signs, i.e., temperature, pulse, respiration, and blood pressure, prior to and following the procedure;

b. Name of procedure performed;

c. Anesthetic agent utilized;

d. Name of attending physician performing the procedure;

e. Names of clinical assistants in attendance, to include other physicians, physician's assistants, anesthetists, nurses, or specially-trained technicians;

f. Signature of physician performing the procedure.

13. Nurses' notes;

14. Progress notes to include a postanesthesia note if general anesthesia is utilized;

15. Attending physician's description of gross appearance of tissue removed;

16. Final diagnosis;

17. Condition on discharge;

18. Post-op orders and follow-up care; and

19. Documented verification that the woman has received information and was offered printed materials as required by **KRS 311.725** [1998 Ky. Acts ch. 614, sec. 2].

(b) The attending physician shall complete and sign the medical record within seventy-two (72) hours following discharge.

(2) Confidentiality of all patient records shall be maintained at all times.

(3) Transfer of records. The abortion facility shall establish systematic procedures to assist in continuity of care where the patient moves to another source of care, and shall, upon proper release, transfer medical records or an abstract thereof when requested.

(4) Retention of records. After patient's death or discharge the complete medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

**Section 15. [16:] Infection Control.** (1) There shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the imple-

mentation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among patients and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

(8) Adequate space shall be provided for storage, maintenance and distribution of sterile supplies and equipment.

(9) Sterile supplies and equipment shall not be mixed with unsterile supplies, and shall be stored in dust-proof and moisture-free units. They shall be properly labeled.

(10) Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and materials. The sterilizing equipment shall have approved control and safety features.

Section 16. [17:] Linen and Laundry. (1) An adequate supply of clean linen or disposable materials shall be maintained in order to ensure change of linen on procedure tables between patients.

(2) Provisions for proper laundering of linen and washable goods shall be made. Soiled and clean linen shall be handled and stored separately. Storage shall be in covered containers.

(3) A sufficient supply of cloth or disposable towels shall be available so that a fresh towel can be used after each hand washing. Towels shall not be shared.

Section 17. [18:] Housekeeping. (1) General.

(a) A facility shall be kept neat, clean and free from odors;

(b) Accumulated waste material shall be removed daily or more often if necessary;

(c) There shall be frequent cleaning of floors, walls, ceilings, woodwork and windows;

(d) The premises shall be kept free from rodent and insect infestation; and

(e) Bath and toilet facilities shall be maintained in a clean and sanitary condition at all times.

(2) Cleaning materials and supplies shall be stored in a safe manner. All harmful agents shall be locked in a closet or cabinet used for this purpose only.

Section 18. [19:] Refuse and Waste Disposal. (1) All garbage and waste shall be collected, stored and disposed of in a manner designed to prevent the transmission of disease.

(a) Containers shall be washed and sanitized before being returned to work areas; and

(b) Disposable type containers shall not be reused.

(2) Containers for garbage and refuse shall be covered and stored outside and placed on an approved platform to prevent overturning by animals, the entrance of flies or the creation of a nuisance. All solid waste shall be disposed of at sufficient frequencies in a manner so as not to create a rodent, insect or other vermin problem.

(3) Immediately after emptying, containers for garbage shall be cleaned.

(4) All medical waste shall be managed in accordance with Section 9 [12] of this administrative regulation.

Section 19. [20:] Outside Areas. All outside areas, grounds and adjacent buildings shall be kept free of rubbish, grass, and weeds that may serve as a fire hazard or as a haven for insects, rodents and other pests. Outside stairs, walkways, ramps and porches shall be maintained free from accumulations of water, ice, snow and other impediments.

Section 20. [21:] Disaster Preparedness. (1) All staff shall be knowledgeable of a written plan and procedure for meeting potential disasters and emergencies such as fires or severe weather. The plan shall be posted. Staff shall be trained in properly reporting a fire, extinguishing a small fire, and in evacuation from the building.

Fire drills shall be practiced in accordance with state fire administrative regulations.

(2) All fire protection and alarm systems and other fire fighting equipment shall be inspected and tested at least once each year, and more often if necessary to maintain them in serviceable condition.

Section 21. [22:] Facility Specifications. (1) An abortion facility shall provide a functionally safe and sanitary environment for patients, personnel, and the public.

(2) An abortion facility shall include space for the following functions:

(a) Reception and waiting;

(b) Administrative activities such as patient admission, record storage, and business affairs;

(c) Patient dressing and storage of personal items;

(d) Preoperative evaluation, including physical examination, laboratory testing, and preparation for anesthesia;

(e) Performance of surgical procedures;

(f) Preparation and sterilization of instruments;

(g) Storage of equipment, drugs, and fluids;

(h) Postanesthetic recovery; and

(i) Janitorial and utility support.

Section 22. [23:] Injunctive Relief. The Office of Inspector General shall refer instances where administrative penalties and legal sanctions have failed to prevent or cause a discontinuance of a violation of KRS Chapter 216B to the secretary of the cabinet for action in accordance with KRS 15.241 [1998 Ky. Acts ch. 582, sec. 7].

Section 23. [24:] Incorporation by Reference. (1) The Application for License to Operate an Abortion Facility, L&R 240 (7/98), is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TIMOTHY L. VENO, Inspector General

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 7, 1999 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Unknown. Less than 10 applications for licensure are projected during the first year.

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

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

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

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

1. First year following implementation: The licensure fee for each licensed facility shall be \$155. The facility is required to document in the medical record that the patient received the abortion information required by KRS 311.725, and to comply with reporting requirements of KRS 213.101. The facility is also required to file with the cabinet written agreements with hospitals and ambulance services regarding emergency care arrangements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this

new regulation. No additional surveyors are anticipated because of this program.

1. First year: \$500 for printing regulation.
2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.
3. Additional factors increasing or decreasing costs: No additional factors.
- (b) Reporting and paperwork requirements: Additional forms for surveyors.
- (4) Assessment of anticipated effect on state and local revenues: No effect.
- (5) Source of revenue to be used for implementation and 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  
Department for Medicaid Services  
Division of Financial Management and Analysis  
(Amended After Hearing)**

**907 KAR 1:019. Pharmacy services.**

RELATES TO: KRS 205.520, 205.6316, 314.011, 320.120, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a, b, c, d, r-8, 1998 Ky. Acts chs. 228, 531 [-320-210]

STATUTORY AUTHORITY: KRS 194A.050, 1998 Ky. Acts chs. 301, 561, 426, sec. 4(3) [194-050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, r-8, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the provisions relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Drug file" means the Kentucky Medi-

caid Program drug file consisting of every drug that may be eligible for reimbursement under the Medicaid Pharmacy Program including drugs requiring and not requiring prior authorization. ["Department" means the Department for Medicaid Services or its designee.]

- (2) "Drug manufacturer" means an entity meeting the definition shown in 42 USC 1396r-8(k)(5).
- (3) "FDA" means Food and Drug Administration.
- (4) "Legend drug" means a drug which by federal law requires a prescription by an authorized prescriber before it can be dispensed.
- (5) [(4)] "Outpatient drug program" means the program of drug services provided directly by a pharmacist to a Medicaid recipient, including both the drug product and dispensing of the drug.

Section 2. Prescribed Drug [Drugs:] Coverage and Limitations [Provisions] Relating to the Outpatient Drug Program. A drug prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner, physician assistant, or podiatrist in accordance with 907 KAR 1:021 shall be provided in accordance with the coverage and limitations [provisions] specified in this administrative regulation.

(1) The drug file shall be maintained in an electronic format and shall be accessed through electronic media via the department's fiscal agent. Indicator explanatives reflecting prior authorization status are specified in an electronic format with the drug file. The drug file is updated from a contracted pharmacy pricing service. New drugs shall be covered as specified in the Pharmacy Manual Section IV A2.

(2) The Outpatient Drug Program shall not make payment for:

(a) A drug which has a FDA issued "less than effective (LTE)" rating;

(b) A drug which is determined to be "identical, related, or similar to" LTE drugs;

(c) A drug, for which the drug manufacturer has not entered into nor complies with a rebate agreement in accordance with 42 USC 1396r-8(a);

(d) A drug which has a termination date issued by the drug manufacturer;

(e) Nursing facility items as specified in the Pharmacy Manual Section IV B3;

(f) A drug or class of drug listed in 42 USC 1396r-8(d)(2) unless:  
 1. Specified within the drug class and placed on the drug file; or  
 2. Prior authorized using the prior authorization criteria of the department as specified in the Pharmacy Manual; or

(g) A drug, provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program.

(3) The Outpatient Drug Program shall make payment for a drug; [Coverage for outpatient drugs shall be limited to drugs:]

(a) For which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396r-8(a); or

(b) Which has [Which are prescribed for a medically accepted indication; and

(c) That have] a prior authorized exemption from the rebate agreement granted by the Health Care Financing Administration; and

(c) Which is prescribed for a medically accepted indication, as approved by the FDA or documented in official compendia.

(4) Limitations within the Outpatient Drug Program.

(a) A prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written.

(b) A recipient placed in lock-in status shall receive services in accordance with 907 KAR 1:677.

[(2) Drugs included on the Kentucky Medicaid Program Outpatient Drug List (as published by the department) may be provided without prior authorization. Prior authorization shall be required for all other drugs in accordance with 907 KAR 1:021.

(3) The drugs or classes of drugs listed in 42 USC 1396r-8(d)(2) shall be excluded from coverage unless specifically (individually by drug within the class) placed on the outpatient drug list or prior authorized using the usual prior authorization criteria of the department as specified in the Pharmacy Manual.]

(5) Prescription requirements. [(4)] Prescribing quantities may be limited by the program as referenced in the Pharmacy Manual, section IV A.3 and 12.

~~[(5) A recipient placed in "lock-in" status shall receive services in accordance with 907 KAR 1:677.~~

~~(6)(a) Practitioner authorization shall be [as] evidenced by the actual signature of the prescriber [shall be required]:~~

- ~~1. On each prescription not telephoned in;~~
- ~~2. On each Schedule II controlled substance prescription; or [and]~~
- ~~3. If the prescriber [override-](certification of brand name necessity)] procedure is being used.~~

~~(b) For a telephone prescription except as provided in paragraph (a) of this subsection, the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.~~

~~[(7) A prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written:~~

~~(8) A drug, provided to a recipient in an institution in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid Program, shall not be billed as an outpatient pharmacy benefit.~~

~~(9) A drug provided to a recipient in a nursing facility (except for a patient in a head injury unit or a unit providing care for ventilator-dependent patients) shall be billed as an outpatient pharmacy benefit.~~

~~(10) Legend drugs, not included on the Kentucky Medicaid Program Outpatient Drug List, and which shall prevent hospitalization or a higher level of care of the recipient, shall be considered covered for an individual recipient if prior authorized by a qualified medical professional in the department.~~

~~(11) Drugs not on the Kentucky Medicaid Program outpatient drug list may be placed on a prior authorization list and authorized as a group, in accordance with 907 KAR 1:021 for a recipient in a personal care home and for those recipients in nursing facilities who meet patient status criteria for the facility.~~

~~(12) A drug for which the Food and Drug Administration has issued a "less than effective (LTE)" rating and a drug which is determined to be "identical, related, or similar to LTC drugs" shall not be covered.]~~

Section 3. Prior Authorization. (1) The prior authorization procedures and policies, as specified in the Pharmacy Manual Appendix II shall be followed for a drug on the drug file which requires prior authorization.

(2) In addition to standard prior authorized drugs, as established in subsection (1) of this section, there are drugs identified on the Map 354 form, included in Pharmacy Manual Appendix III, which may be authorized singularly or as a group for a recipient in a personal care home pursuant to Pharmacy Manual Section 5L.

(3) The prior authorized drugs referenced in subsection (1) of this section may be authorized singularly or as a group for a recipient in a long term care facility who meets the patient status criteria for the facility, pursuant to the Pharmacy Manual Section 5K.

(4) A drug class may be excluded from those authorized for a recipient in a long term care facility or personal care home pursuant to subsections (2) and (3) of this section and shall require individual prior authorization in accordance with drug class parameters as recommended by the drug advisory board and approved by the commissioner or his designee.

Section 4. Drug Advisory Board. The drug advisory board was established by order of the secretary in accordance with 42 USC 1396r-8(a). Duties of the drug advisory board include the following regarding the Medicaid Outpatient Drug Program:

- (1) Prospective and retrospective review;
- (2) Education in relation to drug therapy;
- (3) Establishment of a standard for identification of suspected fraud and abuse;
- (4) Disease management; and
- (5) Review of drug related matters and make recommendations [recommendation] to the commissioner of the department.

Section 5. Drug Status Review Process. (1) With the exception of provisions in paragraphs (a) and (b) of this subsection, in accordance with 1998 Ky. Acts ch. 561, updates and additions to the drug file in accordance with Section 2(1) of this administrative regulation that are not otherwise excluded from coverage by Section 2(2) of this administrative regulation shall be covered without prior authori-

zation for twelve (12) months.

(a) Consideration shall be given to whether the drug expense would favorably offset other patient care costs such as:

1. Hospitalizations;
2. Emergency room visits; or
3. Physician visits.

(b) The department determines that cost or safety concerns outweigh the benefit to Medicaid recipients. The safety risk associated with a drug may be balanced against the benefit gained by retaining the drug on the NPADF (nonprior authorized drug file). The following criteria shall be used to screen for drugs that may result in an undesirable cost or safety profile.

1. Criteria for cost include:

a. In any three (3) month period, the cost of the drug ranks in the top 200 of drugs reimbursed by Medicaid;

b. The cost per prescription exceeds twice the average cost, or is greater than the average cost of drugs within its therapeutic class;

c. The combination of cost and volume results in an increased program expense that places the drug in the top 200 of drugs reimbursed by Medicaid;

d. The number of prescriptions for the drug during the first ninety (90) days exceeds fifteen (15) percent of the total prescriptions for that therapeutic class of drugs; and

e. The drug is partially or completely reimbursed by Medicare or other payment system.

2. Criteria for safety include:

a. The drug is considered to have a potential for abuse;

b. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration;

c. The drug labeling contains a black box warning consisting of a special notation within the manufacturer's labeling calling attention to extremely serious, sometimes life threatening, adverse reactions; or the labeling contains restrictions, contraindications, warnings or cautions which exceed those for other drugs in the same therapeutic class; and

d. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:

- (i) Significant adverse events that were not previously known;
- (ii) Significant morbidity or mortality; or
- (iii) The frequency of the event significantly exceeds that which is expected for the drug.

(2) The manufacturer shall be notified that a drug may require prior authorization prior to the expiration of the first twelve (12) months. This decision shall be reviewed at the next pharmacy advisory board meeting scheduled to meet at least two (2) weeks subsequent to the date of such notification.

(3) An interested party requesting a drug status review shall submit a request in writing to the department or its designee.

(4) The department or its designee shall forward a written acknowledgment of receipt of the status review request and any preliminary drug status to the requester.

(5) Upon request, the manufacturer shall provide to the department or its designee the following information for a drug product for which a status review is to be initiated:

(a) Company name;

(b) Brand product name;

(c) Generic name;

(d) FDA approval date;

(e) Date introduced into United States market;

(f) American Hospital Formulary Service therapeutic class and code;

(g) FDA approval class, 1P, 1S, and orphan drugs;

(h) FDA Approved Drug Products therapeutic equivalence code.

(Note: copy of respective page or supplement must be provided);

(i) Patent expiration date;

(j) HCFA rebate drug designation;

(k) FDA approved indication;

(l) Side effects or toxicity;

(m) Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file;

(n) Specific advantages compared to other available drugs not requiring prior authorization or statement of why this drug should not

require prior authorization;

(c) Most used indications, strength, dosage form, package size, National Drug Code number, average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(p) ~~Date of most recent price change;~~

(q) ~~Amount of most recent price change, old price and new price;~~

(r) ~~Name, address, fax number, telephone number, e-mail address of requester;~~

(q) ~~(s)~~ A statement indicating which drugs currently not requiring prior authorization may be changed to require prior authorization with no appreciable therapeutic loss to patient benefit and no significant dollar cost to the program should this drug be made available without prior authorization; and

(r) ~~(t)~~ If available, landmark clinical and pharmacoeconomic study citations.

(6) The department's review of a drug shall consider the following:

(a) If reimbursement is excluded in accordance with Section 2(2) of this administrative regulation.

(b) If the drug represents a line extension which means a new strength, dosage form, delivery system, or indication of a drug not currently requiring prior authorization. Drug products falling into this category may also be pharmaceutical equivalents or pharmaceutical alternatives as established by the FDA.

(c) If the drug represents a unique drug which include the following:

1. Schedule II/controlled substances;

2. Treatment of HIV/AIDS;

3. Orphan drug;

4. Oral birth control medication; or

5. Other drugs determined to be unique by the department upon the advice of the drug advisory board.

(7) The department or its designee shall determine whether to conduct a full review or a mini review of the drug product.

(a) A full review includes a review of the literature and differs from a mini review in its overall scope. A review may be prepared by a practitioner, pharmacist, physician, or faculty member, or a student of a health science learning center within Kentucky.

(b) A full review may include the following:

1. Medical literature search;

2. Pharmacoeconomic analysis;

3. Comparison to other products on the drug file;

4. Primary indication for use and therapeutic classification;

5. Prominent advantages and disadvantages of the product; or

6. A recommendation regarding status of a drug;

(c) A mini review may include the following:

1. Comparison to other products on the drug file, including cost;

2. Primary indication for use and therapeutic classification;

3. Prominent advantages and disadvantages of the product; or

4. A recommendation regarding status of a drug.

(8) Reviews with recommendations shall be forwarded to the drug advisory board, which shall make a recommendation to the department.

(9) Any person may address the drug advisory board if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.

(10) In addition to routine retrospective and prospective review findings, the drug advisory board may recommend **educational programs**, specific utilization studies or intervention plans. The results of **educational programs** or interventions implemented shall be evaluated for a period of six (6) months.

(11)(a) The department may seek additional information from sources within or outside of the Cabinet for Health Services regarding a recommendation made by the drug advisory board.

(b) Once required information is received and evaluated, a formal decision shall be made in **thirty (30) days [a timely manner]** regarding the acceptance or rejection of the recommendation of the drug advisory board.

(c) A formal decision shall be constituted by a written directive for implementation of the recommendation from the department. If new evidence becomes available regarding a formal decision, the

department may direct that the issue be re-reviewed by the board in light of such new information.

(d) A written notification regarding final disposition taken by the department shall be:

1. Forwarded to the:

a. Appropriate participating providers; and

b. Drug advisory board; and

2. Posted to the departmental web site on the Internet.

(e) Information concerning the drug prior authorization status process may be posted at the department's web site and the web site address may be obtained by contacting the department.

(12) An interested party who is aggrieved by a recommendation of the drug advisory board to the department may submit a written exception to the department in accordance with the following:

(a) New information that was not available to be presented at the time of the board's consideration of the matter may be submitted;

(b) It shall be received within ten (10) days of the recommendation;

(c) If the deadline for filing a written exception falls on a Saturday, Sunday or state holiday, the exception may be filed the following day. After the time for filing an exception has expired, the department shall consider all exceptions filed in a timely manner prior to acting upon the recommendation of the board;

(d) In making a final decision on a recommendation of the board, the Commissioner of the Department for Medicaid Services, or his designee, may seek additional and clarifying information from any source. Additional information submitted to the commissioner, or his designee, shall be made a part of the administrative record supporting the final decision;

(e) An appeal from the decision of the commissioner, or his designee, may be made in accordance with KRS Chapter 13B by a manufacturer of the product. Unless held in abeyance or otherwise addressed by the hearing officer, the decision of the commissioner, or his designee, shall stand until final disposition of the issue.

Section 6. Incorporation by Reference. (1) The "Pharmacy Manual", October 1998 [December 1996] Edition, Department for Medicaid Services, is incorporated by reference.

(2) This material [it] may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 4. The amendments to this administrative regulation shall be implemented with regard to services provided on or after December 1, 1996.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 7, 1999 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All pharmacy providers and recipients.

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

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

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

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

1. First year following implementation: Requiring a recipient his/her representative signs for receipt of medications may increase paperwork.

2. Second and subsequent years: As stated in (c) 1.

(3) Effects on the promulgating administrative body:



- (a) Direct and indirect costs or savings:
  1. First year: Indeterminate increase.
  2. Continuing costs or savings: Indeterminate increase.
  3. Additional factors increasing or decreasing costs: Number of prescriptions written.
- (b) Reporting and paperwork requirements: Current paperwork may be included for additional data.
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. Based on previous experience of OBRA '90 requirements that all new drugs be covered under nonprior authorized status, a substantial increase in the pharmacy budget was calculated to be approximately \$53 million. Due to the complexities of SB 351, the 12 month requirement of nonprior authorized status drugs, except for possible safety/health or cost considerations, makes a definitive fiscal impact impossible.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
  - (a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Compliance with regulations regarding Medicaid Program with regard to recipient access to "new" drugs as mandated by SB 351. Yearly drug utilization reviews to determine most utilized and abused drugs. Education of providers regarding disease-appropriate use of drugs. Recipient signing for receipt of medication would decrease inappropriate dispensing of medication to wrong individuals.
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: Yes
  - (c) If detrimental effect would result, explain detrimental effect: Access to new drugs and education for providers would be hindered. Failure to implement recipient signing for receipt of medication will increase inappropriate dispensing of medication to wrong individual.
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
  - (a) Necessity of proposed regulation if in conflict:
  - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments: Physician assistants shall have prescriptive authority, which should ensure additional access to medical care.
- (11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.
2. State compliance standards. This administrative regulation does not set compliance standards.
3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements,

than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No
3. State the aspect or service of local government to which this administrative regulation relates. None
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
 

Revenues (+/-): None  
Expenditures (+/-): None  
Other Explanation: None

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Financial Management and Analysis (Amended After Hearing)

#### 907 KAR 1:021. Amounts payable for drugs.

RELATES TO: KRS 205.560, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 256b, 1396a-d, 1998 Ky. Acts chs. 228, 561

STATUTORY AUTHORITY: KRS 194A.050, 205.520(3), 1998 Ky. Acts ch. 426, sec. 4(3) [194.050, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid [a] Program [of Medical Assistance]. KRS 205.560 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the method for determining amounts payable by the department [cabinet] for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to a pharmacy [pharmacies] participating in the Medicaid [Medical Assistance] Program for [these] drugs contained on the Kentucky Medicaid [Medical Assistance] Program [Outpatient] drug file, as defined in 907 KAR 1:019, which is accessible through electronic media via the department's fiscal agent, [List (as published by the Cabinet for Human Resources) or preauthorized for individual recipients based on medical necessity] and provided to an eligible recipient [eligible recipients] shall be determined in accordance with the following policies:

(a) An appropriate rebate agreement shall be [must have been] signed by the drug manufacturer [or labeler] or the drug shall [must] be provided based on a prior authorized [preauthorized] exemption from the rebate requirement in accordance with 907 KAR 1:019;

(b) Drug costs shall be determined in the pharmacy program using a computerized price listing service with pricing based on the actual package size utilized; and

(c) [If an average wholesale price is listed,] Reimbursement for a [the] drug cost shall be the lesser of:

1. The federal maximum allowable cost (FMAC) [or average wholesale price (AWP) minus ten (10) percent] plus a dispensing fee and unit dose add-on as appropriate [or the usual and customary billed charge] unless the prescriber [physician] has hand-written "brand medically necessary" ["do not substitute"] or "brand necessary" on the prescription;

2. The estimated acquisition cost (EAC) which shall equal the average wholesale price (AWP) minus ten (10) percent plus a dispensing fee and unit dose add-on as appropriate; or

3. The usual and customary billed charge.

(d) If an AWP is not listed, reimbursement shall be the lesser of the FMAC or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the usual and customary billed charge unless the physician has written "do not substitute" or "brand necessary" on the prescription:

(e) If the physician has written "do not substitute" or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) (AWP minus ten (10) percent or direct price as appropriate) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate):

(f) For a nursing facility resident [residents] meeting Medicaid patient status criteria in accordance with 907 KAR 1:022, there shall not be [no] more than:

1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug;

2. [drugs (as determined by the Medicaid agency), and no more than] Two (2) dispensing fees allowed per drug within a calendar month for other drugs; and

3. [~~except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than~~] Four (4) dispensing fees per drug [shall be allowed] within a calendar month for a nonsolid dosage form, including a topical medication preparation, Schedule II, III or IV controlled substances or legend intravenous drugs. Nonsolid dosage forms mean a covered drug item other than an oral tablet or capsule form.

4. For a nursing facility resident meeting Medicaid patient status criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.

(e) For a nursing facility resident [residents] not meeting Medicaid patient status criteria established in 907 KAR 1:022 or a nonresident of a nursing facility [and nonresidents of nursing facilities], there shall not be [no] more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug [drugs] classified by the Medicaid Program as a maintenance drug; [drugs] and

2. [no more than] Four (4) dispensing fees [shall be] allowed per drug within a calendar month for a legend intravenous drug [drugs].

3. The limitation on the number of [Though] dispensing fees [are limited, this] shall not have the effect of [be construed as] placing a limit on the quantity of reimbursable drugs for which the program shall [will] pay for a [any] patient, since the reasonable cost of the drug shall be [as defined herein] is reimbursable as a covered service in a [whatever] quantity [is] considered medically necessary for the patient. [Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms:

(g) Whenever possible, unused drugs paid for by the cabinet shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the cabinet.]

(2) Reimbursement to a hospital [hospitals] for a drug [drugs] provided to an eligible recipient [recipients] shall be on the basis of reasonable cost pursuant to 907 KAR 1:013. [While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this administrative regulation shall be applicable with regard to payments for drugs provided in those settings.]

(3) Pharmacy claims shall meet point of sale (POS) requirements for services in accordance with 907 KAR 1:673.

Section 2. Dispensing Fees. (1) Except as provided in subsection (2) of this section, the dispensing fee shall be four (4) dollars and seventy-five (75) cents per prescription for a drug [drugs] reimbursed through the outpatient drug program when dispensed to an [all] eligible recipient [recipients except those in nursing facilities meeting Medicaid patient status criteria].

(2) For an eligible recipient [recipients] in a nursing facility [facilities] meeting the appropriate patient status criteria requirements established in 907 KAR 1:022, the dispensing fee shall be five (5) dollars and seventy-five (75) cents per prescription for a drug [drugs] reimbursed through the Outpatient Drug Program.

(a) For a recipient identified in this subsection [(+) or] (2) of this section, [these recipients,] a unit dose addition to the usual dispensing fee shall be made for a drug [drugs] dispensed through the pharmacy outpatient drug program in the amount of:

1. Two (2) cents per unit dose for a unit dose drug [drugs] packaged in unit dose form by the manufacturer; and

2. Four (4) cents per unit dose for a unit dose drug [drugs] packaged in unit dose form by the pharmacist.

(b) The unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars and seventy-five (75) cents is not paid due to monthly limits on dispensing fees.

Section 3. Reimbursement to Dispensing Physicians. (1) A participating dispensing physician [physicians] who practices [practice] in a county [counties] where a pharmacy is not [no pharmacies are] located shall be [are] reimbursed for the cost of the drug [only], with the cost computed:

(a) As the lesser of:

1. The maximum allowable cost or estimated acquisition cost established [as shown] in Section 1(1) of this administrative regulation; or

2. The physician's usual and customary charge to the general public for the drug; [if less;] or

(b) In accordance with 907 KAR 3:010 [1:010] for drugs purchased on the open market for a specified immunization as established [immunizations shown] in 907 KAR 3:005 [1:009].

[Section 4. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after July 1, 1991.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 7, 1999 at 11 a.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: All pharmacy providers and all recipients.

(2) Direct and indirect costs or savings on the: None

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Additional data may be included in current paperwork.

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

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

(6) To the extent available from the public comments received,

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

the economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Allows for reimbursement for prescriptions authorized by physician assistants, SB 351 gives new drug access to recipients without requiring the physician to get a prior authorization, and HB 115 will monitor the prescribing and dispensing of controlled substances for all Kentucky residents.

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

(c) If detrimental effect would result, explain detrimental effect: Inconsistencies in regulations which could create confusion regarding policies and reimbursements. Possible health and safety issues regarding access to drugs for our Medicaid recipients. Increased fraud and abuse of controlled substances.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: There is no change in the amount of dispense fees.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

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

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

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 1999

UNIVERSITY OF KENTUCKY  
Agriculture Experiment Station  
Division of Regulatory Services  
(Amendment)

12 KAR 1:115. Sampling, analyzing, testing, and tolerances.

RELATES TO: KRS 250.081(2)(b)

STATUTORY AUTHORITY: KRS 250.081(1)(c)2

NECESSITY, FUNCTION, AND CONFORMITY: To prescribe the methods of sampling, analyzing, and testing seed, and to establish the tolerances to be applied in the administration of the Kentucky Seed Law and administrative regulations.

Section 1. The methods of sampling, analyzing, testing and examining seed to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 2. The tolerances to be applied in the administration of the Kentucky Seed Law shall be those established in "Rules for Testing Seeds."

Section 3. Incorporation by Reference. (1) "Rules for Testing Seeds", issued by the Association of Official Seed Analysts in 1997, [Vol. 16, No. 3, 1993 revised 1994, revised 1995, Journal of Seed Technology, Association of Official Seed Analysts,] is incorporated by reference.

(2) This document may be inspected, copied, or obtained at the Division of Regulatory Services, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Monday through Friday, 8 a.m. to 4:30 p.m.

C. ORAN LITTLE, Dean and Director

PAUL VAN BOOVEN, Legal Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 11, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation 12 KAR 1:115, "Sampling, analyzing, testing, and tolerances," shall be held on Monday, February 22, 1999 at 10 a.m. in Room 109, Regulatory Services Building, University of Kentucky, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by Monday, February 15, 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 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: Wilbur W. Frye, Director, Division of Regulatory Services, College of Agriculture, 103 Regulatory Services Building, University of Kentucky, Lexington, Kentucky 40546-0275, Phone (606) 257-2785, Fax: (606) 323-9931.

REGULATORY IMPACT ANALYSIS

Contact person: Wilbur W. Frye, Director

(1) Type and number of entities affected: All persons who label or who sell seed in Kentucky are affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. There will be no direct or indirect costs or savings associated with the changes in Rules for Testing Seed in any geographical area in Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. There will be no effect on the cost of doing business in any geographical area in Kentucky because of the changes to Rules for Testing Seeds.

(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 factors of significance in the areas of compliance, reporting, or paperwork requirements during the first year of implementation. There are no factors which would increase or decrease costs during the first year of implementation. There are no factors which would effect competition.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no factors which would effect costs or savings to the promulgating body, either directly or indirectly.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: There are no factors which would increase or decrease costs to the promulgating body.

(b) Reporting and paperwork requirements: There are no factors which would significantly increase or decrease reporting or paperwork requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no effect on the revenue source used to implement and enforce the administrative regulation.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no feasible substitute for the Rules for Testing Seeds.

(8) Assessment of expected benefits: The Rules for Testing Seeds specify testing procedures necessary for producing fair and reliable test results for samples tested in the Kentucky Agricultural Experiment Station Seed Laboratory. The testing procedures and tolerances specified in Rules for Testing Seeds are used by other states in the administration of their state seed laws. A uniform application of testing procedures and tolerances among states is necessary.

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

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

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: We are not aware of any conflicts or duplications.

(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? There is no tiering applied. All samples tested receive the same treatment, and the same tolerances apply to all samples.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amendment)

201 KAR 2:165. Transfer of prescription information.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(5) provides for the board to adopt administrative regulations necessary to control the transfer of prescriptions. This administrative regulation will set out the requirements for the transfer of information.

Section 1. (1) The transfer of [original] prescription information for any noncontrolled substance prescription [except Schedule II Controlled Substances] for the purpose of refill dispensing is permissible if:

(1) Communicated directly between two (2) pharmacists; or

(2) Through use of an on-line real-time computer system that provides documentation of the presence of a pharmacist when the information is transferred [on a one (1)-time basis] subject to the following requirements:

(a) [(+)] The transferring pharmacist shall record the following information:

1. [(a)] That the prescription is void;

2. [(b)] The name and address of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information;

3. [(c)] The DEA registration number of the pharmacy to which it was transferred [if it is a controlled substance]; and

4. [(d)] The date of the transfer and the name of the pharmacist transferring the information.

(b) [(2)] The pharmacist receiving the transferred prescription shall record the following information:

1. [(a)] That the prescription is a transfer;

2. [(b)] The date of issuance of the original prescription;

3. [(c)] The refill authorization on the original prescription;

4. [(d)] The date of original dispensing;

5. [(e)] The refill authorization remaining and the date of the last refill;

6. [(f)] The pharmacy's name and address and the original prescription number from which the prescription was transferred;

7. [(g)] The name of the transferor pharmacist;

8. [(h)] All additional information required by law.

(c) [(3)] Both the original prescription and the transferred prescription must be maintained for a period of five (5) years from the date of the last refill.

(d) [(4)] Pharmacies electronically accessing the same prescription record must satisfy all information of a manual mode for a prescription transfer.

Section 2. The transfer of prescription information for any controlled substance prescription, except Schedule II controlled substances, for the purpose of refill dispensing is permissible if the transfer complies with the requirements of KRS Chapter 218A, the administrative regulations promulgated pursuant thereto or the requirements of the United States Drug Enforcement Administration, whichever is more stringent.

Section 3. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

RODNEY C. STACEY, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: January 4, 1999

FILED WITH LRC: January 12, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 10 a.m. on February 26, 1999, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 19, 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 canceled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All pharmacists.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that pharmacists will be able to transfer patient prescription information among pharmacies thereby permitting greater access by the patient to their prescription medicine.

(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: The failure to adopt these changes would result in restricted access to prescription medicine and would not take into account advances in technology available to pharmacists and pharmacies.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amendment)**

**201 KAR 2:185. Prescription drug refills.**

RELATES TO: KRS Chapters 217, 315

STATUTORY AUTHORITY: KRS 217.215, 315.010(4), (5), (7), 315.191(1), (5)

NECESSITY, FUNCTION, AND CONFORMITY: [~~The Board of Pharmacy is authorized by~~] KRS 315.010, 315.191 and 217.215(2) require the Board of Pharmacy [(+) ] to adopt rules and administrative regulations necessary to regulate the practice of pharmacists and the recordkeeping systems associated with prescriptions. This administrative regulation defines the responsibilities of pharmacists and practitioners as to prescription drug refills.

Section 1. No pharmacist shall refill a prescription for a noncontrolled substance prescription drug [~~bearing a "Federal Caution Legend"~~] unless authorized by the prescribing practitioner. The pharmacist shall record all such refills by writing the date of the refill together with his name or initials on the original prescription. When an alternate approved automated data processing system is used, refills and records shall be maintained in compliance with 201 KAR 2:170.

Section 2. The use of the terms "prn" and "ad lib" in relation to authorization for refilling prescriptions shall mean the prescription may be refilled for a maximum period of one (1) year from the date prescribed [~~six (6) months~~]. To continue the medication the prescribing practitioner must issue a new prescription.

Section 3. [~~Unless specific time limitations are set by the prescribing practitioner, no prescriptions may be refilled beyond six (6) months from the date of issuance.~~] When the authorized refills are expressed solely as a number, the prescription may be refilled for the authorized limit of refills within one (1) year of the date prescribed [~~six (6) months unless the pharmacist determines that the prescribed dosage regimen indicates a term of continued therapy beyond six (6) months~~].

Section 4. This administrative regulation does not govern prescription drugs that are classified as controlled substances. The refill of controlled substances is governed by KRS 218A.180.

Section 5. Violation of any provision of this administrative regulation constitutes unethical or unprofessional conduct in accordance with KRS 315.121.

RODNEY C. STACEY, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: January 4, 1999

FILED WITH LRC: January 12, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 10:15 a.m. on February 26, 1999, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 19, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580; Fax: (502) 573-1582.

## REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

- (1) Type and number of entities affected: All pharmacists.
- (2) Direct and indirect costs or savings on the:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:
    1. First year following implementation: None
    2. Second and subsequent years: None
  - (3) Effects on the promulgating administrative body:
    - (a) Direct and indirect costs or savings:
      1. First year: 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: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.
    - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
      - (a) Geographical area in which administrative regulation will be implemented: None
      - (b) Kentucky: None
      - (7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.
      - (8) Assessment of expected benefits:
        - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that certainty with regard to the length of time a prescription is valid for purposes of refill dispensing will occur as a consequence of the adoption of this administrative regulation.
        - (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 that may be in conflict, overlapping, or duplication:
          - (a) Necessity of proposed regulation if in conflict: None
          - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
            - (10) Any additional information or comments: None
            - (11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Nursing  
(Amendment)**

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

RELATES TO: KRS 314.041, 314.042, 314.051, 314.071, 314.091

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review an application for licensure and a licensee for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and registration.



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement, an applicant shall:

(1) Submit the appropriate completed application form to the board office, as follows:

(a) For RN or LPN licensure by examination or endorsement, "Application for Licensure";

(b) For RN Renewal, "RN Biennial Licensure Renewal Application";

(c) For LPN Renewal, "LPN Biennial Licensure Renewal Application";

(d) For RN or LPN reinstatement, "Application for Reinstatement";

(e) For RN or LPN change of status:

1. "Application for Change of Licensure Status (Inactive to Active)"; or

2. "Application for Change of Licensure Status (Active to Inactive)";

(f) For registration as an advanced registered nurse practitioner, "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky";

(g) For renewal as an advanced registered nurse practitioner, "ARNP Registration Renewal Application"; or

(h) For reinstatement as an advanced registered nurse practitioner, "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner";

(2) Submit the current application fee, as required by 201 KAR 20:240;

(3) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction;

(4) Submit a certified copy of a disciplinary action taken in another jurisdiction with a letter of explanation or report a disciplinary action pending on a nurse licensure application or license in another jurisdiction;

(5) Not have a disciplinary action pending by the board or an agreed order or decision presently in effect for a violation of KRS Chapter 314;

(6) Have paid all monies due to the board;

(7) Submit a copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;

(8) Submit additional information as required by the board in an administrative regulation;

(9) Meet the additional requirements for:

(a) Licensure by examination established by 201 KAR 20:070;

(b) Licensure by endorsement established by 201 KAR 20:110;

(c) Licensure by reinstatement established by 201 KAR 20:225;

(d) Licensure by renewal established by 201 KAR 20:230;

(e) Inactive licensure status established by 201 KAR 20:095; or

(f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056;

(10) If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States; and

(11) Notify the board upon establishment of a new mailing address.

Section 2. A completed renewal application form and all information needed to determine that an applicant meets the requirements for renewal of licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. An application shall lapse and the fee shall be forfeited if the application is not completed as follows:

(1) For an application for licensure by endorsement, within six (6) months from the date the application form is filed with the board office; and

(2) For an application for licensure by examination, within one (1) year from the date the application form is filed with the board office.

Section 4. (1) Pursuant to KRS 314.091(1)(b), a conviction of a

felony shall be considered as bearing directly on the qualifications or ability of an applicant to practice nursing if the licensee:

(a) Committed the felony within five (5) years of the date of filing the application; and

(b) Was convicted of a felony under:

1. One (1) of the following KRS Chapters:

a. KRS Chapter 189A (driving under the influence);

b. KRS Chapter 218A (controlled substances);

c. KRS Chapter 507 (criminal homicide);

d. KRS Chapter 508 (assault and related offenses);

e. KRS Chapter 509 (kidnapping and related offenses);

f. KRS Chapter 510 (sexual offenses);

g. KRS Chapter 511 (burglary and related offenses);

h. KRS Chapter 512 (criminal damage to property);

i. KRS Chapter 513 (arson and related offenses);

j. KRS Chapter 514 (theft and related offenses);

k. KRS Chapter 515 (robbery);

l. KRS Chapter 516 (forgery and related offenses);

m. KRS Chapter 521 (bribery and corrupt influences);

n. KRS Chapter 523 (perjury and related offenses);

o. KRS Chapter 525 (riot, disorderly conduct and related offenses);

p. KRS Chapter 527 (offenses related to firearms and weapons);

q. KRS Chapter 528 (gambling);

r. KRS Chapter 529 (prostitution offenses);

s. KRS Chapter 531 (pornography); or

t. KRS Chapter 506 (offenses of attempt, conspiracy, or complicity to commit an offense specified in this paragraph); or

2. A comparable law in another jurisdiction.

(2) A notice to deny licensure shall be issued to an applicant who has been convicted of a felony specified in subsection (1) of this section.

(3) ~~An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel to determine if the requirements of KRS 314.091 are met. The request shall be:~~

~~(a) In writing; and~~

~~(b) Postmarked within thirty (30) days of receipt of the notice.~~

~~(4)(a) An applicant for licensure by examination or endorsement shall report a conviction for a crime that is:~~

1. Specified in subsection (1) of this section for which the applicant was convicted prior to the time period specified in subsection (1) of this section; or

2. Not specified in subsection (1) of this section.

(b) The board shall review a conviction reported pursuant to paragraph (a) of this subsection on an individual basis to see if the requirements of KRS 314.091 are met.

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

(a) "Application for Licensure", 3/98, Kentucky Board of Nursing;

(b) "RN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(c) "LPN Biennial Licensure Renewal Application", 3/98, Kentucky Board of Nursing;

(d) "Application for Reinstatement", 1/97, Kentucky Board of Nursing;

(e) "Application for Change of Licensure Status (Inactive to Active)", 3/97, Kentucky Board of Nursing;

(f) "Application for Change of Licensure Status (Active to Inactive)", 2/97, Kentucky Board of Nursing;

(g) "Application for Registration as an Advanced Registered Nurse Practitioner in Kentucky", 6/93, Kentucky Board of Nursing;

(h) "ARNP Registration Renewal Application", 3/98, Kentucky Board of Nursing; and

(i) "Reinstatement Application for Registration as an Advanced Registered Nurse Practitioner", 3/98, Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. through 4:30 p.m.

SUE DAVIS, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 16, 1998

FILED WITH LRC: January 4, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 22, 1999 at 1 a.m. (EDT) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000, fax: (502) 329-7011.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Unknown

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

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

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

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

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

(b) Kentucky: N/A

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. The administrative regulation applies to all affected equally.

#### GENERAL GOVERNMENT CABINET

##### Kentucky Board of Podiatry (Amendment)

#### 201 KAR 25:031. Continuing education.

RELATES TO: KRS 311.450

STATUTORY AUTHORITY: KRS 311.410

NECESSITY, FUNCTION, AND CONFORMITY: Sets forth those requirements concerning annual courses of study of subjects relating to the practice of podiatry for compliance with the continuing education requirement for relicensure.

Section 1. (1) Each podiatrist licensed by the board shall be required to annually complete fifteen (15) hours of continuing education relating to the practice of podiatry.

(2) The fifteen (15) hours required pursuant to subsection (1) of this section shall be taken from those programs approved or sponsored by the board.

(3) Two (2) of the fifteen (15) hours required pursuant to subsection (1) of this section shall include a course on acquired immunodeficiency syndrome.

(4) A continuing education hour shall mean fifty (50) clock minutes of participating in continuing education instruction or presentation that meets the requirements of this administrative regulation for continuing education courses.

Section 2. (1) Continuing education hours for credit other than those earned pursuant to Section 1 of this administrative regulation may be compiled in the following areas:

(a) ~~Cassette and audio-visual presentation;~~

~~(b) Professional seminars;~~

~~(b) [(e)] Accredited school of podiatry continuing education programs; and~~

~~(c) [(d)] Correspondence courses;~~

~~(e) Continuing education television series;~~

~~(f) Other programs as approved by the board.~~

(2) Prior approval shall be secured from the board for certification of all programs other than those in Section 1 of this administrative regulation.

(3) Licensees requesting approval of continuing education programs shall submit an application containing such information as the board may require on forms provided by the board.

Section 3. (1) Licensees shall keep valid records, receipts, and certifications of continuing education programs completed. The period during which continuing education courses shall be completed shall be from July 1 of each year until June 30 of the following year. Licensees shall keep valid records, receipts, and certifications of continuing education hours completed for three (3) years and present those records upon request by the board for audit. If selected by the board for audit the licensee shall return to the board the requested proof of continuing education within fifteen (15) days.

(2) Each licensee shall submit, with the annual renewal, a list of all accredited continuing education programs completed by the licensee during the previous license year. Failure to do so shall result in suspension or revocation of the license.

(3) Each licensed podiatrist requesting renewal of his license shall submit to the Kentucky Board of Podiatry that he has successfully completed two (2) hours of continuing education which complies with the requirements of KRS 214.610(1), and is approved by the Kentucky Cabinet for Human Resources pursuant to 902 KAR 2:160 as pertaining to the transmission, control, treatment, and prevention of the human immunodeficiency syndrome and acquired immunodeficiency syndrome.

J. P. LEONE, DPM, President

JAMES J. GRAWE, Assistant Attorney General

APPROVED BY AGENCY: September 17, 1998

FILED WITH LRC: January 15, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held the 23rd day of February, 1999, at 10 a.m. in Capitol Building, 700 Capitol Avenue, Room 114, Frankfort, Ken-

tucky. Individuals interested in attending this hearing shall notify this agency in writing by the 16th day of February, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: C.A. Nava, DPM, Secretary, 110 Hubbard Lane, Louisville, Kentucky 40207, Telephone No. (502) 897-2047, Telefax No. (502) 897-2048.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: James J. Grawe

(1) Type and number of entities affected: Approximately 90 licensed podiatrists 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: No direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No direct or indirect costs or savings on the cost of doing business.

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

1. First year following implementation: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the first year following implementation.

2. Second and subsequent years: No direct or indirect costs or savings on the compliance, reporting, and paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No costs or savings for the first year.

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

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

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

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be licensing fees.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation was amended to update the education, experience and continuing education requirements for licensed podiatrists. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

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

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

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy exists.

ute, regulation, or policy exists.

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

(10) Any additional information or comments: There is no additional information or comments.

(11) TIERING: Is tiering applied? Tiering was not applied because all licensed podiatrists are treated uniformly under the law.

#### FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. None

(2) State compliance standards. This administrative regulation sets out the continuing education requirements required under KRS 311.450.

(3) Minimum or uniform standards contained in the federal mandate. Not applicable.

(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 imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard, or additional or different responsibilities or requirements imposed.

#### JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

#### 501 KAR 6:140. Bell County Forestry Camp.

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 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.

Section 1. (1)(a) "Bell County Forestry Camp Policies and Procedures", January 14, 1999 [~~November 14, 1995~~], is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Bell County Forestry Camp Policies and Procedures:

BCFC 01-02-01	Organization and Assignment of Responsibility
BCFC 01-05-01	Monitoring of Operations, Policies and Procedures
BCFC 01-08-01	Public Information and News Media Access ( <del>Amended 11/14/95</del> )
BCFC 01-11-01	Institutional Duty Officer
BCFC 01-13-01	Annual Planning Document
<u>BCFC 02-01-01</u>	<u>Inmate Canteen (Added 1/14/99)</u>
BCFC 02-02-01	Inmate Accounts
BCFC 02-03-01	Purchase Orders
BCFC 02-04-01	Processing of Invoices
BCFC 02-05-01	BCFC Materials Receiving Procedure
BCFC 02-06-01	Property Inventory
BCFC 02-06-02	Materials Receiving and Control
BCFC 02-07-01	Imprest Cash Fund
BCFC 02-08-01	Prisoners Fund ( <u>Amended 1/14/99</u> )
BCFC 04-01-01	Employee Training and Development ( <u>Amended 1/14/99</u> )
BCFC 05-01-01	Information System
BCFC 06-01-01	Offender Records ( <u>Amended 1/14/99</u> )

# VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

BCFC 06-02-01 Storage of Expunged Records  
 BCFC 06-03-01 Court Trips  
 BCFC 06-03-02 Receipt of Order of Appearance  
 BCFC 07-04-01 Smoking Control ~~(Amended 1/14/99)~~  
 BCFC 07-05-01 Permit Required Confined Space  
 BCFC 07-06-01 Control of Hazardous Energy (Lockout or Tagout)  
 BCFC 08-02-01 Fire Prevention  
 BCFC 08-03-01 Fire Procedures  
 BCFC 08-03-02 Fire Extinguishers and Their Use  
 BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances  
 BCFC 08-09-02 OSHA Hazard Communication Program  
 BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team  
 BCFC 09-06-01 Search Policy, Disposition of Contraband  
 BCFC 09-14-01 Bell County Forestry Camp - Restricted Area  
 BCFC 10-01-01 Special Management Inmates  
 BCFC 11-01-01 Food Services: General Guidelines  
 BCFC 11-02-01 Food Service Security  
 BCFC 11-03-01 Dining Room Guidelines  
 BCFC 11-04-01 Food Service: Meals  
 BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets  
 BCFC 11-05-02 Health Requirements of Food Handlers  
 BCFC 11-06-01 Food Service: Inspection and Sanitation  
 BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products  
 BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues  
 BCFC 12-01-02 Bed Areas and Bed Assignments  
 BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry  
 BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule  
 BCFC 12-03-02 Barbershop Services and Equipment Control  
 BCFC 12-04-01 Institutional Inspections  
 BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles  
 BCFC 12-06-01 Insect and Vermin Control  
 BCFC 13-01-01 Organization of Health Services  
 BCFC 13-02-01 Sick Call and Physician's Weekly Clinic ~~(Amended 11/14/95)~~  
 BCFC 13-03-01 Routine and Emergency Dental Appointments  
 BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations ~~(Amended 11/14/95)~~  
 BCFC 13-05-01 Medical Emergencies and Medical or Psychiatric Transfers ~~(Amended 11/14/95)~~  
 BCFC 13-06-01 Physician's Referrals  
 BCFC 13-07-01 Health Records  
 BCFC 13-08-01 Routine and Emergency Eye Examinations  
 BCFC 13-09-01 Family Notification: Serious Illness, Injury, Major Surgery or Death  
 BCFC 13-10-01 Health Education: Special Health Care Needs  
 BCFC 13-11-01 Informed Consent  
 BCFC 13-12-01 Psychiatric and Psychological Services  
 BCFC 13-13-01 Chronic and Convalescent Care  
 BCFC 13-14-01 Use of Pharmaceutical Products ~~(Amended 11/14/95)~~  
 BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs  
 BCFC 13-16-01 Elective Services  
 BCFC 13-18-01 Management of Serious and Infectious Diseases  
 BCFC 13-19-01 Bloodborne Pathogens Exposure Control Plan  
 BCFC 14-01-01 Inmate Rights and Responsibilities  
 BCFC 14-02-01 Legal Services Program  
 BCFC 14-03-01 Inmate Grievance Procedure  
 BCFC 15-01-01 Due Process/Disciplinary Procedures  
 BCFC 16-01-01 Inmate Visiting  
 BCFC 16-02-01 Telephone Communications  
 BCFC 16-03-01 Mail Regulations  
 BCFC 16-03-02 Inmate Packages  
 BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process  
 BCFC 17-03-01 Inmate Personal Property  
 BCFC 17-04-01 BCFC Inmate Property Control

BCFC 17-05-01 Inmate Canteen  
 BCFC 18-01-01 Institutional Classification Committee  
 BCFC 19-01-01 Work Assignments  
 BCFC 19-02-01 Government Service Detail  
 BCFC 20-01-01 Academic School ~~(Amended 11/14/95)~~  
 BCFC 20-02-01 Educational Program Planning  
 BCFC 20-03-01 Academic Curriculum  
 BCFC 21-01-01 Library Services  
 BCFC 22-01-01 Recreation and Inmate Activities  
 BCFC 22-02-01 Inmate Clubs and Organizations  
 BCFC 22-03-01 Privilege Trips  
 BCFC 23-01-01 Religious Service  
 BCFC 24-01-01 Social Services and Counseling Program ~~(Amended 11/14/95)~~  
 BCFC 24-01-02 Casework Services  
 BCFC 25-01-01 Prerelease Program  
 BCFC 25-02-01 Community Center Program  
 BCFC 25-02-02 Inmate Furloughs  
 BCFC 25-04-01 Inmate Discharge Procedure  
 BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

DOUG SAPP, Commissioner

TAMELA BIGGS, General Counsel

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 14, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, KY. 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 42 employees of the correctional institution, 230 inmates, and all visitors to state correctional institutions.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**JUSTICE CABINET**  
**Department of Corrections**  
**Division of Adult Institutions**  
**(Amendment)**

**501 KAR 6:170. Green River Correctional Complex.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 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 Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, January 14, 1999 [November 12, 1997], is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [There will be no public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025 which states that such policies shall not be accessible to the public or inmates.]

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 02-06-01	Inmate Canteen
GRCC 02-07-01	Inmate Personal Funds
GRCC 09-02-01	Drug Abuse Testing
GRCC 09-09-01	Contraband Control: Collection, Preservation and Disposition of Contraband and Identification

GRCC 10-01-01	of Physical Evidence
GRCC 11-01-01	Special Management Unit
GRCC 11-02-01	Food Service Guidelines
GRCC 11-03-01	Food Service: Security
GRCC 11-04-01	Dining Room Guidelines
GRCC 11-04-02	Food Service: Meals
GRCC 11-06-01	Food Service: Menu, Nutrition and Special Diets
GRCC 11-07-01	Health Requirements of Food Handlers
GRCC 12-01-01	Food Service: Inspections and Sanitation
	Clothing, Bedding, Hygiene Supplies and Barber Services
GRCC 13-01-01	Organization of Medical Services
GRCC 13-02-01	Medical Services: Sick Call, Physician's Clinics and Pill Call
GRCC 13-02-03	Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans
GRCC 13-03-01	Use of Pharmaceutical Products
GRCC 13-04-01	Health Records
GRCC 13-04-02	Psychological and Psychiatric Reports
GRCC 13-05-01	Management of Serious and Infectious Diseases
GRCC 13-06-01	Mental Health Services
GRCC 13-07-01	Medical Restraints
GRCC 13-08-01	Eye Care
GRCC 13-09-01	Dental Care
GRCC 13-10-01	Transfers and Medical Profiles
GRCC 13-11-01	Informed Consent
GRCC 13-12-01	Infirmity Care
GRCC 13-13-01	Inmate Self-administration of Medication
GRCC 13-15-01	Health Education Program and Detoxification
GRCC 14-01-01	Inmate Rights and Responsibilities
GRCC 14-02-01	Legal Services Program
GRCC 15-01-01	GRCC Adjustment Program and Procedures
GRCC 16-01-01	Inmate Visiting
GRCC 16-02-02	Inmate Correspondence and Privileged Mail
GRCC 16-03-01	Inmate Telephone Communications
GRCC 16-04-01	Inmate Packages
GRCC 17-01-01	GRCC Inmate Property Control
GRCC 17-02-01	GRCC Inmate Receiving and Orientation Process
GRCC 17-03-01	Procedure for Sending Televisions to Outside Dealer for Repair
GRCC 18-01-01	Inmate Classification
GRCC 18-02-01	Meritorious Housing
GRCC 18-02-02	Meritorious Visitation Program
GRCC 19-01-01	Inmate Work Programs
GRCC 19-01-02	Unassigned Status
GRCC 20-01-01	Educational Programs
GRCC 21-01-01	Library Services
GRCC 22-01-01	Recreation Programs
GRCC 22-02-01	Inmate Organizations
GRCC 22-04-01	Arts and Crafts Project (Added 1/14/99)
GRCC 22-05-01	Inmate Photo Project
GRCC 23-02-01	Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
GRCC 24-01-01	Social Services and Counseling Program
GRCC 25-01-01	Prerelease Program
GRCC 25-01-02	Inmate Release Process
GRCC 25-02-01	Parole Hearing Procedure

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 14, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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: Jack Damron or Tamela Biggs, Staff Attorneys, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, KY. 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 213 employees of the correctional institutions, 614 inmates, 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: Funds budgeted for this 1998-2000 biennium.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed administrative regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### JUSTICE CABINET Kentucky Law Enforcement Council (Amendment)

#### 503 KAR 1:100. Certification of instructors.

RELATES TO: KRS 15.330(1)(a), (b), (d)

STATUTORY AUTHORITY: KRS 15A.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(a), (b) and (d) authorize the Kentucky Law Enforcement Council to certify instructors at certified schools. This administrative regulation prescribes standards and procedures for such certification.

Section 1. Council Authority. The council shall have the authority to certify all persons instructing in law enforcement training courses at certified schools.

Section 2. Application for Certification. Applications for certification and for certification renewal shall be made to the council. [The instructor certification form, KLEC Form 1 (Instructor Certification Form), is available from[.] and should be submitted to[.] the Kentucky Law Enforcement Council, [Third Floor, Commonwealth Credit Union Building, High Street, Frankfort, Kentucky 40601.] To become certified, an applicant must meet the following requirements:

(1) Have three (3) years of law enforcement experience or experience in the specific field, subject matter or academic discipline to be taught; and

(2) Have earned a high school diploma or its equivalent as determined by the council.

(3) Have successfully completed an instructors' course approved by the council.

(4) Meet additional requirements as designated by the council for teaching specialized topics.

Section 3. The council may waive any training requirements for instructors who are licensed as professionals, including but not limited to: attorneys, physicians, nurses, etc. The council may also waive any training requirements for other experts provided; however, the reasons for waiver and the individual's qualifications shall be stated in the council's minutes.

Section 4. Application Process. Applications for instructor certification and renewal of certification shall be reviewed by the council. The council, at its first regular meeting after the review has been completed, shall vote whether to approve the applicant.

Section 5. Granting of Certification. If the council grants certification to an applicant, the council shall notify the applicant in writing within fifteen (15) days of the council's action.

Section 6. Instructor Certificate. The council shall issue a certificate stating that the person has been approved to instruct.

Section 7. Denial of Certification. The council shall deny certification to an applicant who fails to meet the requirements and shall revoke certification for demonstrated incompetence, immoral conduct, or other good cause. Any instructor who fails to instruct during the one (1) year period of certification shall be required to apply for reinstatement of certification and to meet such requirements as are deemed necessary by the council. When the council denies certification to an applicant or revokes certification or denies recertification or reinstatement of certification to an instructor, the council shall notify the person of the council's action in writing within fifteen (15) days.

Section 8. Length of Certification. Certification shall be for a period of one (1) year. At the end of the one (1) year period, certification may be renewed by the council if the instructor has instructed in an approved course provided by a certified school during that year and if the instructor, if he instructed at a certified school, has been recommended by the director of the certified school. After four (4) [five (5)] years of continuous certification, the council may certify an instructor for a five (5) year period.



Section 9. Monitoring of Instructors. The council shall, when practical, monitor each instructor during the one (1) year period of certification to determine if the instructor is teaching to the stated goals and objectives of the course and is meeting generally accepted standards of the teaching profession.

Section 10. Instructor Directory. Each certified instructor shall be listed in an official directory of the council which shall identify each subject that the instructor has been certified to instruct. The directory shall be published in the form of a notebook, allowing for changes through the use of supplements. The council shall publish annual supplements to the directory by December 31 of each year and the supplements shall include all certification changes, including additions, deletions and renewals, for the year. The council shall provide each certified school and the fund administrator with a copy of the directory.

JOHN THORPE, Chair

STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: January 15, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 1:30 p.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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 proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-2740.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: all law enforcement schools and instructors in the Commonwealth.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 1999 biennium.

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

(a) Geographical area in which administrative regulation will be

implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### TRANSPORTATION CABINET Department of Highways Division of Professional Services (Amendment)

#### 600 KAR 6:010. Definitions.

RELATES TO: KRS 45A.800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation adopts the definitions to be used in all of the administrative regulations set forth in 600 KAR Chapter 6.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Consultant" means a firm which has been selected to perform engineering or related services for the cabinet as the prime firm in accordance with 600 KAR 6:060.

(6) "Continuous professional liability policy" means professional liability insurance coverage which is maintained without a gap in coverage in order to become and to remain prequalified with the Transportation Cabinet.

(7) "Contract" means as defined in KRS 45A.030(5).

(8) "Contract modification" means as defined in KRS 45A.030(6).

(9) "Cost per unit of work" means a price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(10) "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for operating margin.

(11) "DBE" means a disadvantaged business enterprise as defined and certified in accordance with the provisions of 600 KAR 4:010.

(12) "Direct salary" means the salary of persons directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(13) "Firm" means an individual or other entity which offers professional engineering or related services.

(14) "Lump sum" means a fixed price, including cost and operat-

ing margin, agreed upon between a consultant and cabinet for a group of tasks without a breakdown of individual values, i.e., a lot price.

(15) "Modification" means a formal revision to the terms of a contract.

(16) "Noncompetitive negotiation" means as described in KRS 45A.095.

(17) "Overhead costs" means the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.

(18) "Overhead submission packet" means a package of information containing a summary of the firm's overhead expense accounts, the direct labor and indirect labor rates, and direct costs of the items outlined in 600 KAR 6:080, Section 1 (3).

(19) "Pool" means a group of firms selected to provide engineering or related services.

(20) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, technical expertise, experience, past performance, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

(21) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(22) "Prime" means a consultant awarded a contract under 600 KAR 6:070 and who performs at least fifty (50) percent of the dollar value of the work for a project.

(23) "Principal" means any individual who owns directly or indirectly more than ten (10) percent of the voting interest in a consulting firm or who is an officer of the firm (i.e., president, treasurer, vice president, secretary, or director).

(24) "Project-specific professional liability insurance" means separate professional liability coverage which provides noncancelable coverage for the duration of a specific project and continuing through a discovery period after construction is complete.

(25) "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(26) "Professional engineering or related services" means specialized engineering or related professional services performed by individuals, consultants, or other organizations of recognized technical competence, education or experience that are involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(27) "Professional liability policy" means claims-made insurance coverage for professional engineering or related services which indemnifies a firm and past or present partners, officers, directors, stockholders or employees while acting within the scope of their duties for the firm against the following:

- (a) A negligent act;
- (b) An error or omission in performing a professional service; or
- (c) Failure to provide a service in accordance with standard of care.

(28) "Professional services" means specialized services performed by individuals or consultants of recognized technical competence.

(29) "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(30) "Project manager" means the director of the user division or person designated by the user division director to oversee the performance of a consultant to perform contracted services on a project.

(31) "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

(32) "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(33) "Salary additives" means employer-paid fringe benefits including an employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar benefits.

(34) "Scope of work" means all services and actions required of the consultant by the contract.

(35) "Services" means as defined in KRS 45A.030(19).

(36) "Six (6) year plan" means the document prepared by the Transportation Cabinet in accordance with the provisions of KRS 176.419 through 176.470.

(37) "Standard of care" means the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances.

(38) "Subconsultant" means a second consultant contracted to a prime consultant for the performance of work contracted by the cabinet to the prime consultant.

(39) "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the consultant's claims.

(40) "User division" means as defined in KRS 45A.800(6).

(41) "Work unit" means an item on a list of tasks which are required to be accomplished by the consultant in order to satisfactorily complete the scope of work.

JAMES C. CODELL, III, Secretary  
J.M. YOWELL, State Highway Engineer  
GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: December 21, 1998

FILED WITH LRC: December 23, 1998 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on February 26, 1999 at 1:30 p.m. local prevailing time at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by February 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 February 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 February 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

(1) Type and number of entities affected: There are 160 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only contains the definitions which are applicable to this entire chapter of administrative regulations, 600 KAR 6:010 - 080. This administrative regulation will not affect 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: None.

2. Second and subsequent years: None.

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: This assures the public of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.
- (b) Reporting and paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.
- (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 Fund as authorized in the Transportation Cabinet 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 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: No
  - (c) If detrimental effect would result, explain detrimental effect:
    - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
    - (a) Necessity of proposed regulation if in conflict: None
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
      - (10) Any additional information or comments: None
      - (11) TIERING: Is tiering applied? No. There is no way to tier definitions. However, when considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition, subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Professional Services**  
**(Amendment)**

**600 KAR 6:070. Contracting for professional engineering or related services.**

RELATES TO: KRS 45A.800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Methods of Contracting with Consultants. (1) The following methods of contracting with consultants shall be acceptable:

- (a) Lump sum;
- (b) Cost plus a fixed fee;
- (c) Specific rates of compensation; or
- (d) Cost per unit of work.

(2)(a) When the cabinet chooses the lump sum method of contracting, the consultant shall present a statement to the Division of Professional Services showing the probable cost for the elements of work and the expected operating margin.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subconsultant costs which the consultant expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can

be easily reviewed.

(d) The Division of Professional Services and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the consultant;
2. The extent, scope, complexity, character and duration of the required services;
3. Professional and financial investments to be required of the consultant;
4. The consultant's normally-expected return for such services;
5. Conditions under which the consultant is expected to perform;
6. The cabinet's estimate of the appropriate amount for the services required; and
7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) When the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which cannot be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Professional Services or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the consultant for the services required.

(c) The Division of Professional Services or other negotiation unit shall establish the fixed fee and an upper limit based on past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work and the user division's estimates.

(4)(a) When the cabinet chooses the specific rate of compensation method of contracting, the Division of Professional Services or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit when the consultant establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;
2. Conditions under which the work is required to be performed; or
3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount for the overall contract shall be submitted to the LRC's Government [Personal Service] Contract Review Committee [Subcommittee]. A maximum amount shall be established for each of the individual authorizations which shall not exceed the maximum amount for the overall contract.

(5)(a) When the cabinet is using the cost per unit of work method of compensation, the consultant shall be paid on the basis of units completed.

(b) This method of contracting is appropriate when the extent of the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for consultants.

(6)(a) For an individual acting as a consultant, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 2. Prenegotiation Procedures. (1)(a) A consultant selected pursuant to 600 KAR 6:060 shall meet with cabinet representatives in accordance with the schedule identified in the procurement bulletin issued pursuant to 600 KAR 6:050 to discuss in detail the scope of services to be provided by the consultant for the project.

(b) The Transportation Cabinet may require a consultant to obtain project-specific professional liability insurance for an unusual project.

(c) If project-specific professional liability insurance is required:

1. A firm's audit may be reexamined to determine if a change in the overhead rate is needed; or

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

2. And there is more than one (1) consultant involved in the project, the consultants may jointly purchase the insurance.

(2) After this prenegotiation meeting, the consultant shall submit the following to the cabinet:

(a) Official minutes of the prenegotiation meeting;

(b) All required tasks and work units. [For roadway design, work units which quantify the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin and an identification of the assignment of the work units to the prime consultant or a subconsultant.]

1. The cabinet has the following options regarding the submittal:

- a. Concur;
- b. Modify and return the modification to the consultant; or
- c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, pilings based on preliminary geotechnical information, an identification of the assignment of the work units to the prime consultant or a subconsultant, and any other pertinent considerations:

1. The cabinet has the following options regarding the submittal:

- a. Concur;
- b. Modify and return the modification to the consultant; or
- c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(c) For environmental services, a scope of work for each task and corresponding person-hours to achieve each task and an identification of the assignment of the work units to the prime consultant or a subconsultant:

(d) For geotechnical assessments, a copy of the work units and corresponding cost derivatives to achieve each task which qualifies and quantifies the tasks to be performed to achieve the geotechnical services that appear in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant:

1. The cabinet has the following options regarding the submittal:

- a. Concur;
- b. Modify and return the modification to the consultant; or
- c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(e) For bridge maintenance inspection, a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant:

1. The cabinet has the following options regarding the submittal:

- a. Concur;
- b. Modify and return the modification to the consultant; or
- c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(f) For planning studies, work units which qualify the tasks to be performed to achieve the planning study services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant:

1. The cabinet has the following options regarding the submittal:

- a. Concur;
- b. Modify and return the modification to the consultant; or
- c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to

be applied to the work units to determine person-hours for each task.]

(3) The consultant shall submit to the Division of Professional Services a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subconsultants and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of subsections (5), (6), (7), and (8) of this section; and

(f) Person-hours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(4) After the Division of Professional Services requests a proposal and fee estimate from the consultant, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Professional Services in negotiation of the contract.

(5)(a) Except as set forth in subparagraph (b) of this subsection, for contract negotiation purposes, the maximum allowable overhead rate shall be 150 percent;

(b) For contract negotiation purposes, if a consultant or subconsultant offers special expertise in engineering or related services which is outside normal project development activities, the limitations in 600 KAR 6:080, Section 2, may be suspended and the allowable overhead rate may exceed 150 percent if:

1. The director of the Division of Professional Services recommends approval;

2. The State Highway Engineer recommends approval;

3. The Secretary of the Transportation Cabinet approves; and

4. The approved overhead rate does not exceed the actual overhead rate established pursuant to 48 CFR Part 31.

(6) For contract negotiation purposes, travel expenses for consultant employees or survey crews shall be limited to those incurred from an office in Kentucky or the border of Kentucky nearest the consultant's office;

(7) For contract negotiation purposes, direct expenses shall be limited to the following items and limits:

(a) Passenger car - twenty-seven (27) cents per mile;

(b) Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

(c) Lodging:

1. Professional staff - fifty-five (55) dollars per night per person; and

2. Survey field personnel - seventy (70) dollars per night for two (2) persons in one (1) room;

(d) Meals:

1. Breakfast - six (6) dollars per day per person;

2. Lunch - seven (7) dollars per day per person; or

3. Dinner - fourteen (14) dollars per day per person;

(e) Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

(f) Travel time for a survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives;

(g) Special equipment which is project-specific;

(h) Capital cost of money; and

(i) Computer time, if accounted for as a direct charge, shall not exceed fifteen (15) dollars per hour.

(8) For contract negotiation purposes, the maximum direct salary per year shall be:

(a) \$90,000 for a nonprincipal or nonpartner of a firm; and

(b) \$100,000 for a principal or partner of a firm.

Section 3. Contract Negotiations. (1)(a) The Division of Professional Services shall be the designated negotiating agent for the Department of Highways in the Cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Professional Services or other designated negotiation unit shall receive the proposal and fee estimate from the consultant. The proposal submitted by the consultant shall include either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;
2. Overhead;
3. Other direct costs including cost of materials which are not included in the overhead;
4. Subconsultant costs;
5. Operating margin; and
6. Use of DBE firms.

(b) The Division of Professional Services or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with KRS 45A.825(9).

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the consultant shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the External Audit Branch.

(4)(a) If a consultant intends to utilize the services of a subconsultant to perform any part of the work, at the time of negotiations the consultant shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subconsultant.

(c) A subconsultant shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Professional Services or other negotiation unit shall be necessary.

(e) If a consultant desires to utilize a subconsultant to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 6 of this administrative regulation shall be followed.

(5) A consultant which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Professional Services.

(6)(a) The operating margin allowed a professional engineering or related services consultant shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract - up to [a:] fifteen (15) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications up to and including [less than] \$2,000,000 and ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, in excess of \$2,000,000. [; or

b. Ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, equal to or in excess of \$3,000,000; or

c. For a contract with the total direct labor cost, plus overhead cost of \$2,000,000 to \$3,000,000, the operating margin shall be fourteen (14) percent to ten (10) percent with a one (1) percent reduction for each \$200,000 increase in fee.]

2. Unit price contract - up to fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Professional Services or other negotiation unit shall compare the consultant's established fee with the cabinet's esti-

mate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Professional Services or other negotiation unit shall negotiate with the consultant to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The consultant shall keep written documentation of each negotiation meeting and shall submit to the Division of Professional Services or other negotiation unit the following:

1. Minutes of negotiations;
2. As-negotiated fee;
3. As-negotiated person-hours;
4. Classification percentage distribution; and
5. Direct cost breakdowns.

(b) The public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(10) After the Division of Professional Services or other negotiation unit has negotiated a contract, the head of the unit shall comply with the provisions of KRS 45A.825(10).

Section 4. Contract Preparation and Execution. (1) The Division of Professional Services or other negotiation unit shall prepare an agreement or contract to cover the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall also include by reference the General Provisions Attachment as revised July 1994 unless the project is for a consultant structure inspection. The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.

(b) If the project is for a consultant structure inspection, the agreement shall also include by reference the Division of Operations, Consultant Structure Inspection Provisions as revised in May 1993. The Division of Operations, Consultant Structure Inspection Provisions Form is incorporated by reference as a part of this administrative regulation.

(2) The contract and negotiation minutes shall be sent to the consultant for the signature of an authorized representative. All original documents shall be returned to the Division of Professional Services or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) When the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Professional Services shall send to the FHWA the following requesting their approval:

- (a) A copy of the contract;
- (b) The negotiated fee and person-hours;
- (c) The consultant's fee and person-hour proposal;
- (d) The cabinet's person-hour estimate;
- (e) The minutes of the negotiation;
- (f) The minutes of the predesign conference;
- (g) A copy of the advertisement and announcement;
- (h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the Professional Engineering Services Selection Committee;

(k) The memorandum from the Chairman of the Selection Committee stating the ranking of the three best-qualified firms by the Professional Engineering Services Selection Committee; and

(l) The audit report of overhead and wage rates which was used to establish the fee.

(6) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section 5. Notice to Proceed and Payments. (1)(a) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(b) The funds for statewide contracts shall be encumbered on a

project by project basis.

(2) After the Division of Professional Services or other negotiation unit receives notification indicating that the LRC Government [~~Personal Service~~] Contract Review Committee [~~Subcommittee~~] has received the contract and project information for review, a notice to proceed shall be transmitted to the consultant indicating that it may commence work but it shall not bill for services until specifically authorized to do so. For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.

(3) When the LRC Government [~~Personal Service~~] Contract Review Committee [~~Subcommittee~~] issues a notification of acceptance on a contract, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Government [~~Personal Service~~] Contract Review Committee [~~Subcommittee~~] objects to the contract and the cabinet determines that the contract is to be canceled, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and shall take necessary steps to close the contract.

(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Government [~~Personal Service~~] Contract Review Committee [~~Subcommittee~~], the Division of Professional Services or other negotiation unit shall notify the consultant of the necessary modifications and shall follow the contract modification [~~and change order~~] procedures specified in Section 7 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Government [~~Personal Service~~] Contract Review Committee [~~Subcommittee~~], the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

Section 6. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project manager shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project manager.

(c) The project manager shall be responsible for coordinating all cabinet activities with the consultant and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the consultant's activities;
2. Reporting the status of these activities to the appropriate authority;
3. Periodically reviewing the work to determine if the work:
  - a. Is acceptable;
  - b. Is in accordance with the agreement for the particular project; and
- c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation; and
4. Completing and processing the Consultant Monthly Report Form incorporated by reference in Section 9 of this administrative regulation.

(2)(a) During the project, the consultant may subcontract with other firms to perform specialized services in a manner similar to Section 1(4) of this administrative regulation. The subconsultant shall be prequalified by the cabinet in accordance with the provisions of 600 KAR 6:040 if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subconsultant are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent contract modifications [~~change orders~~], the consultant shall submit a request for a fee adjustment for the person-hours to be performed by the subconsultant.

(c) If the subconsultant services are not subject to prequalification procedures and exceed \$25,000, they shall be reviewed by the External Audit Branch for reasonableness of cost. For subcontracts equal to or less than \$25,000, the Director of the Division of Professional

Services or other negotiation unit, upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 7. Contract Modifications. (1) When it is determined by either the consultant or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

- (a) Change in termini or section;
- (b) Addition of major phases of work to the negotiated scope of work;
- (c) Modification of previously approved work resulting from factors beyond the control of the consultant;
- (d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a contract modification [~~change order~~] consideration are identified in the original contract;
- (e) Delay by the cabinet as outlined in each contract;
- (f) Use of a subconsultant for services previously identified to be done by the consultant or other subconsultant; or
- (g) Availability of current audit established in accordance with 600 KAR 6:080.

(2) The request for a contract modification may be originated by the Division of Professional Services, user division, highway district office or the consultant.

(3) When the director or office head of the user division determines the change is appropriate, the user division shall advise the consultant in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement.

(a) When additional or reduced compensation is justified, the user division shall request a revised proposal from the consultant.

(4) The contract modification shall be negotiated using the procedures set forth in Sections 1, 2, and 3 of this administrative regulation.

(5) The Division of Professional Services or other negotiation unit shall send the Contract Modification [~~Change Order~~] form TC 40-17 as revised December 1998 [~~June 1992~~] or the Construction Consultant Change Order form, TC 63-53 revised June 1992, to the consultant for its approval. These forms are incorporated by reference in Section 11 of this administrative regulation.

(6) After approval by the cabinet, the contract modification [~~change order~~], LRC's proof of necessity form and other supporting documentation shall be submitted to the LRC Government [~~Personal Service~~] Contract Review Committee [~~Subcommittee~~].

(7) For projects requiring FHWA oversight, the approved contract modification [~~change order~~] shall be sent to the Federal Highway Administration for approval in accordance with Section 4(4) of this administrative regulation.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved contract modification [~~change order~~].

(9) If a contract modification [~~change order~~] results in a fee negotiated for the contract modification [~~change order~~] in other than lump sum as a method of compensation, the consultant shall use an accounting system which segregates and accumulates allocable and allowable costs which are to be charged to the contract modification [~~change order~~].

Section 8. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the consultant for future reference.

(2) The project manager or the director of the user division shall review the work performed by the consultant, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the consultant.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the consultant and prepare written documentation of the consultant's performance on the project.

(4) The user division shall send the consultant written documentation of the consultant's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Professional Services and in the consultant's experience



record file.

(5)(a) The consultant may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the consultant's performance for the project.

(b) The appeal shall specifically set forth the reasons why the consultant believes the below average rating is in error.

(c) The user division director shall notify the consultant within thirty (30) days from the consultant's appeal of the director's decision of whether or not to revise the performance rating.

(d) The consultant may appeal in writing the user division director's decision to the Chairman of the Consultant Prequalification Committee within thirty (30) days.

(e) The Consultant Prequalification Committee shall review all documentation relating to the consultant's performance for the project. The committee may discuss the performance rating with the project supervisor or the consultant.

(f) The committee shall notify the consultant and the user division of its decision within ninety (90) days from the consultant's appeal.

(g) If the consultant's appeal is denied by the Consultant Prequalification Committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the Consultant Prequalification Committee.

(h) The State Highway Engineer shall notify the consultant of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.

(6) The Director of the Division of Professional Services or head of other negotiation unit shall request the External Audit Branch to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the consultant. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 9. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the consultant.

(2) When the cabinet decides to cancel a professional services contract, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall be liable only for payment of services up to the effective date of cancellation of the contract as specified by the terms of the contract.

(4) The cabinet shall be liable for a demobilization fee equal to ten (10) percent of the remaining balance of the contract not to exceed \$25,000.

Section 10. Payments to Consultants. Before payment of a partial or final request for payment, the cabinet shall review the work of the consultant, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the consultant as agreed upon in the contract. The consultant shall submit an Engineer's Pay Estimate, TC 61-408 revised March 1988 and a Consultant Monthly Report, TC 61-2 revised October 1995 as an invoice to the chief district engineer or director of the user division or to their designees.

(2) The chief district engineer or director of the user division or his designee shall review the Engineer's Pay Estimate and Consultant Monthly Report, verify that the work has been completed as described in the document, and sign both forms.

(3) If an Engineer's Pay Estimate is not needed to be submitted to the chief district engineer or director of the user division within a given month, the Consultant Monthly Report shall still be submitted.

(4) Final invoices and requests for payment shall be authorized

only after all work has been reviewed and accepted or approved, including any final reports prepared by the consultant. All terms and conditions of the contract shall be satisfactorily met and the final audit shall be performed prior to processing the final payment.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Contract Modification [Change Order]", Form TC 40-17, December 1998 [June 1992] edition;

(b) "Construction Consultant Change Order", Form TC 63-53, June 1992 edition;

(c) "Engineer's Pay Estimate", Form TC 61-408, July 1998 [March 1988] edition;

(d) "Consultant Monthly Report", Form TC 61-2, March 1996 [October 1995] edition;

(e) "General Provisions Attachment (Exhibit 15-07)", July 1994 edition; and

(f) "Consultant Structure Inspection Provisions (Exhibit 15-07A)", May 1993 edition.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4555. Its office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

JAMES C. CODELL, III, Secretary  
J.M. YOWELL, State Highway Engineer  
GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: December 21, 1998

FILED WITH LRC: December 23, 1998 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on February 26, 1999 at 1:30 p.m. local prevailing time at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by February 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 February 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 February 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

(1) Type and number of entities affected: There are 160 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and includes the 60 or so which ultimately negotiate contracts each year.

(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:

**FINANCE AND ADMINISTRATION CABINET  
School Facilities Construction Commission  
(Amendment)**

1. First year following implementation: None  
2. Second and subsequent years: None  
(3) Effects on the promulgating administrative body: The staff of the Division of Professional Services is constantly involved in the contract negotiation process. There are approximately 60 original contracts negotiated each year. Approximately 100 contract modifications are issued on these contracts each year. It is almost as time-consuming to negotiate a contract modification as the original contract.

(a) Direct and indirect costs or savings:

1. First year: This change will provide reduced incremental project costs.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: This process assures the public of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting and paperwork requirements: Documentation of the entire negotiation process. Preparation of the contracts.

(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 Fund as authorized in the Transportation Cabinet 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 why alternatives were rejected: This change will reduce the number of interpretations which are considered in applying the regulation. It will also reduce the value of contracts between \$2,000,000 and \$3,000,000.

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering is applied by establishing two levels at which direct labor and overhead costs are negotiated.

**FEDERAL MANDATE ANALYSIS COMPARISON**

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.

2. State compliance standards. The state has promulgated this administrative regulation setting forth negotiating criteria for the contracting of professional engineering or related services.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the method of negotiating of the reimbursement to be paid to the selected consultant.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for negotiating of the reimbursement to be paid to the selected consultant is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This is not a conflict with the federal regulation, just a way of simplifying all negotiations with the Transportation Cabinet.

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

RELATES TO: KRS Chapter 157

STATUTORY AUTHORITY: KRS 157.617, 157.622

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

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

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

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

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

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

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

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

Section 3. Rate of Participation. The rate of participation of each "eligible district", as defined by KRS 157.615, shall be determined by dividing the unmet needs of such respective district by the total unmet needs of all eligible districts and multiplying that fraction times the total new debt service budgeted for the biennium. In the event there are insufficient funds budgeted in the first year of the biennium to fund all the requests, bond sales will be scheduled in the order in which the School Facilities Construction Commission receives requests for approval of bond sales. All bond sales may proceed after January 1 of the first year of the biennium.

Section 4. Offer of Assistance. Upon certification of the rate of participation by the School Facilities Construction Commission, the Executive Director of the School Facilities Construction Commission shall notify each eligible district of its entitled rate of participation and the requirements to be met if it wishes to accept the offer of assistance.

tance. These requirements shall include the amount of local revenue to be expended as certified by the State Board for Elementary and Secondary Education, the priority order of facilities to be built as certified by the State Board for Elementary and Secondary Education, and the sequence of events and deadlines to be met if the local school district accepts the offer of assistance.

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

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

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

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

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

Section 8. Bond Issuance Procedures. (1) Upon acceptance of an offer of assistance by a local school district, the School Facilities Construction Commission shall determine whether the local school district will issue the bonds or the SFCC will issue the bonds. Local school districts may request authority from the SFCC to issue the bonds through a city, county, or other agency and instrumentality of the Board of Education. ~~[the local fiscal court or municipal government. Such a request shall be submitted to the commission at the time the local school district accepts the offer of assistance.]~~

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

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

financial advisor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The accrued interest allocated to the SFCC is calculated by multiplying the number of days times the "daily interest" as defined in Section 1 of this administrative regulation.

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

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

5. If local payments are involved in the bond issue, this same

method shall be used to allocate the accrued interest available to the local district.

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

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

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

#### Maximum Fee Schedule

##### Services and Expenses of Fiscal Agent

\$7,500 shall be permitted as a minimum fee on any amount of bonds issued; otherwise,

\$11 per \$1,000 on the first \$1 million,

\$10 per \$1,000 on the second million, and

\$4 per \$1,000 all over \$2 million.

Fee is based upon the amount of bonds actually issued.

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

Fee not to include title search or rating service.

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

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

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

(2) On refinancings which already have incurred debt service payment(s), the amount of annual savings that accrued to the commission shall be rolled forward and added to the commission's last payment(s) of the commission's share of the debt service, thereby insuring that the total savings over the life of the bond issue accrues to the account of the local district.

(3) Where the commission's amount of participation in the bond issue being refinanced is of such a level that the same amount of annual debt service paid on behalf of the commission is greater than the annual debt service of the refinanced bond issue debt, annual savings generated shall be added to that school district's cumulative

credit with the SFCC. These credits shall have no expiration time period for their use.

DR. ROBERT TARVIN, Executive Director

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: January 11, 1999

FILED WITH LRC: January 12, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 24, 1999, at 2 p.m. in Room 267, Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing not less than five (5) workdays prior to the hearing date of their intent to attend. If no notification of intent to attend the hearing is received by February 17, 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: Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission, Room 264, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-5582, FAX (502) 564-2653.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Robert Tarvin

(1) Type and number of entities affected: 176 public school districts in the state.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: Will permit schools to have immediate use of debt service payments to use on future debt.

(b) Kentucky: Same as above.

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

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: Change will implement KRS 157.622(7) as amended by Senate Bill 309 which was passed during the 1998 General Session of the Legislature.

(11) TIERING: Is tiering applied? No. Procedures for allocating savings from refinancings are the same for all districts.

### LABOR CABINET Department of Workers' Claims (Amendment)

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

RELATES TO: KRS 342.0011(22), 342.340(2)

STATUTORY AUTHORITY: KRS 342.260(1)

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

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

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

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

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

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

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

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

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

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

(a) Be returned by NCCI; and

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

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

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

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

(2) Any electronic transmission of data shall have:

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

(b) Received the approval of the commissioner.

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

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

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: January 12, 1999

FILED WITH LRC: January 13, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on February 22, 1999 at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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 canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on February 22, 1999, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery.

(1) Type and number of entities affected: Approximately 550 insurance carriers as defined in KRS 342.0011(22).

(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: At this time, no public comments have been received. The department does not anticipate an effect on 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: At this time no public comments have been received. By giving insurance carriers other options, cost should not be increased.

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

1. First year following implementation: Insurance carriers are already complying with this requirement. There are 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: There should be no effect on costs or savings

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 continue to be used for the implementation of this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: At this time, no public comments have been received. The department will have better information to assure compliance in providing workers' compensation for employees.

(b) Kentucky: At this time, no public comments have been received. The department will have better information to assure compliance in providing workers' compensation for employees.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department has been using an exclusive agent to receive the workers' compensation insurance coverage information. The information has been inadequate and fails to meet the department's standards. It is imperative to give the insurance carriers different options to immediately get this information to the department.

(8) Assessment of expected benefits: The department will have adequate data with regard to workers' compensation insurance coverage for employees. Employers and employees will benefit from the department having correct and timely information. The department can properly carry out its statutory duties.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The proper information with regard to whether employees have proper workers' compensation insurance coverage will be received by the department. The department can carry out its statutory duties. Injured workers will get the proper information when filing claims.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department cannot have inadequate information with regard to whether workers' compensation coverage is provided by employers.

(c) If detrimental effect would result, explain detrimental effect: If the information is not properly transmitted to the department, insurance carriers would be in violation of the law. The department may issue citations by mistake against employers when they are in compliance. Injured workers could not get the proper information about coverage from our data system when filing a claim.

(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: 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 all insurance carriers as defined in KRS 342.0011(22) must comply with this regulation.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(Amendment)**

**902 KAR 13:010. Definitions for 902 KAR Chapter 13.**

RELATES TO: KRS 211.952, 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964[; EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO-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 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to define terms that are used in administrative regulations promulgated by the cabinet relating to EMTs [emergency medical technicians].

Section 1. Definitions. (1) "Adjunct faculty" means a person other than regularly assigned instructional faculty of an EMS educational institution who may be called upon, due to their unique qualifications, to teach a lesson in an EMT training course. ["Applicant" means a person applying for training or certification as an EMT, EMT-instructor, or EMT-first responder under this administrative regulation.]

(2) "Cabinet" means the Cabinet for Health Services.

(3) "Certificate" means the certificate issued by the cabinet to an individual qualified to perform the duties of an EMT[, EMT-instructor, or EMT-first responder].

(4) "Certified" means a person who holds a certificate issued pursuant to this administrative regulation.

(5) "Conviction" means the result of a court hearing or criminal trial which ends in a final judgment or sentence that the accused is guilty

as charged. A finding of guilty shall also include a plea of guilty, or a plea of nolo contendere. A conviction shall be considered a final judgment until it has been expunged by pardon, reversed, set aside, or otherwise rendered nugatory.

(6) "Council" means the Kentucky Emergency Medical Services Council established by KRS 211.952 [and appointed by the secretary of the cabinet to act in an advisory capacity].

(7) "Course completion date" means the date of the last classroom session of an EMT training course.

(8) "Employee" means a person who is employed full time, part time, paid or volunteer.

(9) "EMS educational institution" means a public or private organization approved by the cabinet to conduct, supervise and coordinate an EMT training course for initial certification.

(10) "EMS testing agency" means a public or private organization approved by the cabinet to administer a Kentucky EMT certification examination.

(11) "Emergency medical technician (EMT)" means the following levels of EMT certification:

(a) EMT-basic;

(b) EMT-basic instructor;

(c) EMT-instructor trainer;

(d) EMT-first responder; and

(e) EMT-first responder instructor.

(12) "EMT-basic (EMT-B) [Emergency medical technician-first responder (EMT-first responder)]" means an individual certified by the cabinet to perform a portion of the patient care skills of certified EMTs in order to stabilize a patient's condition until an EMT or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(8) "Emergency medical technician-first responder instructor" means a person, other than an emergency medical technician-instructor or emergency medical technician-instructor-trainer, who is qualified to teach EMT-first responder courses and who is approved by the cabinet to teach EMT-first responder courses.

(9) "Emergency medical technician (EMT)" means an individual certified by the cabinet as an EMT-B [emergency medical technician] who is trained to provide immediate emergency medical care and intervention to stabilize a patient's condition at the scene of an emergency and en route to definitive medical care.

(13) "EMT-B graduate" means an EMT-B student who has completed a Kentucky approved EMT-B course of training and testing, but who has not:

(a) Completed a minimum of forty-eight (48) hours of field internship with a Class I ambulance provider licensed pursuant to 902 KAR 14:070 which shall include at least ten (10) patient contacts; and

(b) Successfully passed the Kentucky EMT-B practical skills and written certification examinations.

(14) "EMT-B instructor" [(10) "Emergency medical technician instructor"] means a person certified by the cabinet to teach EMT-B [emergency medical technician] and EMT-first responder courses.

(15) "EMT-B instructor candidate" [(11) "Emergency medical technician-instructor candidate"] means a certified EMT-B who has completed his initial training as an EMT-B instructor and is performing a student teaching internship [emergency medical technician-undergoing approved instruction] and evaluation for eligibility to become certified as an EMT-B [emergency medical technician] instructor [while under the supervision of a certified emergency medical technician instructor].

(16) "EMT-first responder" (EMT-FR) means an individual certified by the cabinet to perform the patient care skills consistent with the authorized procedures described in 902 KAR 13:110, Section 13, in order to stabilize a patient's condition until an EMT-B or other higher level of certified or licensed emergency medical services (EMS) personnel arrives.

(17) "EMT-first responder instructor" (EMT-FR instructor) means a person, other than an EMT-B instructor who is approved by the cabinet to teach a EMT-first responder course.

(18) "EMT instructor trainer" (EMT-IT) [(12) "Emergency medical technician-instructor-trainer"] means a [person] certified EMT-B instructor appointed by the cabinet to teach EMT-B [emergency medical technician] instructor courses and evaluate EMT-B instructor candi-



dates [emergency medical technician instructor candidates].

(19) "Interfacility" means a situation in which a licensed ambulance is utilized to transport a person from a licensed health care facility or a physician's office to another licensed health care facility.

(20) "Lead instructor" means an instructor appointed by a program coordinator to assume primary responsibility for teaching and overseeing an EMT course.

(21) "Medical director" means a physician licensed by the Kentucky Board of Medical Licensure (KBML) or the authorized agency of a contiguous state.

(22) [(13) "Emergency situation" means an unforeseen circumstance or combination of circumstances, regardless of place of occurrence, requiring immediate and continuing medical response and intervention to safeguard the life, or physical well-being of a patient.

(14) "Implementing agency" means a public or private organization, other than an instructor, instructor trainee, or instructor candidate, approved by the cabinet to conduct, supervise, coordinate, and operate an emergency medical technician or EMT-first responder training course.

(15) "[The] National Registry of Emergency Medical Technicians" (NREMT) means the national professional organization that specializes in practical skills and written examination materials used in evaluation of prehospital personnel [and practical skills testing of EMTs]. Their service may be utilized for implementing the EMT-B and EMT-FR, practical skills and written examinations in the EMS personnel certification or licensing [certification written and practical examination] process for participating states.

(23) "Pilot program" means a program approved by the cabinet to permit an EMS educational institution, Class I ambulance service or Class III ambulance service to educate, train and authorize selected EMT students or employees to utilize a specialized procedure, for a specified time period, that has not been previously approved by administrative regulation.

(24) "Preestablished IV" means an intravenous solution that has been established on a person prior to the incident to which an EMT-B is responding.

(25) "Transition course" means a training program, approved by the cabinet, to prepare an EMT-B or EMT-FR who was not initially trained under the guidelines of the United States (US) Department of Transportation (DOT) National Standard Curricula (NSC)-1994 for an EMT-B or the US DOT NSC-1995 for an EMT-FR to update him to additional scope of practices that meet the 1994 EMT-B or 1995 EMT-FR DOT NSC and the additional Kentucky practice requirements pursuant to 902 KAR 13:055 and 902 KAR 13:110.

RICE C. LEACH, MD, Commissioner  
JOHN MORSE, Secretary  
JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs), EMT-instructors, and EMT-

first responders; EMS educational institutions, and EMS testing 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. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits: This administrative regulation will provide definitions for 902 KAR Chapter 13.

(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 result would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: 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 because this administrative regulation provides definitions for levels of EMT certification.

#### 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 administrative regulation will not affect a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does

not affect a local government or any service it provides.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(Amendment)**

**902 KAR 13:030. Fees.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964, 211.966[; HB 799 Part II of the 1990 GA]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 directs the Cabinet for Health Services [~~Human Resources~~] to adopt [rules and] administrative regulations relating to emergency medical technicians, [and] KRS 211.966 permits the Cabinet for Health Services [~~Human Resources~~] to prescribe a schedule of fees and charges for services to emergency medical technicians (EMTs). The function of this administrative regulation is to establish a fee schedule pursuant to KRS 211.966.

Section 1. Examination Fees. (1) The following schedule of fees shall be charged to an applicant for an examination administered by the cabinet or an agency funded under a contract with the cabinet:

(a) EMT initial written: fifteen (15) dollars.

(b) EMT written retest: fifteen (15) dollars.

(c) EMT initial practical: forty (40) dollars.

(d) EMT retest per station: ten (10) dollars.

(2) Emergency medical services (EMS) educational institution initial application fee: 100 dollars.

(3) The following schedule of fees shall be charged to an EMS testing agency for an application to:

(a) Administer an EMT practical and written examination: fifty (50) dollars.

(b) Administer only the written examination: thirty (30) dollars.

(c) Administer only the practical examination: forty (40) dollars.

(4) The following schedule of fees shall be charged for an EMT certificate:

(a) EMT-first responder (EMT-FR) certification: fifteen (15) dollars.

(b) EMT-FR recertification: thirteen (13) dollars.

(c) EMT-basic (EMT-B) certification: twenty (20) dollars.

(d) EMT-B recertification: nineteen (19) dollars.

(e) EMT-FR instructor certification: twenty-five (25) dollars.

(f) EMT-FR instructor recertification: twenty (20) dollars. An EMT-FR instructor shall not be required to pay the EMT-FR recertification fee.

(g) EMT-B instructor certification: twenty-five (25) dollars.

(h) EMT-B instructor recertification: twenty (20) dollars. An EMT instructor shall not be required to pay the EMT-B recertification fee.

Section 2. Service Fees. (1) Duplicate certificate or duplicate wallet card: fifteen (15) dollars.

(2) Checks returned due to nonsufficient funds, invalid account or invalid negotiable instrument: twenty-five (25) dollars.

Section 3 - Payment of Fees. (1) Fees shall be paid by:

(a) Money order;

(b) Certified check;

(c) Cashier's check;

(d) Institutional check;

(e) Interagency account; or

(f) Cash.

(2) Cash payments shall not be accepted by mail. [is established pursuant to KRS 211.966:

(1) EMT certification, examination fee: nineteen (19) dollars;

(2) EMT recertification fee: nineteen (19) dollars;

(3) EMT-first responder certification, examination fee: thirteen (13) dollars;

(4) EMT-first responder recertification fee: thirteen (13) dollars;]

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

**REGULATORY IMPACT ANALYSIS**

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 17,000 emergency medical technicians (EMTs), EMT-instructors, and EMT-first responders; EMS educational institutions; and EMS testing 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. This administrative regulation will have minimal effect on the cost of living and employment in this state. Certification fees for approximately 1,500 individuals seeking initial certification would increase by \$1 each. There is no increase in recertification fees for individuals currently certified under these administrative regulations.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have minimal effect on the cost of doing business in any geographical area of this state. Proposed fees for individuals tested under state contract will remove a barrier to development of alternative testing organizations which must now compete against a state funded organization that provides testing for which no fees are currently charged.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

(4) Assessment of anticipated effect on state and local revenues: It is anticipated that the following additional annual fee income will result if this administrative regulation is implemented: Initial certification fees - \$9,100; Training agency approval fees - \$4,500; Testing agency approval fees - \$400.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds and fees authorized through 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: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits: This administrative regulation will provide funds to administer and evaluate programs that train and test individuals desiring to become certified as EMTs, EMT-instructors, EMT-first responders, and EMT-first responder instructors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Properly trained and certified EMS personnel can reduce the incidence of premature death and unnecessary disability due to medical emergencies and injuries.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental result would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: 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 because this administrative regulation provides definitions for levels of EMT certification.

#### 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. This administrative regulation could relate to local governments that choose to apply for approval as an EMT training or testing agency or that choose to pay certification fees for EMTs.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect a local government or a division of the local government that chooses to apply for approval as an EMT training or testing agency or that chooses to pay certification fees for EMTs.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation only affects an aspect of local government that chooses to apply for approval as an EMT training or testing agency or that chooses to pay certification fees for EMTs.

4. How does this administrative regulation affect the local government or any service it provides? If a local government or any service it provides chooses to apply for approval as an EMT training or testing agency or pay certification fees for EMTs, it must comply with minimum standards and obtain medical direction.

#### CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

**902 KAR 13:050. Requirements for [Training;] examination, certification and recertification of the emergency medical technician-basic.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964[– EO–96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO–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 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to

emergency medical technicians (EMTS). The function of this administrative regulation is to establish requirements for [training;] examination, certification and recertification of the basic level of emergency medical technicians.

Section 1. Applicant Requirements for Emergency Medical Technician-Basic (EMT-B) Certification. An applicant shall be eligible for initial Kentucky EMT-B certification if he:

(1) Completes the United States (U.S.) Department of Transportation (DOT), National Highway Traffic Administration, 1994 National Standard Curriculum (NSC), Emergency Medical Technician-Basic and the applicable course requirements of 902 KAR 13:055;

(2) Successfully passes the Kentucky practical and written certification examination;

(3) Obtains National Registry of Emergency Medical Technicians (NREMT) registration;

(4) Becomes Kentucky certified within two (2) years after the EMT-B course completion date;

(5) Is eighteen (18) years of age or older;

(6) Understands, reads, speaks, and writes the English language at a minimum of a tenth grade level. The EMS branch or an EMS educational institution may require testing to verify this requirement;

(7) Submits a signed application on the:

(a) Application for Emergency Medical Technician Certification-Basic (EMS-Branch 2/96); or

(b) Application for Emergency Medical Technician Certification (EMS Branch 12/97);

(8) Holds a high school diploma or equivalent;

(9) Pays the fee as required by 902 KAR 13:030; and

(10) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

Section 2. EMT-B Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT-B certification examination that shall utilize, as a minimum, the practical and written testing requirements of:

(a) The 1994 National Registry for Emergency Medical Technicians (NREMT) EMT-B Examination Coordinators Manual; and

(b) The 1994 National Registry of EMT-B Practical Examination Users Guide.

(2) An EMS testing agency that has been approved pursuant to 902 KAR 13:025 shall be administer the EMT-B certification examination.

Section 3. Expiration of Certification. (1) Unless it is renewed, the initial certification period of an EMT shall expire three (3) months after the expiration of his initial NREMT certification.

(2) Upon expiration of certification, an EMT-B shall not practice as an EMT-B or perform any of the authorized procedures for a certified EMT-B described in 902 KAR 13:080, other than those procedures authorized by statute or other Kentucky administrative regulations, until the cabinet has:

(a) Received and reviewed his application for completeness and compliance with this administrative regulation;

(b) Processed the application; and

(c) Issued a new certificate to the applicant or provided other written verification of the certification of the applicant.

(3) If the certification of an EMT-B expires, before he may again be eligible for certification, he shall:

(a) Complete a cabinet approved refresher training, described in the Kentucky Cabinet for Health Services EMT Basic Minimum Continuing Education Requirements, Total Contact Hours, incorporated by reference, within two (2) years of his expiration date; and

(b) Successfully pass the Kentucky EMT-B practical skills and written certification examination; or

(c) Retake an entire EMT-B course and pass the EMT-B practical skills and written certification examination.

Section 4. Recertification and Continuing Education Requirements. (1) Except as provided in subsection (2) of this section, an EMT-B who initially certified prior to July 15, 1997 and who has not chosen to obtain national registration and meet the requirements of

the NREMT may be eligible to renew his certification if he:

(a) Submits to the cabinet:

1. A signed application for Emergency Medical Technician-Basic Certification Renewal;

2. Written evidence of completion of current training in cardiopulmonary resuscitation (CPR) that shall:

a. Meet the educational objectives of:

(i) The American Heart Association;

(ii) The American National Red Cross; or

(iii) The National Safety Council;

b. Be taught for record;

c. Be conducted by a person who shall be:

(i) An American Heart Association CPR instructor;

(ii) An American National Red Cross CPR instructor;

(iii) A National Safety Council-CPR instructor; or

(iv) A Cabinet of Health Services-EMT-B instructor; and

d. Provide instruction and testing in:

(i) One (1) rescuer cardiopulmonary resuscitation;

(ii) Two (2) rescuer cardiopulmonary resuscitation;

(iii) Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

(iv) Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

(v) Techniques for relief of obstruction of the airway;

(vi) Cardiopulmonary resuscitation of infants and small children;

(vii) Barrier to mouth, barrier to nose, or barrier to stoma resuscitation for adults, small children, and infants;

(viii) Use of oral and nasal airways;

(ix) Use of bag-valve-mask or other ventilatory devices; and

(x) Use of supplemental oxygen;

3. The fee as required in 902 KAR 13:030; and

4. A record of his continuing education, as required in paragraph (b) of this subparagraph, on an "EMT-B Official Record of Continuing Education" or other form approved by the cabinet that shall be:

a. Signed by the EMT-B and the instructor; and

b. Contain a statement certifying to the truth of the information supplied;

(b) Completes, prior to the expiration date of his current certification period, at least twenty-four (24) hours of continuing education that shall:

1. Contain no less than twelve (12) hours in practical skills, conducted in a structured classroom setting. A minimum of two (2) of the contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education required by KRS 214.610;

2. Be limited to the subjects covered in the EMT-B training course as required in 902 KAR 13:055, Section 3;

3. Be taught by a person who holds certification or licensing as:

a. A Kentucky certified EMT-B instructor;

b. Kentucky certified paramedic;

c. A registered nurse licensed pursuant to KRS Chapter 314;

d. A physician licensed pursuant to KRS Chapter 311;

e. An instructor, certified by a state or federal agency to teach a subject that qualifies for EMT-B in-service training or continuing education; or

f. A physician, registered nurse, paramedic, or EMT-B instructor licensed or certified in another state; and

4. Not be subject to disciplinary action pursuant to 902 KAR 13:090.

(2) After completion of the first certification period following the effective date of this administrative regulation, an EMT-B, who initially certified prior to July 15, 1997, and who has not chosen to obtain national registration and meet the requirements of the NREMT shall be eligible to renew his certification if he:

(a) Submits to the cabinet evidence of successful completion of the "EMT Basic Minimum Continuing Education Requirements" (EMS Branch, 11/98) that:

1. Includes:

a. Two (2) contact hours shall in AIDS education required by KRS 214.610; and

b. Validation of skills maintenance; and

2. Is taught by a person who meets the requirements of subsection (1)(b)3 of this section;

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

and

(c) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

(3) An EMT-B who initially certified prior to July 15, 1997 and who has chosen to obtain national registration and meets the requirement of the NREMT shall be eligible to renew his certification if he meets the requirements of subsection (4) of this section.

(4) An EMT-B who initially certified after July 15, 1997, shall be eligible to renew his certification if he:

(a) Is not subject to disciplinary action pursuant to 902 KAR 13:090; and

(b) Submits to the cabinet:

1. A signed "Application for Emergency Medical Technician-Basic Certification Renewal";

2. Validation that he is currently registered and maintains the registration or registration renewal requirements for the NREMT;

3. Evidence of completion of the AIDS education required by KRS 214.610; and

4. The applicable fee as required in 902 KAR 13:030.

(5) Except for the requirements for completion of the AIDS education required by KRS 214.610 and the limitations described in subsection (6) of this section, hours earned in a transition course (TC), as described in Section 7 of this administrative regulation, may be applied toward the continuing education requirements for recertification in subsections (1)(b), (2)(a), (3), and (4)(b)2 of this section.

(6) If an EMT-B attends the:

(a) Entire TC, but does not successfully pass the accompanying practical skills examination, these hours may be utilized hour-for-hour to meet the continuing education requirements described in subsection (5) of this section, except that the hours shall not apply as credit for update training to the NSC-1994 as required in Section 7 of this administrative regulation;

(b) Entire TC and successfully passes the accompanying practical examination, these hours may:

1. Be utilized hour-for-hour to meet the continuing education requirements described in subsection (5) of this section; and

2. Apply as credit for update training to the NSC-1994 as required in Section 7 of this administrative regulation; or

(c) First two (2) modules, "Introduction" and "Patient Assessment," of the transition course, and successfully completes the eleven (11) psychomotor competency objectives, and successfully passes the accompanying skills examination, he may:

1. Apply the hours hour-for-hour for the first two (2) modules, and any additional modules attended if the total hours attended are less than twenty-five (25); and

2. Receive credit for the update training required in Section 7 of this administrative regulation.

(7) An EMT-B shall be issued a certificate of completion, signed by the lead instructor, which specifies the hours earned to meet the requirements of subsection (6) of this section.

(8) An application for renewal of certification shall not be considered for renewal if:

(a) The application is postmarked to the cabinet more than thirty (30) days after the certification expiration date of the applicant; or

(b) Prior to his certification expiration date, the EMT-B applicant has not met the applicable requirements of subsections (1), (2), (3), or (4) of this section.

(9) Upon written application to the cabinet, an EMT-B who is a member of a National Guard or a military reserve unit and is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after his release from active duty or return to the United States, whichever occurs first, to meet the applicable requirements for recertification listed in subsections (1), (2), (3), (4), and (5) of this section.

Section 5. Reciprocity. A person shall be eligible for direct reciprocity for initial Kentucky certification as an EMT-B if he:

(1) Submits a signed "Application for Emergency Medical Technician Certification";

(2) Provides documentation that he has currently met the registration or registration renewal requirements for the NREMT;

(3) Provides documentation that he has completed the AIDS

education required by KRS 214.610; and

(4) Has paid fees as required in 902 KAR 13:030; and

(5) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

Section 6. Exemptions from EMT-B Administrative Regulations. The Kentucky certification requirements for an EMT-B shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT-B certified in another state who comes into Kentucky to:

(a) Transport a patient into or through the state; or

(b) Return a patient to his out-of-state residence.

Section 7. Kentucky EMT-B Transition Course. (1) The EMT-B update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program," shall be referred to as the Transition Course (TC).

(2) An EMT-B currently certified in Kentucky who completed his EMT-B training based on a version of the 1984 or earlier NSC shall complete the TC by December 31, 1999.

(3) A Kentucky certified EMT-B shall be exempt from the Kentucky TC if he is a:

(a) Kentucky certified EMT-B who completed his EMT-B training and Kentucky certification in accordance with the requirements of the NSC-1994;

(b) Candidate for Kentucky EMT-B certification who holds out-of-state certification and provides evidence, prior to December 31, 1999, that he has completed training equivalent to the EMT-B TC in another state; or

(c) Kentucky certified EMT-B who is also a licensed physician board-certified in emergency medicine by the American Association of Emergency Physicians.

(4) A TC shall be coordinated by a sponsoring agency such as:

(a) An approved EMS educational institution;

(b) A licensed ambulance service;

(c) An acute care facility; or

(d) Other agency approved by the cabinet.

(5) An agency sponsoring a TC shall:

(a) File, at least two (2) weeks prior to the planned starting date of the course, an application to sponsor a TC;

(b) Receive approval from the cabinet before conducting the training;

(c) Assume all responsibilities for conducting the EMT-B TC; and

(d) Have, prior to the commencement of the course, a course number assigned by the cabinet.

(6) The TC shall:

(a) Be at least twenty-five (25) hours in duration except for the alternatives outlined in Section 4(6) of this administrative regulation. This shall not include time for the course practical examination;

(b) Be limited to twenty-eight (28) certified EMT-B students;

(c) Utilize texts, which are compatible with the 1994 NSC;

(d) Have available and in good working order, supplies, equipment and other materials:

1. When needed during course lessons; and

2. As needed for skills practice and skills examination.

(7) The sponsoring agency shall:

(a) Not permit an enrolled EMT-B to be on call while classes are in session;

(b) Not permit an enrolled EMT-B to take the course practical skills examination if the EMT-B has not completed the eleven (11) course psychomotor skills and objectives before the scheduled examination;

(c) Have a designated lead instructor for lectures who:

1. Is an EMT-B instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-instructor orientation (roll-out) training program on the NSC-1994;

(d) Have a minimum ratio of one (1) faculty, including a lead instructor and one (1) assistant, to seven (7) enrolled EMT-Bs for

skills practice sessions; and

(e) Have assistants to the lead instructor who shall:

1. Assist the lead instructor in the skills practice sessions of the course; and

2. Assist as an evaluator for the course practical examination.

(8) An assistant to the lead instructor shall be:

(a) An EMT-B instructor certified by the cabinet who has met the requirements of 902 KAR 13:070, Section 4;

(b) A physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) A Kentucky certified paramedic who:

1. Has successfully completed an EMT-B TC; and

2. Holds current credentials as an instructor in the:

a. American Heart Association Advanced Cardiac Life Support;

or

b. Pediatric Advanced Life Support;

3. Is a level I fire service instructor; or

4. Has earned a bachelor's or higher degree; or

(d) A Kentucky licensed registered nurse who:

1. Has completed a TC;

2. Is:

a. A certified emergency nurse; or

b. Has evidence of three (3) consecutive years experience in an acute medical facility emergency department; and

3. Has evidence of:

a. Credentials as an instructor in the American Heart Association Advanced Cardiac Life Support instructor; or

b. Credentials as a Pediatric Advanced Life Support instructor;

or

c. Credentials as a level I fire service instructor; or

3. A bachelor's or higher degree.

(9) The sponsoring agency shall:

(a) Complete an application for cabinet approval to conduct each TC offered;

(b) Maintain, as property of the EMS educational institution for a period of at least five (5) years or until December 31, 2004, whichever comes first, the following records for each EMT-B student enrolled:

1. The lesson Master Attendance Sheet;

2. Required remediation;

3. Validation of competency on the "Participant Competency Record Kentucky EMT-Basic Transition Course" for eleven (11) psychomotor skill objectives before an EMT-B is allowed to take the accompanying course practical skills examination; and

4. The results of the course skills station examination;

(c) Submit the original to the cabinet and maintain, as property of the sponsoring agency or organization for a period of at least five (5) years or until December 31, 2004, whichever comes first, the following records:

1. A TC Master Attendance Form; and

2. A TC Master Grade Sheet.

(d) Provide a certificate of completion to each EMT-B that shall specify:

1. The hours earned toward certification renewal; and

2. If the TC was successfully completed by passing the accompanying skill examination; and

(e) Assure that the accompanying course skill examination shall be administered as follows:

1. With at least two (2) evaluators assigned per station, the enrolled EMT-B shall pass one (1) skill station featuring patient assessment and intervention;

2. The skill station shall be designed to test one (1) or more skills. On the date of the examination, the EMT-B shall randomly choose if the station to be tested shall feature a medical or trauma patient condition, and at the same time, the EMT-B shall randomly choose the scenario which shall be tested;

3. At the completion of the skill examination, the EMT-B shall be informed of his pass or fail status. After all enrolled EMT-Bs who are eligible to test have completed the testing process, all participating evaluators shall meet to review all skill testing results and shall determine the pass or fail status of each EMT-B as a consensus of all evaluators.

(10) If an EMT-B fails to pass the required station, he shall:

- (a) Be permitted one (1) opportunity to retest the same medical or trauma patient condition station which he failed; and
- (b) Randomly choose the scenario on the date of the retest.
- (11) The retest may be administered by the same agency that sponsored the TC in which the EMT-B was enrolled.
- (12) The two (2) retest evaluators shall not be the same two (2) evaluators who evaluated the EMT-B during the first examination.
- (13) If an EMT-B again fails to pass the required skill station examination, he shall be required to retake the entire TC before being eligible for reexamination.
- (14) Until December 31, 1999, an EMT-B may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.
- (15) An EMT-B who has not been successful in passing the skill examination retest on the second attempt by December 31, 1999, shall not be eligible for Kentucky EMT-B certification renewal.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum, Emergency Medical Technician-Basic" (1994 Edition);
  - (b) The "Application for Emergency Medical Technician", (2/96);
  - (c) The "1994 National Registry EMT-Basic", Examination Coordinator Manual, published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229;
  - (d) The "1994 National Registry of EMT-Basic Practical Examination Users Guide", published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229;
  - (e) The "Emergency Medical Technician Official Record of Continuing Education/Inservice" (EMT/R 97);
  - (f) The "Application for Emergency Medical Technician Recertification Application" (7/98);
  - (g) The "Emergency Medical Technician Recertification Application with NREMT Certification" (7/98);
  - (h) The "Application for Emergency Medical Technician Certification" for challenge candidates (EMS Branch-12/97);
  - (i) The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program";
  - (j) The "Sponsoring Agency Application, 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (5/96);
  - (k) The "Course Approval Application, 1994 NSC EMT Basic Transition Course for Kentucky Certified Emergency Medical Technicians", (10/97);
  - (l) The "1994 EMT-Basic Transition Course Supplies and Equipment List" (5/96);
  - (m) The "Participant Competency Record Kentucky EMT-Basic Transition Course" (9/96);
  - (n) The "Master Attendance Sheet EMT-Basic Transition Course" (9/96);
  - (o) The "Emergency Medical Technician Basic Transition Course Master Grade Sheet" (9/96);
  - (p) The "Certificate, KY. Transition Course for Ky. Certified Emergency Medical Technicians", Did Not Complete, (2/97);
  - (q) The "Certificate, KY. Transition Course for Ky. Certified Emergency Medical Technicians", Successful Completion, (2/96); and
  - (r) The "Kentucky Cabinet for Health Services EMT Basic Minimum Continuing Education Requirements", Total Contact Hours, (EMS Branch 11/98).
- (2) This material may be inspected, obtained, or copied, unless prohibited by copyright, at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m. [EMT Training Course Requirements. (1) The EMT training course shall follow the United States Department of Transportation (DOT) 1984 Emergency Medical Technician: National Standard Curriculum (NSC) (Third Edition).
- (2) An EMT training course shall follow the DOT, National Highway Traffic Administration, 1994 NSC, EMT-Basic.
- (3) Prior to the effective date of this administrative regulation, an

implementing agency may:

- (a) Apply to the cabinet, utilizing the "Emergency Medical Technician-Basic Course Inventory Pilot Program" form 10/95, to make application to be approved to conduct a pilot program utilizing the 1994 NSC, EMT-Basic; or
- (b) Be considered to begin teaching the 1994 curriculum if:
  - 1. The implementing agency is ready to teach the 1994 curriculum;
  - 2. An application is submitted in writing to the cabinet;
  - 3. The required materials are in place for the cabinet to process the application; and
  - 4. The cabinet approves and assigns a course approval number.
- (4) An implementing agency shall assume all responsibilities for conducting a 1994 EMT basic training course.
- (5) Prior to commencing the course, the implementing agency shall substantiate that:
  - (a) An "Emergency Medical Technician-Basic Course Application" (EMS Branch-5/96) form has been submitted to the cabinet; and
  - (b) A course number has been assigned by the cabinet.
- (6) During the time the course is being conducted, the implementing agency shall substantiate that:
  - (a) The course is at least 119 hours in duration;
  - (b) Lessons are taught by a lead instructor, who as a minimum is an EMT-instructor certified by the cabinet, and at least one (1) assistant to the lead instructor who shall minimally be a Kentucky-certified EMT who meets the criteria of the lead instructor and the implementing agency or who is a Kentucky-certified EMT-instructor;
  - (c) In the absence of the lead instructor, lessons shall not be conducted without the presence of an EMT-instructor certified by the cabinet;
  - (d) The course is limited to twenty-eight (28) students; and
  - (e) The course utilizes texts as chosen by the lead instructor and approved by the implementing agency.
- (7) Approved texts shall be:
  - (a) Currently in publication;
  - (b) The most current edition available at the time the course begins which meets the appropriate 1984 or 1994 NSC;
  - (c) Maintained on file in the office of the implementing agency and at the course location; and
  - (d) Available upon request for public inspection during normal office hours or during course hours.
- (8) The training course shall utilize equipment, audiovisuals and other materials approved by the cabinet;
- (9) The training course shall have all required equipment available at the training site for the scheduled lessons and not permit sharing of equipment between courses unless the equipment is equally available to all course lessons as needed; and
- (10) The training course shall not permit a student to be on call while course lessons are in session.

Section 2. Responsibilities of the Lead Instructor. (1) The EMT course lead instructor shall:

- (a) Require each student to sign in, on the same date as the lesson to be presented, on an attendance sheet approved by the cabinet;
- (b) Submit to the cabinet, at least two (2) weeks prior to the starting date of the class:
  - 1. A syllabus for the course showing course lesson dates and the materials to be covered; and
  - 2. A "Basic Course Inventory" form (12/93) verifying that all equipment, texts, audiovisuals, and other materials specified are on hand, in proper working order and available as specified in Section 1(9) of this administrative regulation;
- (c) Submit to the cabinet, within two (2) weeks following the completion of each course:
  - 1. The master "Grade Sheet", (1/96);
  - 2. "Answer Sheets", (9/94) for each of the four (4) certification written examinations;
  - 3. "Score Sheets for the Certification Practical Examination" for each student who completed the class;
  - 4. "Master Attendance Sheet", (3/95);
  - 5. "Attendance Sheet", (1/96), or cabinet approved equivalent for each lesson;
  - 6. "Application for Emergency Medical Technician", (2/96) for each



eligible student desiring EMT certification; and

7. The fee prescribed by 902 KAR 13:030, Section 1(1) for each student desiring EMT certification.

(2) The EMT course lead instructor shall:

(a) Establish, with the approval of the implementing agency, the course standards for training and examinations, including development and procurement of examination materials, and course absenteeism;

(b) Require that remediation or makeup of missed eligible lessons be completed within the course in which the EMT is enrolled.

Section 3. EMT Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT certification examination which shall consist of two (2) parts:

(a) Written:

1. The Kentucky certification written examination for eligible applicants trained according to the 1984 NSC EMT-Basic shall consist of four (4) separate examinations, the fourth to be inclusive of the entire course:

2. An absolute overall passing grade of not less than eighty (80) percent shall be required for successful completion of the written portion of the certification examination:

3. The Kentucky certification examination for eligible applicants trained according to the 1994 NSC EMT-Basic shall follow the format described in subsection (3)(a) of this section:

(b) Practical:

1. The applicant shall pass all required stations of the Kentucky certification practical examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination:

2. If an applicant fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass:

3. If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination:

(2) An instructor who is employed by the same ambulance service, public service or industrial organization for whom an EMT course is conducted shall not evaluate in the practical examination of the students from that course:

(3) The format for the EMT two (2) part examination for Kentucky initial certification for an eligible applicant who has successfully completed a 1994 NSC EMT-Basic course shall be as follows:

(a) Written:

1. The written portion of the certification examination shall be a single examination that is comprehensive and compatible with the 1994 NSC EMT-Basic, utilizing the National Registry of EMTs (NREMT) (1/96) written examination:

2. In order to be eligible for Kentucky certification, a student who has successfully completed a Kentucky 1994 NSC EMT-Basic course and is recommended as eligible to take the NREMT written examination shall obtain an absolute score according to the following schedule:

a. Prior to the effective date of this administrative regulation, for an EMT Basic Pilot Program, sixty-five (65) percent;

b. After the effective date of this administrative regulation, sixty-six (66) percent; and

c. Effective July 1, 1997, seventy (70) percent or whatever is equivalent to the current score required for passing the National Registry of EMTs written examination:

3. Standards and eligibility for retesting of the written examination shall be consistent with the rules and regulations of the NREMT:

(b) Practical:

1. The Kentucky practical skills portion of the initial certification examination shall be compatible with the 1994 NSC EMT-Basic, utilizing the 1994 NREMT EMT-Basic Practical Examination Users Guide for the practical examination:

2. An eligible student who passes the practical examination according to the NREMT guidelines and passes the written examination referenced in paragraph (a)2 of this subsection shall be eligible for

Kentucky EMT certification:

3. Standards and eligibility for retesting of the practical skills examination shall be consistent with the rules and regulations of the NREMT:

(4) An EMT student, who does not become Kentucky certified within two (2) years after completion of the EMT course, shall repeat the EMT course before he may become Kentucky certified:

Section 4. Expiration of Certification. (1) An EMT certificate shall expire two (2) years from the date of issuance:

(2) Upon expiration of certification, an EMT shall not perform any of the authorized procedures for certified EMTs described in 902 KAR 13:080, until he has met the conditions described in Section 9 of this administrative regulation and has been recertified by the cabinet as evidenced by having been issued a new certificate by the cabinet:

Section 5. Recertification and Continuing Education Requirements. (1) During his period of certification, an EMT shall attain at least twenty-four (24) continuing education hours, with no less than twelve (12) hours being practical skills in a structured instructional setting. A minimum of two (2) of the twenty-four (24) contact hours shall be in Acquired Immune Deficiency Syndrome (AIDS) education as required by KRS 214.610:

(2) An EMT shall:

(a) Maintain evidence in the form of a certificate of completion of current training in cardiopulmonary resuscitation (CPR) as required by:

1. The American Heart Association; or
2. The American National Red Cross; or
3. The National Safety Council; and

(b) Submit evidence of continuing education and a current certificate of completion in CPR training to the cabinet prior to the expiration of his EMT certification:

(3) An applicant for EMT recertification shall receive credit for completion of continuing education on a subject:

(a) Covered by the United States Department of Transportation basic emergency medical technician curriculum, outlined in Section 4 of this administrative regulation; or

(b) For which instruction is:

1. Preapproved; and
2. Authorized by the cabinet:

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course:

(5) Training received as a requirement for continuing education as a physician, registered nurse, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for continuing education credit if it meets the criteria of subsection (3) of this section:

(6) The applicant for recertification shall submit evidence of successful completion of instruction in at least six (6) different subject areas, with a maximum of four (4) hours per subject area, of emergency medical technician course lecture subject matter or practice of skills:

(7) Hours earned in a transition course, as described in Section 12(1) of this administrative regulation, may be applied toward renewal of certification for an EMT who either:

(a) Attends the entire minimum twenty-five (25) hour transition course, but does not successfully pass the accompanying practical skills examination. These hours may be utilized hour-for-hour toward the required twenty-four (24) continuing education hours described in subsection (1) of this section, except that these hours shall not apply toward the required two (2) hours of cabinet approved AIDS education. Additionally, these hours shall not apply as credit for update training to the 1994 NSC referenced in Section 12(1) of this administrative regulation; or

(b) Attends the entire minimum twenty-five (25) hour transition course and successfully passes the accompanying practical skills examination. The EMT may utilize the hours earned in the transition course as described in paragraph (a) of this subsection, and may additionally receive credit for the required update training to the 1994 NSC; or

(c) Attends the minimally required first two (2) modules, "Introduction" and "Patient Assessment", of the minimum twenty-five (25) hour transition course, successfully completes the eleven (11) psychomotor competency objectives, and successfully passes the accompanying

practical skills examination. The EMT may:

1. Apply the hours hour-for-hour for the first two (2) modules, and any additional modules attended when the total hours attended are less than twenty-five (25) hours; and

2. Receive credit for update training referenced in paragraph (b) of this subsection:

(8) An EMT shall be issued a certificate of completion, signed by the lead instructor, which specifies the hours earned as outlined in subsection (7)(a), (b), or (c) of this section:

(9) An EMT shall submit to the cabinet:

(a) A signed "Application for Emergency Medical Technician and EMT-Instructor Certification Renewal"; and

(b) A signed record of his continuing education on an "EMT Official Record of Continuing Education/Inservice" (EMT/R-90) form which:

1. Has been signed by the EMT;

2. Contains a certification as to the truth of the information supplied; and

3. Includes a statement that misrepresentation of the information may be cause for suspension or loss of certification:

(10) The following shall not be eligible for credit as continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities.

(b) Instruction in material, techniques, or procedures not authorized to be performed by emergency medical technicians:

(11) Upon the effective date of this administrative regulation, an EMT applicant for Kentucky certification renewal shall be deemed as meeting the Kentucky certification requirements addressed in subsections (1) and (6) of this section if he:

(a) Is able to validate that he has currently met the renewal requirements for the NREMT;

(b) Meets the Acquired Immune Deficiency Syndrome (AIDS) education required by KRS 214.610 and subsection (1) of this section; and

(c) Meets the requirements outlined in Section 12 of this administrative regulation.

Section 6. EMT Instructors for Continuing Education. (1) The following persons shall be qualified to conduct continuing education courses for emergency medical technicians:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the cabinet;

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches a course which qualifies for emergency medical technician in-service training or continuing education; or

(f) Other presenters who are preapproved by the cabinet as persons who are uniquely qualified by experience or education.

(2) As applicable, a physician, registered nurse, paramedic or emergency medical technician instructor currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section:

Section 7. Cardiopulmonary Resuscitation Requirement. (1) During the two (2) year certification period, the EMT shall maintain current training in cardiopulmonary resuscitation and related techniques as follows:

(a) The course shall be conducted by, or under the authority of:

1. The American Heart Association;

2. The American National Red Cross; or

3. The National Safety Council; or

4. By an instructor certified by the American Heart Association or the American National Red Cross; or

5. By an instructor certified by the National Safety Council;

(b) The course shall be:

1. Taught for record; and

2. Certified by the instructor as meeting all applicable standards of the organization to:

a. The American Heart Association; or

b. The American National Red Cross; or

c. The National Safety Council;

(c) The course shall provide instruction and testing in:

1. One (1) rescuer cardiopulmonary resuscitation;

2. Two (2) rescuer cardiopulmonary resuscitation;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;

4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;

5. Techniques for relief of obstruction of the airway;

6. Cardiopulmonary resuscitation of infants and small children; and

7. Barrier to mouth, barrier to nose or barrier to stoma resuscitation for adults, small children, and infants.

(d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1)(c) of this section:

(2) The applicant for renewal of certification shall forward to the cabinet a copy of both sides of the certificate of completion issued to him indicating successful completion of the CPR course as required in Section 5(2)(b) of this administrative regulation:

Section 8. Continuing Education Requirements for Emergency Medical Technician Instructors and Instructor Trainers. (1) An EMT instructor and an EMT instructor trainer shall attain twenty-four (24) continuing education hours during his certification period:

(2) An emergency medical technician instructor or instructor trainer may meet the continuing education requirements for recertification by:

(a) Conducting an emergency medical technician course;

(b) Teaching one (1) or more lessons of an emergency medical technician course;

(c) Teaching one (1) or more lessons of an in-service training or continuing education course;

(d) Evaluating an EMT certification practical examination; or

(e) Conducting an EMT instructor training course.

(3) During his two (2) year certification period an emergency medical technician instructor or instructor trainer shall attend:

(a) At least one (1) annual emergency medical technician instructor conference; or

(b) At least one (1) annual training session for newly appointed instructors:

(4) Continuing education hours obtained at these conferences may be used as credit toward the time required in subsection (2) of this section:

(5) An emergency medical technician instructor or instructor trainer shall meet the CPR requirement in one (1) of the following ways:

(a) Meet the cardiopulmonary resuscitation requirement outlined in Section 7(1) of this administrative regulation;

(b) Teach a cardiopulmonary resuscitation course for record; or

(c) Teach the cardiopulmonary resuscitation portion of the emergency medical technician course to emergency medical technician students:

Section 9. Certification Renewal. (1) All requirements of certification renewal, including continuing education hours, shall be obtained prior to the certification expiration date:

(2) Effective January 1, 1997, if all requirements were met prior to the certification expiration date of the applicant, a recertification application postmarked to the cabinet or received by the cabinet within three (3) months after the certification expiration date of the applicant may be considered for renewal:

(3) Effective January 1, 1997, an application for recertification postmarked to the cabinet or received by the cabinet more than three (3) months after the certification expiration date of the applicant shall not be considered for renewal and shall be returned to the applicant:

(4) Upon written application to the cabinet, an EMT or EMT instructor who is a member of a National Guard or military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, may be given an extension for a period up to one (1) year after the individual's release from active duty or return to the United States, whichever occurs first:

(5) An EMT who has not renewed his EMT certification within the time limitations specified in subsection (1) or (2) of this section may be eligible for certification by:

(a) Successfully completing the reentry challenge examination as outlined in Section 10 of this administrative regulation; or

(b) By retaking and successfully completing the entire EMT training course.

**Section 10. Challenge Examination Procedure.** (1) For those persons specified in subsection (3) of this section, a challenge examination may be taken in order to qualify or requalify the person as an EMT. This challenge examination shall be in lieu of the requirement for completion of the Kentucky EMT course and the passing of the Kentucky EMT examinations. The provisions of this section shall not prohibit a person listed in subsection (3) of this section from taking and successfully completing the Kentucky EMT course and the Kentucky EMT examinations:

(2) The cabinet shall prescribe the format and content of the EMT challenge certification examination which shall consist of two (2) parts:

(a) Written:

1. The Kentucky challenge written certification examination shall consist of one (1) examination inclusive of the entire EMT basic course curriculum content.

2. An absolute overall passing grade of not less than eighty (80) percent, shall be required for successful completion of the written portion of the challenge certification examination. The challenge candidate shall successfully complete the written certification examination before being eligible to take the certification practical examination.

3. If an applicant fails to pass the written examination, the applicant may be allowed one (1) retest, which shall be completed within thirty (30) days from the completion of the first testing.

4. The initial EMT certification written examination for a challenge candidate shall utilize the NREMT written examination as referenced in Section 3(3)(a) of this administrative regulation.

(b) Practical:

1. The applicant shall pass all required stations of the Kentucky challenge practical certification examination. The practical examination shall be divided into stations in which one (1) or more skills are tested. Certain stations shall be designated as mandatory. Other stations shall be designated as wild card stations in which more than one (1) skill may be tested. The student shall randomly choose the skills from the wild card station on the date of the examination.

2. If an applicant fails to pass all required stations, he shall be permitted, within one (1) year from the date of the first testing, one (1) opportunity to retake and complete the required stations which he failed to pass.

3. If the applicant fails again to pass the required stations, he shall be required to retake the entire Kentucky EMT training course before being eligible for reexamination.

4. The initial EMT certification challenge practical skills examination shall utilize the NREMT skills examination as referenced in Section 3(3)(b) of this administrative regulation.

(3) The following shall be eligible to take the Kentucky Challenge Examination:

(a) U.S. military personnel on active duty, or within a period of one (1) year from the date of discharge, who submit:

1. Proof of having successfully completed training equivalent to the Department of Transportation EMT curriculum outlined in Section 1 of this administrative regulation; and

2. Proof of current CPR certification.

(b) An EMT certified or licensed in another state or country, who submits proof of current EMT certification, or foreign equivalent, and CPR certification. An out-of-state or foreign license or certification shall be maintained current until the date of the first attempt to pass the practical skills examination.

(c) An EMT whose Kentucky certification has not been expired for more than five (5) years and who was in good standing when his certification expired.

(d) A challenge applicant, who does not become Kentucky certified within two (2) years from the date the cabinet receives his application to challenge, shall repeat the EMT course before he may become Kentucky certified.

(e) An applicant shall be exempt from the challenge examination

requirements and shall be eligible for direct reciprocity for initial Kentucky certification if he:

1. Meets the eligibility requirements in this subsection;

2. Submits evidence of current NREMT registration; and

3. Meets the requirements of subsection (6)(b) of this section related to AIDS education required by KRS 214.610;

(f) An applicant who is not eligible for the exemption outlined in Section 12(3) of this administrative regulation shall have until July 1, 1999 to complete the requirements of Section 12 of this administrative regulation.

(4) An applicant for the Kentucky Challenge Examination shall submit:

(a) A letter of request to take the examination;

(b) The fee prescribed by 902 KAR 13:030, Section 1(2); and

(c) A completed "Application for Emergency Medical Technician Challenge Only", (1992).

(5) An applicant whose Kentucky emergency medical technician certification has not been expired for more than five (5) years and who was in good standing when his certification expired, shall submit the following additional documentation at the time of application:

(a) Proof of previous Kentucky emergency medical technician certification; and

(b) Proof of current CPR certification which meets the requirements of Section 7(1)(a) and (b) of this administrative regulation; and

(c) Proof of having completed four (4) hours of MAST Trousers training, taught by an instructor who meets the criteria in Section 6 of this administrative regulation; and

(d) Proof of completion of at least twenty-four (24) hours of continuing education taught by an instructor who meets criteria in Section 6 of this administrative regulation.

(6) Continuing education hours shall include:

(a) A minimum of one (1) hour in each of the following areas:

1. Airway management;

2. Diabetic emergencies;

3. Cardiovascular emergencies;

4. Multiple trauma;

5. Overdose and poisoning;

6. EMS-related legal issues; and

7. Patient assessment.

(b) No less than two (2) continuing education hours in Acquired Immune Deficiency Syndrome (AIDS) education equivalent to the requirement specified in Section 5(1)(b) of this administrative regulation.

**Section 11. Exemptions from EMT Administrative Regulations.** The Kentucky certification requirements for an EMT shall not apply to:

(1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or

(2) An EMT certified in another state who comes into Kentucky:

(a) To transport patients into or through the state; or

(b) For the purpose of returning a patient to his out-of-state residence.

**Section 12. Kentucky EMT Transition Course.** (1) The EMT update training to the 1994 NSC, the United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program", shall be referred to as the Transitional Course (TC).

(2) The TC shall be completed by July 1, 1999 by EMTs currently certified in Kentucky who completed their EMT basic training in a course initiated prior to the effective date of this administrative regulation.

(3) If a Kentucky certified EMT who also holds out-of-state certification can provide evidence that he has completed equivalent training in another state prior to July 1, 1999, he may be exempt from the Kentucky TC in part, or in its entirety based upon the equivalency training he has received.

(4) The TC shall not be required of EMTs currently certified in Kentucky who completed their EMT basic training in a Kentucky 1994 NSC EMT-Basic Pilot Program course prior to the effective date of this administrative regulation.

(5) The TC shall be coordinated by a sponsoring agency or or-

ganization such as a Kentucky EMT training implementing agency, licensed ambulance service, acute care facility, or other agency or organization approved by the cabinet.

(6) A sponsoring agency shall have filed an application, "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95) if it has not been already approved.

(7) If an agency has already been approved to sponsor a TG, the agency shall have filed a "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians", (10/95);

(8) An agency shall:

(a) File an application to sponsor a TG at least two (2) weeks prior to the planned starting date of the course; and

(b) Have received approval from the cabinet for coordinating the training;

(9) An approved sponsoring agency shall assume all responsibilities for conducting the TG;

(10) The TG course shall:

(a) Have, prior to the commencement of the course, a course number assigned by the cabinet;

(b) Be at least twenty-five (25) hours in duration except for the alternatives outlined in Section 5(7)(c) of this administrative regulation. This shall not include time for the course practical examination;

(c) Be limited to twenty-eight (28) certified EMT students;

(d) Utilize texts as outlined in Section 1(7) of this administrative regulation, which are compatible with the 1994 NSC;

(e) Meet cabinet requirements regarding supplies, equipment and other materials, which shall be available when needed during course lessons and as needed for skills practice and examination by the enrolled EMTs;

(f) Not permit an enrolled EMT to be on call while classes are in session;

(g) Not permit an enrolled EMT to take the course practical skills examination if the EMT has not completed the eleven (11) course psychomotor skills and objectives before the scheduled examination;

(h) Have a designated lead instructor for lectures who:

1. Is an EMT-instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-Instructor roll-out training program on the 1994 NSC;

(i) Have a minimum ratio of one (1) faculty, including lead instructor and assistants, to seven (7) enrolled EMTs for skills practice sessions; and

(j) Have assistants to the lead instructor who shall:

1. Assist the lead instructor in the skills practice sessions of the course; and

2. Assist as an evaluator for the course practical examination.

(11) The assistants to the lead instructor shall meet at least one (1) of the following requirements:

(a) Be an EMT-instructor certified by the cabinet who has completed the requirements outlined in 902 KAR 13:070, Section 4;

(b) Be a physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) Be a Kentucky-certified paramedic who has successfully completed a TG who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree; or

(d) Be a Kentucky-licensed registered nurse who has completed a TG and is a certified emergency nurse or has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support;

2. Is a level I fire service instructor; or

3. Has earned a bachelor's or higher degree.

(12) The lead instructor shall be required to:

(a) Assist the sponsoring agency in filing an application for cabinet approval to conduct each TG;

(b) Maintain the following records for each enrolled EMT. These

records shall remain as property of the sponsoring agency for a period of at least five (5) years or until July 1, 2004, whichever comes first:

1. Lesson attendance;

2. Required remediation;

3. Validation of competency for eleven (11) psychomotor skill objectives before an EMT is allowed to take the accompanying course practical skills examination;

4. A copy of the cabinet TG master attendance form. The original shall be submitted to the cabinet;

5. A copy of the cabinet master grade sheet. The original shall be submitted to the cabinet; and

6. The results of the course skills station examination. The original completed score sheets shall be submitted to the cabinet.

(c) Provide a certificate of completion to each EMT which specifies the hours earned toward certification renewal and if the TG was successfully completed by passing the accompanying skill examination;

(d) Assure that the accompanying course skill examination shall be administered as follows:

1. With at least two (2) evaluators assigned per station, the enrolled EMT shall pass one (1) skill station featuring patient assessment and intervention;

2. The skill station shall be designed to test one (1) or more skills. On the date of the examination, the EMT shall randomly choose whether the station to be tested shall feature a medical or trauma patient condition, and at the same time the EMT shall randomly choose the scenario which shall be tested.

3. At the completion of the skill examination, the EMT shall not be informed of his pass or fail status. After all enrolled EMTs who are eligible to test have completed the testing process, all participating evaluators shall meet to review all skill testing results and shall determine the pass or fail status of each EMT as a consensus from all evaluators.

(13) If an EMT fails to pass the required station, the EMT shall be permitted one (1) opportunity to retest the same medical or trauma patient condition station which he failed, but he shall randomly choose the scenario on the date of the retest. The retest shall be administered by the same agency that sponsored the TG in which the EMT was enrolled, but the two (2) evaluators shall not be the same two (2) evaluators who evaluated the EMT during the first examination.

(14) If an EMT again fails to pass the required skill station examination, he shall be required to retake the entire TG before being eligible for reexamination.

(15) Until July 1, 1999, an EMT may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.

(16) An EMT who has not been successful in passing the skill examination retest on the second attempt by July 1, 1999, shall not be eligible for Kentucky EMT certification renewal.

Section 13. Material Incorporated by Reference. The following material is incorporated by reference and may be inspected, obtained, or copied, unless prohibited by copyright, at the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday:

(1) The United States Department of Transportation "1984 Emergency Medical Technician: National Standard Curriculum", (Third Edition);

(2) The United States Department of Transportation, National Highway Traffic Administration, "1994 National Standard Curriculum; Emergency Medical Technician-Basic";

(3) The "Emergency Medical Technician-Basic Course Inventory Pilot Program" form (10/95);

(4) The "Emergency Medical Technician-Basic Course Application (EMS Branch-5/96);

(5) The master "Grade Sheet" (1/96);

(6) "Kentucky EMT Examination Answer Sheet", number one (1), two (2), three (3), and four (4) (9/94);

(7) The "Master Attendance Sheet" (3/95);

(8) The "Attendance Sheet" (EMS Branch-01/96);

(9) The "Application for Emergency Medical Technician", (2/96);

(10) The "National Registration, Registered EMT-Basic", (1/96); published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229;

(11) The "1994 National Registry of EMT-Basic Practical Exami-

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

nation Users Guide" published by the NREMT, P.O. Box 29233, Columbus, Ohio 43229.

(12) The "EMT Official Record of Continuing Education/Inservice" (EMT/R-92).

(13) The "Application for Emergency Medical Technician/Emergency Medical Technician-Instructor Certification Renewal" (2/96).

(14) The "Application for Emergency Medical Technician Challenge Only" (EMS Branch-2/96).

(15) The United States Department of Transportation, National Highway Traffic Safety Administration, "1994 EMT-Basic Transitional Program".

(16) The application "For Approval as an Agency to Sponsor 1994 NSC EMT-Basic Transition Courses for Kentucky Certified Emergency Medical Technicians" (10/95).

(17) The "Cabinet Approved Agency/Organization Application to Sponsor a 1994 NSC EMT-Basic Transition Course for Kentucky Certified Emergency Medical Technicians" (10/95).

(18) The "1994 EMT-Basic Transition Course Equipment Requirements" (10/95).

(19) The "Participant Competency Record Kentucky EMT-Basic Transition Course" (10/95).

(20) The "Master Attendance Sheet EMT-Basic Transition Course" (10/95).

(21) The "Emergency Medical Technician Transition Course Master Grade Sheet", (10/95).]

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 12,500 emergency medical technicians-basic (EMT-B).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Based on comments received through the Notice of Intent hearing, the cabinet rejected a proposed requirement that all EMTs currently certified that are not required to be nationally registered through the NREMT meet continuing education requirements equivalent to the NREMT. The rejection of this proposal will result in no increase in the number of continuing education hours for currently certified EMTs and should not affect the quality of care provided by EMTs in Kentucky.

(8) Assessment of expected benefits: This administrative regulation will maintain uniform requirements for certification and recertification of EMTs based on national standards.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health by maintaining uniform requirements for certification and recertification of EMTs based on national standards.

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

(c) If detrimental result would result, explain detrimental effect: This administrative regulation, if not implemented will have a detrimental effect on public health in that uniform requirements for certification and recertification of EMTs based on national standards would not be established or maintained.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation provides uniform certification and recertification requirements only for the EMT-B.

### 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 administrative regulation will not affect a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government or any service it provides.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(Amendment)**

**902 KAR 13:070. Emergency medical technician-basic [EMT-] instructors [and EMT-instructor trainers].**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964[, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [EO 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 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for attaining certification as an emergency medical technician-basic instructor (EMT-B instructor) [EMT instructor and EMT-instructor trainer].

Section 1. Eligibility for Training. A person applying to become a Kentucky certified EMT-B instructor shall be eligible for training if he:

(1) Has current credentials with the National Registry of Emergency Medical Technicians (NREMT) as a NREMT-basic (EMT-B) or a NREMT paramedic;

(2) Is currently certified in Kentucky as an:

(a) EMT-B; or

(b) Paramedic;

(3) Provides documented proof of having at least two (2) years of experience in the active delivery of prehospital patient care or transportation as a part of an organized emergency medical service system; and

(4) Provides verification from the director or chief officer of the organization for whom the experience was provided that the experience was obtained within the last five (5) years prior to application for training.

Section 2. EMT-B Instructor Training. (1) Except as provided in subsection (2) of this section and Section 3(1)(b) of this administrative regulation, a person training to become a Kentucky certified EMT-B instructor shall complete a:

(a) United States (U.S.) Department of Transportation (DOT) EMT-B instructor method of instruction (MOI) educational course conducted by an approved EMS educational institution; and

(b) A student teaching internship and evaluation for certification as required in Section 3 of this administrative regulation.

(2) A person shall not be required to meet the requirements of subsection (1)(a) of this section if he holds a:

(a) Bachelor's degree in education; or

(b) Valid Kentucky teaching certificate.

Section 3. EMT-B Instructor Candidate Student Teaching Internship and Evaluation for Certification. (1) An EMT-B instructor candidate shall complete a student teaching and evaluation internship in which he has:

(a) Attended a minimum of fifty (50) percent of scheduled class sessions;

(b) Served in various capacities under the direct supervision of a lead instructor for that course for which the lead instructor:

1. Is a Kentucky certified EMT-B instructor who has been certified for at least three (3) years; and

2. Has taught at least two (2) complete EMT-B training courses prior to serving as an EMT-B instructor candidate supervising instructor; and

(c) While under the direct supervision of the lead supervising instructor, assumed total classroom responsibility on separate topics within the same EMT-B course for a minimum of ten (10) complete classroom lessons consisting of at least:

a. Five (5) lectures; and

b. Five (5) skill instruction sessions.

(2) The ten (10) lesson student teaching component described in subsection (1)(c) of this section shall be evaluated as an eligibility

requirement for certification by an EMT-B instructor internship evaluation committee in accordance with the review process requirements of the 1998 EMT-B Instructor Candidate Evaluation Manual.

(3) An EMT-B instructor teaching internship and evaluation committee shall:

(a) Consist of three (3) members to include:

1. The lead EMT-B instructor who directly supervised the student teaching process;

2. The program course coordinator of the EMS educational institution at the location the EMT-B instructor candidate performed his student teaching internship; and

3. An impartial EMT-B instructor trainer; and

(b) Be authorized to terminate the evaluation process after a lesson if it is determined by the full committee that the candidate has not demonstrated sufficient competence to continue with the current EMT-B instructor training course.

(4) An EMS educational institution shall be responsible for the costs associated with the preparation and evaluation of each accepted EMT-B instructor candidate.

(5) An EMS educational institution may charge an EMT-B instructor candidate and evaluation fee.

(6) A person who was notified in writing by the cabinet, between 1996 and the effective date of this administrative regulation, that he has been placed on a waiting list for EMT-B instructor candidate evaluation may be exempt from the requirements of Sections 1(1), (3), and (4) and 2(1)(a) of this administrative regulation if he provides to the cabinet documentation that he:

(a) Has completed an EMT-B transition course (TC) as required pursuant to 902 KAR 13:050, Section 7; and

(b) Has completed a cabinet approved MOI educational course such as a:

1. Cabinet sponsored EMT-B instructor MOI taught by an EMT-B instructor trainer; or

2. Level II fire service instructor; or

(c) Holds a:

1. Bachelor's degree in education; or

2. A valid Kentucky teaching certificate.

(7) A person, who is notified in writing by the cabinet that he has met the requirements of subsection (6) of this section, may apply to a cabinet approved EMS educational institution for acceptance into an EMT-B instructor candidate teaching internship and evaluation program.

(8) If an EMT-B instructor candidate fails the evaluation process he may, within two (2) years of the course completion date of the MOI as required in Section 2(1)(a) of this administrative regulation, repeat the teaching internship and evaluation until he successfully passes.

(9) If an EMT-B instructor candidate does not successfully pass the teaching internship and evaluation within two (2) years of the course completion date, he shall repeat the entire EMT-B instructor training course before he may be reevaluated.

(10) If a person who meets the requirements of subsections (6) and (7) of this section fails, as an EMT-B instructor candidate, to pass the evaluation process, he may, within two (2) years from the effective date of this administrative regulation, repeat the teaching internship and evaluation until he successfully passes.

(11) If a person who meets the requirements of subsections (6) and (7) of this section fails to successfully pass the teaching internship and evaluation within two (2) years from the effective date of this administrative regulation, he shall:

(a) Apply as a new EMT-B instructor candidate;

(b) Meet the requirements of Sections 1 and 2 of this administrative regulation; and

(c) Repeat the entire EMT-B instructor training course before he may be reevaluated.

(12) At the conclusion of the evaluation, the lead instructor shall submit verification of attendance and performance evaluations to the cabinet for each EMT-B instructor candidate.

Section 4. EMT-B Instructor Certification. A person shall be eligible for initial certification as an EMT-B instructor if he:

(1) Meets the requirements of Sections 1, 2, and 3 of this ad-



ministrative regulation;

(2) Submits to the cabinet, within two (2) years of the completion of the MOI course as required in Section 2(1)(a) of this administrative regulation:

(a) An application for EMT-B instructor certification; and

(b) The fees required in 902 KAR 13:030; or

(3) Meets the requirements of Section 3(7) and (8) of this administrative regulation;

(4) Has obtained a recommendation for certification by each member of the EMT-B instructor teaching internship and evaluation committee;

(5) Pays the fee required in 902 KAR 13:030; and

(6) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

Section 5. Renewal of EMT-B Instructor Certification. (1) A person who was certified by the cabinet as an EMT-B instructor prior to the effective date of this administrative regulation shall be eligible to renew his EMT-B instructor certification if he:

(a) Meets the applicable requirements of 902 KAR 13:050, Section 4 pertaining to the recertification of an EMT-B;

(b) Documents participant involvement in the delivery of prehospital patient care or transportation as part of an organized emergency medical services system for a minimum of twenty-four (24) hours during the preceding twenty-four (24) month period;

(c) Documents that he has conducted, during the preceding two (2) years, a minimum of twenty-four (24) hours of instruction on at least three (3) different topics that are within the scope of practice for a Kentucky certified EMT-B;

(d) Documents attendance at three (3) hours of continuing education on topics related to MOI;

(e) Completes an application for EMT instructor certification and recertification; and

(f) Pays the fees required by 902 KAR 13:030.

(2) A person who is certified by the cabinet as an EMT-B instructor after the effective date of this administrative regulation, shall be eligible to renew his EMT-B instructor certification if he:

(a) Documents that he has current credentials with the NREMT as a:

1. NREMT-B; or

2. NREMT paramedic; and

(b) Meets the requirements applicable requirements of subsection (1) of this section.

Section 6. An Instructor Certified in Another State. A person certified in another state as an EMT-B instructor shall be eligible for Kentucky certification as an EMT-B instructor if he:

(1) Meets the reciprocity requirements outlined in 902 KAR 13:050, Section 5; and

(2) Meets the applicable requirements of Sections 2(1)(b), 3, and 4 of this administrative regulation.

Section 7. EMT-B Instructor Trainer. (1) An EMT-B instructor shall be eligible for appointment as an EMT instructor trainer for a period of two (2) years if he:

(a) Has current credentials with the NREMT as a:

1. NREMT-B; or

2. NREMT paramedic;

(b) Is currently a Kentucky certified EMT-B or paramedic;

(c) Provides documented proof of five (5) years experience in the active delivery of prehospital patient care or transportation as a part of an organized emergency medical services system;

(d) Has been certified in Kentucky an EMT-B instructor for five (5) consecutive years;

(e) Has served as the lead instructor for at least five (5) complete EMT-B courses;

(f) Files, with the cabinet, a letter of request for appointment;

(g) Does not have an active pending investigation by the cabinet relating to his EMT certification; and

(h) Has not had a negative action taken by the cabinet relating to his EMT certification within the past five (5) years.

(2) A person who was certified as an EMT instructor trainer, prior to the effective date of this administrative regulation shall not

be required to meet the requirements of subsection (1)(a), (c), and (e) of this section for initial appointment as an EMT instructor trainer.

(3) A person who was certified as an EMT instructor trainer, prior to the effective date of this administrative regulation shall meet the requirements of subsection (4) of this section for reappointment as an EMT instructor trainer.

(4) A person shall be eligible for reappointment as an EMT-B instructor trainer if he:

(a) Documents that he has current credentials with the NREMT as a:

1. NREMT-B; or

2. NREMT paramedic;

(b) Meets the requirements of 902 KAR 13:050 relating to EMT-B certification;

(c) Is a currently certified EMT-B instructor;

(d) Documents annual attendance at no less than one (1):

1. EMS training committee; and

2. EMS council meeting; and

(e) Documents attendance and participation at one (1) annual conference at which continuing education hours for an EMT-B instructor or EMT-FR instructor is offered; and

(f) Is recommended for reappointment by the cabinet.

(5) An EMT-B instructor trainer shall function at the pleasure and direction of the cabinet.

(6) An EMT-B instructor trainer may serve as:

(a) An instructor liaison to assist an EMS educational institution lead instructor with questions that may arise during a training program;

(b) A representative of the cabinet who may monitor or evaluate:

1. An EMT-B or EMT first responder (EMT-FR) training program;

2. EMS educational institutions; or

3. Faculty performance in an EMT-B or EMT-FR training program;

(c) A NREMT representative for EMT-B or NREMT-FR registry testing;

(d) A member of an EMT-B instructor teaching internship and evaluation committee as required in Section 3(3) of this administrative regulation;

(e) A liaison to an EMS regional advisor who may:

1. Assist in an investigation relating to an EMT-B training program; or

2. Provide information and assistance to cabinet staff relating to an EMT-B training issue; and

(f) A continuing education instructor at a time or location approved by the cabinet such as at an instructor conference.

(7) An EMT-B instructor trainer may be utilized to:

(a) Provide advice and direction for the cabinet through the Kentucky EMS Advisory Council on an issue relating to the development and implementation of a standard relating to the EMT-B and EMT-B instructor training processes; and

(b) Assume other responsibilities as requested by the cabinet.

(8) An EMT-B instructor trainer shall have the authority to act as a representative of the cabinet for the purposes to which they are assigned and as such shall have all rights as would normally be afforded a cabinet representative.

(9) An action recommended by an EMT-B instructor trainer shall be reviewed for approval by the cabinet.

(10) An EMT-B instructor trainer shall be eligible for travel reimbursement for an assignment made by the cabinet.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The United States Department of Transportation, National Highway Traffic Administration, 1994 National Standard Curriculum, EMT Instructor Training Program, Method of Instruction;

(b) The 1998 EMT-B Instructor Candidate Evaluation Manual (11/98);

(c) The Application for EMT-B Instructor Certification for Recertification, (10/98); and

(d) The Emergency Medical Technician Instructor Official Record of Continuing Education/Inservice (EMT/R-7/97).

(2) This material may be inspected, copied, or obtained at the Department for Public Health, Division of Adult and Child Health,

EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Emergency Medical Technician-Instructor. A person shall be certified as an EMT-instructor if he has:

- (1) Been certified as an EMT by the cabinet;
- (2) Assisted a Kentucky EMT-instructor for a minimum of one (1) complete EMT basic training course in which he:
  - (a) Participated in the conduct of each lesson;
  - (b) Conducted, under supervision of the course lead EMT-instructor, at least one (1) complete lesson during the course;
  - (c) Served as a small-group assistant to the course lead EMT-instructor during practical skill exercises;
  - (d) Conducted class demonstrations of manipulative skills;
  - (e) Performed other related duties as directed by the course lead EMT-instructor;
  - (f) Was recommended for final evaluation, in writing to the cabinet, by the lead EMT-instructor whom the candidate assisted in teaching the complete EMT basic training course; and
  - (g) Assisted throughout an EMT basic course that was completed no more than one (1) year prior to the date of the written recommendation submitted by the EMT-instructor.
- (3) Been evaluated by a panel of EMT-instructor trainers;
- (4) Received an evaluation score of no less than an absolute eighty (80) percent;
- (5) Attended a later scheduled annual training session for EMT-instructor candidates who have successfully completed the requirements outlined in subsections (1) through (4) of this section; and
- (6) Completed an application for EMT-instructor certification.

#### Section 2. Reevaluation of EMT Instructor Candidates by Panel.

- (1) If an EMT-instructor candidate fails to score at least eighty (80) percent on his initial evaluation, he shall be given another opportunity, upon application, to be reevaluated.
- (2) An EMT-instructor candidate who fails to score at least eighty (80) percent on the second attempt shall, upon application, be given another opportunity to be reevaluated if he:
  - (a) Drops out for a year, or one (1) evaluation course, if more than one (1) is held in a given year;
  - (b) Reapplies by having a current recommendation for evaluation submitted in writing by the lead EMT-instructor for whom the EMT-instructor candidate has assisted throughout an entire EMT basic course; and
  - (c) Assisted throughout an EMT basic course that was completed no more than two (2) years previous to the date of the updated written recommendation submitted by the lead EMT-instructor.
- (3) A candidate who is not successful on two (2) attempts, but reapplies after meeting the requirements of subsection (2)(a), (b), and (c) of this section shall be allowed two (2) additional attempts to successfully complete the EMT-instructor evaluation course.

#### Section 3. Certification of an EMT-instructor-trainers. A person shall not be certified as an EMT-instructor-trainer unless he has:

- (1) Complied with all requirements of Section 1 of this administrative regulation; and
- (2) Been evaluated by the Kentucky EMS Council and recommended to the cabinet for certification as an EMT-instructor-trainer.

#### Section 4. Renewal of EMT-instructor Certification. (1) If the certification of an EMT-instructor is not renewed, it shall become invalid two (2) years from the date of issue. In order to obtain renewal, the EMT-instructor shall meet all requirements of 902 KAR 13:050, Section 8:

- (2) A Kentucky (KY) EMT-instructor who was certified before the effective date of this administrative regulation shall have completed a 1995 Kentucky EMT-Instructor Roll-Out Training Program on the 1994 National Standard Curriculum (NSC) EMT Basic. A Kentucky-certified EMT-instructor who has not completed a 1995 Kentucky EMT-Instructor Roll-out Training Program on the 1994 NSC EMT basic shall not:
  - (a) Teach an EMT basic course;
  - (b) Teach an EMT continuing education class;
  - (c) Serve as an EMT-certification practical skills advisor;
  - (d) Serve as a lead instructor or assistant to the lead instructor;

- (e) Evaluate the accompanying practical skills examination for an EMT transition course as outlined in 902 KAR 13:050, Section 12; or
- (f) Be eligible for renewal of the EMT-instructor certification.
- (3) After the last scheduled Kentucky EMT-Instructor Roll-Out Training Program, a candidate accepted for evaluation shall not be eligible for EMT-instructor certification until he has:
  - (a) Successfully completed a KY EMT transition course as outlined in 902 KAR 13:050, Section 12; and
  - (b) Completed the requirements of Sections 1 and 2 of this administrative regulation. The conference referenced in Section 1(5) of this administrative regulation shall include the methods of instruction related to the 1994 NSC.
- (4) Effective January 1, 1997, future candidates eligible for evaluation shall have:
  - (a) Met the requirements in Section 1(2) of this administrative regulation by participating in an EMT basic course conducted according to the 1994 NSC; and
  - (b) Completed the requirements in subsection (3)(a) of this section.
- (5) An instructor who obtained Kentucky EMT-instructor certification and whose certification is not eligible for renewal due to the conditions outlined in subsection (2)(a) of this section, may regain certification status if:
  - (a) He repeats the requirements of Section 1 and 2 of this administrative regulation; and
  - (b) The EMT course in which he assisted was in accordance with the 1994 NSC EMT Basic.
- (6) A Kentucky EMT-instructor who is denied renewal of his certification for not meeting the requirements in subsection (2)(a) of this section, may request an administrative hearing in accordance with the guidelines specified in 902 KAR 13:090, Section 5.

#### Section 5. Instructors Certified in Other States. A person who is certified in another state as an EMT-instructor and who wishes to become certified in Kentucky as an EMT-instructor, shall:

- (1) Comply with the challenge examination procedures outlined in 902 KAR 13:050, Section 10; and
- (2) Comply with the requirements of Sections 1 and 2 of this administrative regulation.]

RICE C. LEACH, MD, Commissioner  
JOHN MORSE, Secretary  
JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 250 emergency medical technician instructors (EMT-ls).

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

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

this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation establishes uniform requirements for certification of EMT instructors and a student teaching internship and evaluation process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: EMT instructors certified in Kentucky will be better prepared to teach EMT classes because they will have completed a national standard curriculum, a student internship, and a standard evaluation to prepare them for teaching.

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

(c) If detrimental result would result, explain detrimental effect: The certification process for EMT-B instructors would be less accountable and less responsive to local needs.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: 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 in that although a new process is established to prepare and certify individuals as EMT-B instructors, the administrative regulation provides certain accommodations to individuals who had previously entered the process described in the current administrative regulations.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.

4. How does this administrative regulation affect the local gov-

ernment or any service it provides? This administrative regulation does not affect a local government or any service it provides.

#### CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

**902 KAR 13:080. Emergency medical technician-basic authorized procedures.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964[~~EO-96-862~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO-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 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish procedures which an emergency medical technician-basic (EMT-B) shall be [EMTs are] authorized to perform.

Section 1. Authorized [~~Certified~~] EMT-B Procedures. [~~(f)~~] Except for the procedures authorized in Sections 2 and 3 of this administrative regulation requiring medical direction, a Kentucky certified EMT-B shall be authorized to:

(1) Perform any of the procedures established in the core curriculum of the "United States Department of Transportation, National Highway Traffic Administration, 1994 National Standard Curriculum, Emergency Medical Technician-Basic," incorporated by reference in 902 KAR 13:050;

(2) Transport a patient with an intravenous (IV) infusion entry point maintained patent by a heparin or saline lock placement, to which no IV infusion fluid is attached;

(3) Transport a patient encountered in an interfacility setting who has a preestablished peripheral IV on the arms, hands, or feet to the nearest appropriate medical facility based on local medical protocol. The preestablished IV infusion shall contain only those solutions listed in Section 2(12)(a), (b), (c), (d) and (e) of this administrative regulation;

(4) Transport a patient encountered in a prehospital setting who has a preestablished IV infusion to the nearest appropriate medical facility based on local medical protocol. The preestablished IV infusion solution may contain any additive;

(5) During interfacility transport:

(a) Change the flow rate of a preestablished IV infusion ; or

(b) Add additional solution, if the solution meets the requirements listed in Section 2(12)(a), (b), (c), (d), and (e) of this administrative regulation.

(6) Discontinue a preestablished IV infusion by closing the flow valve; and

(7) Possess and administer medical oxygen.

Section 2. Procedures Which an EMT-B May Perform Under the Authorization of a Medical Director. An EMT-B who is employed by an employer that has a contract or other agreement with a medical director shall, if approved by the medical director, be authorized to:

(1) Utilize an automated external defibrillator (AED) in accordance with the requirements of 902 KAR 13:120;

(2) Test the blood glucose level of a person using automated testing devices pursuant to laboratory licensing requirements established by the Department of Health and Human Services, Health Care Financing Administration;

(3) Assist in the preparation of intravenous fluids for administration by a person authorized to establish intravenous access;

(4) Assist in the ventilation and care of a patient who has an endotracheal tube in place;

(5) Utilize noninvasive patient monitoring devices;

(6) Administer patient prescribed Epinephrine via use of an Epinephrine auto-injecting device;

- (7) Administer patient prescribed nitroglycerin;
- (8) Administer activated charcoal;
- (9) Administer glucose containing substances via the oral route;
- (10) Administer patient prescribed bronchodilators via the use of a metered-dose inhaler;

(11) Transport from a health care facility to his place of residence a stable patient who has a preestablished peripheral IV infusion. The IV infusion may be discontinued in accordance with the requirements of Section 1(7) of this administrative regulation;

(12) Provide interfacility transport for a patient who has a preestablished IV infusion that shall contain:

- (a) Ringers solution;
- (b) Lactated ringers;
- (c) Normal saline;
- (d) Five (5) percent dextrose in water; or
- (e) Any combination thereof without other additives.

(13)(a) Change the flow rate of a preestablished IV infusion during interfacility transport; or

(b) Add additional solution, if the solution meets the requirements listed in Section 2(12)(a), (b), (c), (d), and (e) of this administrative regulation; and

(14) Discontinue a preestablished peripheral IV infusion in accordance with the requirements of Section 1(7) of this administrative regulation.

Section 3. Pilot Programs. (1) The cabinet shall authorize an EMS educational institution, Class I ground ambulance provider, Class III ground ambulance provider, or specialized Class I ground ambulance provider to pilot test and utilize a specialized procedure that has not been previously approved in this administrative regulation, if the EMS educational institution or ambulance provider:

(a) Submits a written request to the cabinet for approval before initiating a pilot program;

(b) Provides a written description of:

- 1. How the procedure shall be implemented and monitored;
- 2. The proposed training curriculum;
- 3. A list of instructors and their qualifications;
- 4. The beginning and ending dates of the field pilot testing program;

5. How the procedure, if used by an EMT-B, shall benefit or improve the quality of patient care; and

6. The methods to be used to evaluate the training and the authorized procedure.

(2) An EMS educational institution, approved by the cabinet to conduct a pilot program shall agree, in writing:

(a) To submit periodic reports as required by the cabinet related to the progress of the pilot program; and

(b) To abide by the requirements established by the cabinet for the pilot program.

(3) An EMT-B who successfully completes an approved pilot program may perform the procedures relevant to the training received in the pilot program.

(4) The cabinet may establish pilot program limitations on:

(a) The geographic area or service location where the procedure may be performed;

(b) The performance of the procedure related to:

- 1. Specific events;
- 2. Disasters; or
- 3. Directives; or

(c) The performance of an invasive or medication administered procedure related to:

1. Physician medical director oversight; or

2. Protocols established and supervised by the medical director of the ground ambulance provider. (as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum (NSC)," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, incorporated by reference in 902 KAR 13:050, and in the accompanying texts which have been chosen by the lead instructor and approved by the implementing agency. Texts utilized shall be:

(a) Currently in publication;

(b) The most current edition available at the time the course begins. Courses initiated prior to the effective date of this administrative regulation shall utilize a text which meets the 1984 NSC standards. Pilot programs of the 1994 NSC and statewide courses initiated on or after the effective date of this administrative regulation shall utilize a text which meets the 1994 NSC standards;

(c) Maintained on file in the office of the implementing agency; and

(d) Available, upon request, for public inspection during normal office hours or during course hours.

(2) An EMT may:

(a) Transport a stable patient with an IV infusion entry point maintained patent by a heparin lock placement, to which no IV infusion fluid is attached;

(b) Transport interfacility or facility to home a stable patient who has a preestablished peripheral IV infusion; and as authorized by local medical control may perform procedures for the maintenance and, if needed, discontinuation of the preestablished peripheral IV infusion if he has completed the training requirements specified in 902 KAR 13:130;

(c) Transport a patient having a preestablished IV infusion who is encountered in a prehospital setting to the nearest appropriate medical facility based on local protocol; and

(d) Discontinue the preestablished IV infusion by closing the flow valve:

(3) An EMT shall not:

(a) Perform the initiation of intravenous (IV) fluid infusion;

(b) Remove a preestablished IV needle or catheter from a patient;

(c) Perform a cricothyrotomy;

(d) Relieve a tension pneumothorax through the use of needles;

(e) Insert an endotracheal airway, an esophageal obturator airway, or an esophageal gastric tube airway;

(f) Perform external cardiac defibrillation except by use of automatic or semiautomatic defibrillation equipment authorized according to the requirements specified in 902 KAR 13:120; or

(g) Use medical antishock trousers unless:

1. The EMT has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught; or

2. The EMT is currently certified as an emergency medical technician and has completed training on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The training and examination shall be conducted by an EMT instructor or instructor-trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, on or after the effective date of this administrative regulation, the 1994 National Standard Curriculum EMT-Basic, which is incorporated by reference in 902 KAR 13:050, and the standards and protocols of the cabinet; or

3. The EMT has completed an emergency medical technician course in another state or country which included the use of medical antishock trousers and has taken and passed an examination in the use of medical antishock trousers; and

4. The EMT uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

(4) An EMT who successfully completes a transition course and passes the accompanying practical skills examination, as outlined in 902 KAR 13:050, Section 12(11)(d), may perform the procedures requiring physician medical oversight (e.g. assistance in the administration of certain prescribed medications or automatic defibrillation) if:

(a) The EMT works with a basic life support (BLS) ambulance service that:

1. Chooses to provide the procedures and has a written contract with a physician medical director, licensed to practice in Kentucky; or

2. Has an alternate method for ambulance service physician medical oversight that has been approved by the cabinet.

(b) These procedures may also be performed by an EMT who:

1. Meets the transition course requirements; and

2. Works with a public safety organization that is affiliated with a BLS ambulance service which meets the physician medical oversight requirements:

Section 2. 1994 National Standard Curriculum (NSC) EMT-Basic

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

Pilot Program. (1) As outlined in 902 KAR 13:050, Section 1, prior to the statewide implementation of the 1994 NSC EMT-Basic, a cabinet approved implementing agency may participate in a pilot program to conduct and evaluate the 1994 NSC EMT-Basic.

(2) Each approved pilot program shall agree to abide by the requirements of the cabinet, outlined in 902 KAR 13:050, for EMT training and certification.

(3) In addition to the requirements of the cabinet, outlined in 902 KAR 13:050, an implementing agency conducting a 1994 NSC EMT-Basic Pilot Program shall be responsible for:

(a) Establishing applicant requirements;

(b) Establishing EMT student training and examination standards; and

(c) Submitting summary reports to the cabinet as requested, but minimally at the midpoint and at the completion of the 1994 NSC Pilot Program.

(4) A student successfully completing a pilot program shall be eligible to apply for the Kentucky certification examination utilizing the National Registry of EMTs written and practical examination in lieu of the Kentucky four (4) part written examination and practical examination outlined in 902 KAR 13:050, Section 3. Scoring standards for the examination shall be consistent with the policy of the National Registry of EMTs.

(5) For a candidate who has successfully completed a Kentucky 1994 NSC EMT-Basic Pilot Program, the passing score for the Kentucky written examination utilizing the National Registry of EMTs written examination shall be sixty-five (65) percent. Scoring standards and eligibility for retesting of the National Registry of EMTs written and practical examinations shall be consistent with the policy of the National Registry of EMTs.

(6) An EMT student who completes a cabinet approved 1994 NSC EMT-Basic Pilot Program and is Kentucky certified by utilization of the National Registry examination shall be subject to the standards for disciplinary actions specified in 902 KAR 13:090.

(7) A cabinet approved 1994 NSC EMT-Basic Kentucky Pilot Program shall not be initiated after the effective date of this administrative regulation.

Section 3. Other Requested Pilot Programs. (1) A cabinet approved Kentucky EMT training implementing agency or Kentucky licensed ambulance service desiring to pilot test an EMT procedure not previously authorized in this administrative regulation shall:

(a) Apply to the cabinet for approval before initiating a pilot program; and

(b) Provide a written description of how the procedure shall be implemented and monitored, and how the procedure, if used by an EMT, shall benefit patient care.

(2) An agency approved by the cabinet to conduct a pilot program shall agree, in writing, to submit periodic reports to the cabinet related to the progress of the pilot program and to abide by the requirements of the cabinet.

(3) An EMT who completes a cabinet approved pilot program may perform the procedures relevant to the training received in the pilot program in accordance with requirements established by the cabinet including limitations on:

(a) The geographic area or service location where the procedure may be performed;

(b) The performance of the procedure to specific events, disasters, or directives;

(c) The performance of the procedure under a physician medical director oversight and protocol directed authority; or

(d) Other limited or broad scope practice as approved by the cabinet.]

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals

interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 12,500 emergency medical technicians (EMTs).

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation permits EMT-Bs to perform additional life saving skills in the prehospital setting.

(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 would have a positive effect on public health because it permits EMT-Bs to perform additional life saving skills in the prehospital setting.

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

(c) If detrimental result would result, explain detrimental effect: EMT-Bs in Kentucky would be unable to perform certain life saving skills in the prehospital setting.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

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

- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None
- (10) Any additional information or comments: None
- (11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation establishes uniform authorized procedures for all EMT-Bs.

#### 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 administrative regulation will not affect a local government.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.
4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government or any service it provides.

#### CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (Amendment)

#### 902 KAR 13:090. Disciplinary actions.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS Chapter 13B, 194A.030, 194.050, 211.964[-EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 directs the Cabinet for Health Services to adopt administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish grounds and [establishes] procedures for taking disciplinary action against an applicant for certification or a certified EMT [emergency medical technician (EMT), EMT-first responder, EMT-first responder instructor, EMT-instructor, or EMT-instructor-trainer. 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. Denial, Revocation, Suspension, Probation, and Restriction of Certificates. The cabinet may deny, revoke, suspend, pro-  
bate, or restrict the certificate of a person who:

- (1) Has engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public;
- (2) Uses drugs or controlled substances to the extent it may affect  
[effect] his ability to perform the duties of an EMT, or becomes a drug dependent person or drug abuser as defined in KRS 222.011(8);
- (3) Uses alcohol to the extent that it may affect his ability to perform the duties of an EMT or becomes an alcoholic person who suffers from alcoholism as defined in KRS 222.011(3);
- (4) Has or develops a physical or mental disability or other condition that continued practice or performance of his duties may be dangerous to patients or the public;
- (5) Fails to:
  - (a) Follow the appropriate standards of care or established patient care protocols in the management of a patient;
  - (b) Administer medicine or treatment in a responsible manner in accordance with:
    1. His level of certification;
    2. The legal order [Orders] of a physician who is the medical director of the EMT; [or]
    3. Locally approved medical protocols; or
    4. The legal order of a physician who is not the medical director of the EMT if the physician:
      - a. Is physically present with the patient;
      - b. Can be identified as a licensed physician in the United States of America;

- c. Agrees to assume responsibility for the patient; and
  - d. Agrees to accompany the patient to the receiving medical facility;
- (c) [Maintain patient confidentiality;
  - (d) Meet the applicable requirements for certification or recertification pursuant to:
    1. 902 KAR 13:050 for an EMT-B; [-EMT-instructor or EMT-instructor-trainer; or]
    2. 902 KAR 13:110 for an EMT first responder or EMT first responder instructor; or
    3. [(e) Meet the requirements for an applicant for certification pursuant to 902 KAR 13:020; or
    - (f) Meet the requirements for an EMT instructor or EMT instructor-trainer pursuant to] 902 KAR 13:070 for an EMT-B instructor;
    - (6) Unlawfully breaches patient confidentiality;
    - (7) [(a)] Reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of a training or certification [an emergency medical technician] examination for the purpose of assisting another to cheat on the examination; or
    - (8) [(b)] Disseminates information for purposes of reproduction or reconstruction of a portion of a training or certification [an emergency medical technician] examination in order to assist another to cheat on the examination;
    - (9) [(7)] Cheats, or assists another to cheat, on an examination for certification[-recertification, challenge, or reentry];
    - (10) [(8)] Does not meet the qualifications, minimum requirements, special requirements, and basic competency areas outlined in the:
      - (a) "Emergency Medical Technician/Basic Functional Position Description"; or
      - (b) The "Emergency Medical Technician/First Responder Functional Position Description" [Basic Functional Position Description"; April 1993, is incorporated by reference, and may be inspected, copied, or obtained from the Office of the Commissioner for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. until 4:30 p.m., Monday through Friday];
    - (11) [(9)] Issues a check for a certificate or is certified as the result of a check being issued on an invalid account or an account which does not have sufficient funds to pay the fee for the certificate required by 902 KAR 13:030;
    - (12) [(10)] Discriminates in the provision of services on the basis of race, sex, age, religion, color, creed, or national origin;
    - (13) [(11)] Practices outside or beyond the scope of his level of certification, or represents he is qualified at a level other than his current certification;
    - (14) [(12)] Takes or possesses, without authorization, for personal use or gain, medicines, supplies, equipment, or personal items of a patient;
    - (15) [(13)] Materially alters a certificate, or uses or possesses an altered certificate;
    - (16) [(14)] Obtains or attempts to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge; or assists another to obtain a certificate by fraud, forgery, deception, misrepresentation, or subterfuge.
    - (17) [(15)] Falsifies an application for certification or recertification;
    - (18) [(16)] Falsifies a patient record;
    - (19) [(17)] Has had an EMT, paramedic [EMT-first responder, EMT-first responder instructor, EMT-instructor, EMT-instructor-trainer], or equivalent certificate denied, suspended, revoked, or restricted in another state while holding a Kentucky certificate;
    - (20) [(18)] Uses or attempts to use his certificate to obtain or attempts to obtain a [any] benefit to which he is not entitled by duress, coercion, fraud, or misrepresentation;
    - (21) [(19)] Is not at least eighteen (18) years of age at the time of application for certification;
    - (22) [(20)(a)] Has been convicted of a felony or misdemeanor described in KRS 335B.010(4); or
    - (23) [(b)] Has been convicted of another relevant crime as established in Section 2 of this administrative regulation which is [other crimes] directly related to the ability of a person to perform the duties of an EMT.

Section 2. Relevant Crimes. In determining whether a crime directly relates to the ability of a person to perform the duties of an



EMT, the cabinet shall apply the test established in KRS 335B.020(2) to the following crimes:

(1) Offenses under KRS Chapter 189 (traffic regulations punishable by fine or imprisonment or both);

(2) Offenses under KRS Chapter 189A (driving under the influence); and

(3) Offenses under:

(a) KRS Chapter 218A (controlled substances);

(b) KRS Chapter 507 (criminal homicide);

(c) KRS Chapter 508 (assault and related offenses);

(d) KRS Chapter 509 (kidnapping and related offenses);

(e) KRS Chapter 510 (sexual offenses);

(f) KRS Chapter 511 (burglary and related offenses);

(g) KRS Chapter 512 (criminal damage to property);

(h) KRS Chapter 513 (arson and related offenses);

(i) KRS Chapter 514 (theft and related offenses);

(j) KRS Chapter 515 (robbery);

(k) KRS Chapter 521 (bribery and corrupt influences);

(l) KRS Chapter 523 (perjury and related offenses);

(m) KRS Chapter 525 (riot, disorderly conduct and related offenses);

(n) KRS Chapter 527 (offenses relating to firearms and weapons);

(o) KRS Chapter 528 (gambling);

(p) KRS Chapter 529 (prostitution offenses); and

(q) KRS Chapter 506 (Inchoate offenses).

**Section 3. Presumptive Denial of Certification for Conviction of a Relevant Crime.** Convictions for the following crimes shall be grounds for presumptive denial or revocation of an EMT certification:

(1) Capital offenses;

(2) Class A, Class B, and Class C felonies;

(3) Class D felonies, if the conviction occurred within the last five (5) years;

(4) Crimes involving sexual misconduct including forcible rape;

(5) Sexual or physical abuse of:

(a) Children;

(b) The elderly; or

(c) The infirm;

(6) Child pornography;

(7) Incest involving a minor;

(8) Assault on an elderly or infirm person;

(9) Crimes in which the victim is a patient or otherwise under the care and protection of the EMT or applicant including:

(a) Abuse;

(b) Theft; or

(c) Financial exploitation;

(10) Crimes involving the use of alcohol or illegal drugs, while on duty as an EMT;

(11) Traffic offenses defined as:

(a) Three (3) or more convictions for driving under the influence (DUI) within the last five (5) years;

(b) Four (4) or more separate incidents which result in convictions for moving violations within the last two (2) years;

(c) A combination of convictions for two (2) DUI's and three (3) separate moving violations within the last three (3) years; or

(d) A DUI conviction or more than two (2) separate moving violations incurred while operating an emergency vehicle; or

(12) Four (4) or more misdemeanor convictions within the last five (5) years.

**Section 4. Restricted Certification for Conviction of a Relevant Crime.** A person convicted of a relevant crime may be eligible for a restricted EMT certificate with a particular employer or a particular type of employment if:

(1) He has not been convicted of a Class D felony within five (5) years prior to the request for certification;

(2) He has not been convicted of any other felonies;

(3) He:

(a) Has completed all the terms of his sentencing; or

(b) Is on unsupervised probation;

(4) The crime does not fall under the conditions for presumptive denial or revocation outlined in subsection (3) of this section;

(5) He has not been convicted of traffic offenses defined as:

(a) Two (2) convictions for driving under the influence (DUI) within the last five (5) years;

(b) Three (3) separate moving violations within the last two (2) years;

(c) A combination of convictions for one (1) DUI and two (2) separate moving violations within the last two (2) years; or

(d) A moving violation incurred while operating an emergency vehicle; or

(6) He has not been convicted of more than three (3) misdemeanors within the last five (5) years.

**Section 5. Probationary Certification for Conviction of a Relevant Crime.** A person convicted of a relevant crime may be eligible for a probationary EMT certificate if:

(1) The crime does not fall under the conditions for presumptive denial or revocation outlined in Section 3 of this administrative regulation;

(2) The crime does not fall under the conditions for a restricted certificate outlined in Section 4 of this administrative regulation;

(3) He has not been convicted of traffic offenses defined as:

(a) One (1) conviction for driving under the influence (DUI) within the last five (5) years;

(b) Two (2) separate moving violations within the last two (2) years;

(c) A combination of convictions for one (1) DUI and one (1) separate moving violation within the last two (2) years; or

(4) He has not been convicted of more than two (2) misdemeanor convictions within the last three (3) years.

**Section 6. Persons Certified While Incarcerated.** (1) [Restricted Certificate:] The cabinet may issue a restricted [restrict the] certificate to [of] a person who is certified or obtains certification as an EMT-B or EMT first responder while incarcerated in a prison, correctional facility, reformatory, or jail to function as an EMT-B or EMT first responder only within the physical boundaries of that facility during the period of his incarceration.

(2) If a restricted certificate is issued to a person who is incarcerated in a prison, correctional facility, reformatory, or jail, the certificate shall automatically expire upon release of the person from incarceration.

**Section 7. [3-] Cease and Desist Order.** If the cabinet has reasonable cause to believe that a person may cause harm or create an imminent danger to the public if his certificate is not denied, suspended, revoked, probated or restricted, the cabinet may issue an order directing a person to immediately cease and desist functioning as an EMT-B, EMT first responder, EMT first responder instructor, or EMT instructor[; or EMT-instructor-trainer if the cabinet has reasonable cause to believe that the person may cause harm or create an imminent danger to the public if his certificate is not denied, suspended, revoked, or restricted].

**Section 8. [4-] Notice Procedures.** (1) The cabinet shall notify a person by certified mail sent to his last known address of record of an action to deny, revoke, suspend, or restrict his certificate, and of his right to request a hearing.

(2) The written notice of the cabinet shall comply with KRS 13B.050.

(3) Failure of an EMT to notify the cabinet of a change of address or to accept or claim the certified notice at his last known address of record shall not:

(a) Delay or negate the disciplinary action;

(b) Change the effective date of the action; or

(c) Suspend, alter, or negate the time period allowed to respond to the action or request a hearing.

(4) [(2)] The written notice shall state the substance of each offense charged with sufficient detail to reasonably apprise him of the nature, time, and place of the violation.

**Section 9. [5-] Hearings.** (1) An administrative hearing [hearings] shall be conducted in accordance with 902 KAR 1:400.

(2) The hearing shall be conducted by a hearing officer appointed by the cabinet in accordance with 902 KAR 1:400.

(3) If an applicant or certificate holder does not request a hearing within twenty (20) days of the written notice of intended action, the action shall be final.

(4) If a person receives a certificate and his check for the certification fee is later returned unpaid due to an invalid account or insufficient funds, the certificate shall be automatically suspended until:

(a) The fee is paid in full by cash, certified check, or money order; or

(b) The person requests a hearing on the suspension.

Section 10. Disclosure and Publication of Disciplinary Actions. (1)

{{5}} The cabinet may disclose to the public and publish in the EMS newsletter, or similar publication:

(a) The name of a person whose certificate has been denied, suspended, revoked, or restricted and the time period involved;

(b) The administrative regulation violated; and

(c) The nature of the violation.

(2) {{6}} If a person is employed as an EMT, EMT first responder, EMT first responder instructor, EMT instructor, or EMT instructor trainer at the time a final decision is made by the cabinet to deny, suspend, revoke, or restrict a certificate, the cabinet may notify the employer of the action taken.

(3) {{7}} If a person fails to abide by a decision of the cabinet to deny, suspend, revoke, or restrict his certificate, the person shall be in violation of KRS 211.962 and may be charged with a Class A misdemeanor under KRS 211.990(5).

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Emergency Medical Technician/Basic Functional Position Description", April, 1993; and

(b) The "Emergency Medical Technician/First Responder Functional Position Description", October, 1998.

(2) This material may be inspected, copied, or obtained from the Office of the Commissioner 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: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs), EMT instructors, and EMT first responders.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits: This administrative regulation will establish, in administrative regulation, uniform policies for taking disciplinary action against the certification of an emergency medical technician.

(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 result would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation applies to all levels of emergency medical technician (EMT) certification.

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 administrative regulation will not affect a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government or any service it provides.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(Amendment)**

**902 KAR 13:110. Emergency medical technician-first responder [EMT-first responder] training, examination, and certification.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 directs the Cabinet for Health Services [Human Resources] to promulgate [adopt rules and] administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish [a new classification of emergency medical technician, the emergency medical technician-first responder (EMT-first responder), and to establish] requirements for emergency medical technician first responder (EMT-FR) and EMT-FR instructor training, examinations, and certifications.

Section 1. Training Course Requirements. (1) Except for the requirements related to the medical director specified in 902 KAR 13:025, Sections 1(2)(b) and 2(4)(a), an EMT-FR [The EMT-first responder] training course shall:

(a) Be conducted by a cabinet approved emergency medical services (EMS) educational institution that meets the requirements of 902 KAR 13:025;

(b) Not commence until the sponsoring agency has been certified by the cabinet as an EMS educational institution;

(c) Be a minimum of forty-seven and one-half (47 1/2) hours in duration;

(d) Follow the United States (U.S.) Department of Transportation, (DOT), National Highway Traffic Safety Administration, 1995 EMT First Responder National Standard Curriculum (NSC); and

(e) Include training in:

1. Acquired Immune Deficiency Syndrome (AIDS) as required by KRS 214.610;

2. Proper use of an automated external defibrillators (AEDs);

3. Proper use of oxygen therapy delivery devices including bag-valve-mask;

4. Proper use of a cervical collar and long spine board immobilization;

5. Proper use of the sphygmomanometer and stethoscope for obtaining blood pressure; and

6. Cardiopulmonary resuscitation (CPR) that meets the educational objectives of:

a. The American Heart Association;

b. The American National Red Cross; or

c. The National Safety Council.

(2) The CPR course shall:

(a) Be taught for record by a person who is:

1. An American Heart Association CPR instructor;

2. An American National Red Cross CPR instructor;

3. A National Safety Council CPR instructor;

4. An EMT-B instructor; or

5. An EMT-FR instructor; and

(b) Include instruction and testing in:

1. One (1) rescuer CPR;

2. Two (2) rescuer CPR;

3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of CPR;

4. Techniques of changing rescuers during the performance of two (2) rescuer CPR;

5. Techniques for relief of obstruction of the airway;

6. CPR for infants and small children; and

7. Barrier to mouth, barrier to nose and barrier to stoma resuscitation for adults, small children and infants.

[(1)(a) Include the curriculum of the "Emergency Medical Services: First Responder Training Course", (March 1979); U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, D.C. 20590, and the accompanying text "First Responder" (Third Edition), (1991) The Brady Company, Prentice-Hall,

Inc., Englewood Cliffs, N.J. 07632.

(b) A copy of these publications is incorporated by reference. They shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40601, and shall be available for public inspection and copying Monday through Friday from 8 a.m. until 4:30 p.m.;

(2) Be at least forty (40) hours in duration;

(3) Utilize equipment, texts, and other materials approved by the cabinet;

(4) Not begin until all equipment, texts, and other materials specified are available, in proper quantities, in proper working condition, and placed in secure storage;

(5) Share equipment between courses if it is available equally to all EMT-first responder classes;

(6) Be taught by an instructor approved by the cabinet pursuant to Section 2 of this administrative regulation;

(7) Have one (1) assistant instructor for every ten (10) students during a practice session;

(b) A certified emergency medical technician or paramedic may be used as an assistant for practice sessions;

(8) Have a class certification number assigned by the cabinet;

(9) Be limited to a maximum of thirty (30) students;

(10) Permit more than one (1) lesson absence per student if the absence is made up:

(a) With the approval of the instructor; or

(b) In a subsequent EMT-first responder course;

(11) Require each student to sign in for each lesson on attendance sheets provided by the cabinet; and

(12) Require the instructor at the end of each course, to provide the cabinet with the:

(a) "Final Course Records Form";

(b) "Answer Sheet";

(c) "Final Practical Exams";

(d) "Application for Certification";

(e) The fee prescribed by 902 KAR 13:030, Section 1(3);

(f) Two (2) "Master Student Attendance Sheets"; and

(g) "Attendance sheets" for each lesson.

(13)(a) The following forms are incorporated by reference:

1. "Final Course Records Form" (11/87);

2. "Kentucky First Responder Examination Answer Sheet" (88-89);

3. "Application for Certification" (7/90);

4. "Master Student Attendance Sheet" (11/87); and

5. "Attendance Sheet" (11/87);

(b) They may be inspected, copied or obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, 8 a.m. through 4:30 p.m., Monday through Friday.]

Section 2. EMT-First Responder Instructors. [(1)] A person shall be eligible for certification as an EMT-FR instructor [not hold himself out as an EMT-first responder instructor] if he:

(1) Submits to the cabinet;

(a) An application for EMT-FR instructor certification; and

(b) Pays the fees as required in 902 KAR 13:030;

(2) Is a Kentucky certified;

(a) EMT-FR trained in the 1995 EMT-FR NSC;

(b) EMT-B trained in the 1994 EMT-B NSC; or

(c) EMT paramedic trained in the 1994 EMT-B NSC;

(3) Meets the requirements of Section 1(1)(d) of this administrative regulation;

(4) Has completed a cabinet-approved basic instructional methodology course that consists of a minimum of sixteen (16) contact hours that shall include:

(a) Adult learning techniques;

(b) Use of audio visuals;

(c) Small group dynamics; and

(d) Evaluation techniques;

(5) Provides documentation that he has had at least two (2) years experience teaching or providing emergency medical services;

(6) Has completed instructor orientation on the 1995 EMT-FR NSC;

(7) Has completed a cabinet-approved HIV/AIDS Train the Trainer course; and

(8) Is not subject to disciplinary action pursuant to 902 KAR 13:090.

[(a) Is not an EMT-instructor certified by the cabinet; or

(b) Has not been approved by the cabinet to teach the EMT-first responder course;

(2) Upon submission of appropriate documentation to the cabinet, the following shall be eligible for approval:

(a) An individual certified by the:

1. Kentucky Law Enforcement council to teach the first responder course; and

2. Cabinet as an EMT or EMT-first responder;

(b) An individual certified by the:

1. Commission on Fire Protection Personnel Standards and Education as a fire protection instructor; and

2. Cabinet as an EMT or EMT-first responder;

(c) A physician, registered nurse, paramedic, or emergency medical technician who has:

1. Completed a basic instructional methodology course approved by the cabinet; and

2. Experience, or is active in teaching or providing emergency medical services;]

Section 3. Requirements for Applicants for Initial Kentucky EMT-FR Certification. An [Each] applicant for initial EMT-FR certification shall be eligible for certification if he:

(1) Submits to the cabinet a signed Kentucky Application for EMT first responder certification;

(2) Provides evidence of current registration as an EMT-FR by the National Registry of Emergency Medical Technicians (NREMT);

(3) Meets the Acquired Immune Deficiency Syndrome (AIDS) education requirements of KRS 214.610;

(4) Pays the fees required by 902 KAR 13:030; and

(5) Is not subject to disciplinary action pursuant to 902 KAR 13:090. [Be eighteen (18) years of age or older;

(2) Not be habitually addicted to or an abuser of alcoholic beverages, drugs, or controlled substances; and

(3) Understand and be able to read, speak, and write the English language;]

Section 4. EMT-First Responder Certification Examination. (1) The cabinet shall prescribe the format and content of the EMT-FR [a] certification examination, which shall include, as a minimum, the practical and written testing requirements of the NREMT-FR Examination Coordinators Manual.

(2) A person shall not evaluate or proctor a EMT-FR certification examination if he:

(a) Served as lead instructor or assistant instructor for the student;

(b) Supervises or is supervised by the applicant for certification;

(c) Is a family member; or

(d) Has a conflict of interest that could potentially bias the evaluator or proctor toward or against the student in the performance of his duties.

(3) An EMT-FR student who does not become Kentucky certified within two (2) years after the EMT-FR course completion date shall repeat the EMT-FR course before he may become certified.

(4) A Kentucky certified EMT-B instructor or an EMT-FR instructor who does not serve as a regular employee or instructor for the EMS educational institution or EMS testing agency conducting the examination shall serve as the representative of the NREMT during the administration of the Kentucky EMT-FR Practical Skills Examination.

(5) The EMS educational institution or EMS testing agency shall:

1. Secure skill examination evaluators who shall:

1. Be certified or licensed to perform the skills at or above the level of the student being tested; and

2. Have completed a cabinet-approved practical skills examiner training program; and

(b) Verify the eligibility of the student to test or initially retest for the Kentucky EMT-FR certification skills examination. Eligibility for subsequent testing or retesting shall be verified in conjunction with the EMS Branch, [consist of two (2) parts:

(1) Written:

(a) A passing grade of seventy-five (75) percent shall be required.

(b) If an applicant's grade average is seventy (70) percent or more, the applicant may, upon proper application, retake the written examination:

(c) If the applicant fails again, he shall be required to retake the entire EMT-first responder course before being eligible for reexamination:

(2) Practical:

(a) The applicant shall pass all parts of the final practical examination:

(b) If he fails to pass all portions of the final practical examination, he shall be permitted one (1) opportunity to retake the part which he failed to pass:

(c) If the applicant fails again to pass that particular part of the examination, he shall be required to retake the entire EMT-first responder training course before being eligible for reexamination:

(3) Examiners:

(a) Except as provided in paragraph (b) of this subsection, examiners for EMT-first responder course practical examinations shall be:

1. EMT-instructors certified by the cabinet; or

2. EMT-first responder instructors approved by the cabinet pursuant to Section 2 of this administrative regulation.

(b) An instructor who is employed by the organization for whom the EMT-first responder course is conducted shall not be used as an examiner in the practical examination of that course;]

Section 5. Expiration of Certification. (1) An EMT-FR [first responder] certificate shall expire two (2) [three (3)] years from the date of issuance.

(2) Upon expiration of his certification, an EMT-FR shall not perform any of the procedures authorized for a certified EMT-FR pursuant to Section 9 of this administrative regulation, unless he is certified to do so under other credentialing.

(3) If the certification of an EMT-FR expires, he may obtain EMT-FR certification if he:

(a) Successfully repeats the entire EMT-FR training course including the certification examinations; and

(b) Meets the requirements of Section 3 of this administrative regulation.

Section 6. Renewal of EMT-FR Certification and Continuing Education Requirements. (1) Effective July 1, 2002, an EMT-FR who was initially certified by the cabinet prior to the effective date of this administrative regulation, shall:

(a) Attain continuing education, taught by an EMT-FR instructor or a person who meets the requirements of 902 KAR 13:050, Section 4(2), prior to the expiration date of his certification that:

1. Meets or exceeds the requirements of the NREMT; and

2. Includes at least seventeen (17) contact hours, of which, two (2) shall be in AIDS education as required by KRS 214.610;

(b) Provide written evidence to the cabinet of completion of current training in CPR which meets the requirements of Section 1(1)(e)6 of this administrative regulation;

(c) Submit to the cabinet, prior to the expiration date of his certificate:

1. A signed application for EMT-FR certification renewal; and,

2. A record of his continuing education hours on a form that:

a. Has been signed by the instructor;

b. Has been signed by the EMT-FR; and

c. Contains a certification as to the truth of the information supplied.

(2) An EMT-FR, who applies for renewal as an EMT-FR, who was initially certified by the cabinet after the effective date of this administrative regulation, shall be eligible for Kentucky EMT-FR certification if he:

(a) Provides documentation that he has currently met the renewal requirements for the NREMT-FR registration;

(b) Provides documentation that he has obtained continuing education that meets the AIDS education required by KRS 214.610;

(c) Provides documentation that he has met, prior to his certification expiration date, the requirements of certification renewal, including having obtained continuing education hours as required in subsection (1) of this section;

(d) Submits to the cabinet, prior to the expiration date of his certificate:

1. A signed application for EMT-FR certification renewal; and
2. A record of his continuing education hours on a form which:
  - a. Has been signed by the instructor;
  - b. Has been signed by the EMT-FR; and
  - c. Contains a certification as to the truth of the information supplied;

(e) Provides written documentation from a CPR instructor, EMS educational institution instructor or chief administrative officer, or organization training officer verifying completion of the CPR requirements as outlined in Section 1(1)(e)6 of this administrative regulation; and

(f) Pays the fees as required in 902 KAR 13:030.

(3) An EMT-FR shall submit a completed application for recertification shall be postmarked to the cabinet no later than thirty (30) days after the expiration date of the certificate.

(4) If the application for renewal is not postmarked to the cabinet within thirty (30) days of the certification expiration date, the applicant shall not be considered for renewal.

(5) An EMT-FR who is a member of the National Guard or a military reserve unit and who is called to active duty by presidential order under sections 121 and 673b of Title 10 U.S. Code, shall, upon written request to the cabinet, be given an extension for a period up to one (1) year after the release of the EMT-FR from active duty or return to the United States, whichever occurs first.

(6) An EMT-FR who attends the entire minimum twenty (20) hour EMT-FR transition course (TC) as described in Section 8 of this administrative regulation and does not successfully pass the accompanying practical skills examination may apply the hours earned in the EMT-FR TC hour-for-hour toward the required twenty (20) continuing education hours described in subsection (1) of this section, except that the hours earned in the TC shall not:

(a) Apply toward the required two (2) hours of AIDS education required by KRS 214.610; or

(b) Apply as credit for update training to the 1995 NSC referenced in Section 1(1)(d) of this administrative regulation.

(7) An EMT-FR who attends the entire minimum twenty (20) hour EMT-FR TC and successfully passes the accompanying practical skills examination, may:

(a) Utilize the hours earned in the TC as described in accordance with the requirements of subsection (6) of this section; and

(b) Receive credit for completing the required update training to the 1995 NSC.

Section 7. Renewal of EMT-FR Instructor Certification. (1) Unless it is renewed, the certification of an EMT-FR instructor shall expire two (2) years from the date of issuance.

(2) An applicant for EMT-FR instructor renewal shall:

(a) Submit to the cabinet an application for EMT-FR instructor renewal;

(b) Complete, prior to application for EMT-FR certification renewal, a Kentucky:

1. EMT-B instructor training program on the 1994 NSC EMT-B; or

2. EMT-FR instructor training program on the 1995 NSC EMT-FR; and

(c) Provide documentation that he has obtained continuing education that meets the AIDS education required by KRS 214.610.

(3) A Kentucky-certified EMT-B instructor who has not renewed his certification, shall not:

- (a) Teach an EMT-FR course;
- (b) Teach an EMT-FR continuing education class;
- (c) Serve as a lead instructor or assistant to the lead instructor;

or

(d) Be eligible for renewal of the EMT-FR instructor certification.

(4) If the certification of an EMT-FR instructor expires, he shall meet the requirement of Section 2 of this administrative regulation before he may be eligible for certification.

Section 8. Kentucky EMT-FR Transition Course. (1) An EMT-FR currently certified in Kentucky who completed his EMT-FR training based on a version other than the 1995 EMT-FR NSC shall complete, by December 31, 2001, the 1995 EMT-FR transition course (TC) based on the first responder refresher, NSC.

(2) A Kentucky certified EMT-FR who also holds out-of-state certification shall not be required to take the Kentucky EMT-FR TC if he provides documentation that he has completed equivalent training in another state prior to December 31, 2001.

(3) An EMT-FR, currently certified in Kentucky, who completed his EMT-FR training in a Kentucky 1995 NSC EMT-FR pilot program or a 1995 NSC EMT-FR course shall not be required to complete the EMT-FR TC.

(4) An EMT-FR, currently certified in Kentucky, who completed his EMT-FR training in a Kentucky 1995 NSC EMT-FR pilot program or a 1995 NSC EMT-FR course may complete the EMT-FR TC in order to obtain continuing education hours to meet the requirements of Section 6 of this administrative regulation for EMT-FR recertification.

(5) An EMT-FR TC shall be coordinated by an agency or organization approved by the cabinet such as:

- (a) An EMS educational institution;
- (b) A licensed class I ambulance service; or
- (c) An acute care facility.

(6) An agency or organization sponsoring a 1995 NSC EMT-FR TC shall:

(a) File with the cabinet, a written notice of intent to sponsor an EMT-FR TC at least two (2) weeks prior to the planned starting date of the course;

(b) Assume all responsibilities for conducting the EMT-FR TC.

(c) Ensure that the course is at least twenty (20) hours in duration. This shall not include time for the course practical examination;

(d) Utilize texts that shall:

1. Meet the requirements of the 1995 NSC;
2. Be currently in publication;
3. Be the most current edition available at the time the course begins;

4. Be maintained on file in the office of the sponsoring agency; and

5. Be available upon request during normal office hours or during course hours.

(e) Have available supplies and equipment, when needed, during course lessons, skills practice sessions, and examinations.

(f) Not permit a student to be on call while classes are in session;

(g) Not permit a student to take the course practical skills examination if the student has not, prior to the scheduled examination, completed the eleven (11) psychomotor skills and objectives included in the EMT-FR TC; and

(h) Provide a designated lead instructor for lectures who:

1. Is an EMT first responder instructor certified by the cabinet; and

2. Has completed a Kentucky EMT-FR instructor orientation training program on the 1995 NSC.

(7) If there are more than ten (10) students enrolled in an EMT-FR TC, there shall be a minimum ratio of one (1) assistant instructor for each additional ten (10) enrolled students during skill practice sessions.

(8) An assistant instructor shall be available to assist as an evaluator for the course practical examination.

(9) An assistant instructor shall be Kentucky certified or licensed as:

- (a) An EMT-B or EMT-FR instructor;
- (b) A physician licensed by the Kentucky Board of Medical Licensure (KBML);

(c) A Kentucky certified paramedic who:

1. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support; or

2. Is a level 1 fire service instructor;

(d) A Kentucky licensed registered nurse who:

1. Has completed a EMT-FR TC; and

2. Is a certified emergency nurse; or

3. Has evidence of three (3) consecutive years experience in an acute medical facility emergency department who:

a. Holds current instructor credentials in either the American Heart Association Advanced Cardiac Life Support or Pediatric Advanced Life Support; or

b. Is a level 1 fire service instructor; or

(e) A Kentucky certified EMT-B or EMT-FR who:

1. Holds current instructor credentials as:

a. An American Heart Association instructor;

b. An American National Red Cross instructor; or

c. A National Safety Council instructor; and

2. Holds current certification by:

a. The Commission on Fire Protection Personnel Standards and Education as a level 1 or higher fire protection instructor; or

b. The Kentucky Law Enforcement Council as an instructor; or

3. Has completed a cabinet-approved basic instructional methodology course that consists of a minimum of sixteen (16) contact hours to include:

a. Adult learning techniques;

b. Use of audio visuals;

c. Small group dynamics; and

d. Evaluation techniques.

(10) The sponsoring agency or organization shall:

(a) Submit to the cabinet an application for approval to conduct an EMT-FR TC;

(b) Submit to the cabinet the original copy of the:

1. Results of the course skill station examination; and

2. Master grade sheet;

(c) Maintain for a minimum five (5) years or until December 31, 2006, whichever comes first, the original copy of the:

1. Lesson attendance;

2. Required remediation;

3. Validation that a student has demonstrated competency in the eleven (11) psychomotor skill objectives which are required in order to take the accompanying course practical skills examination; and

4. Master attendance sheet;

(d) Provide a certificate of completion which specifies:

1. The hours earned toward certification renewal; and

2. An indication whether the student was successful in completing the EMT-FR TC by passing the accompanying skill examination;

(e) Assume that the accompanying course skill examination shall be administered with at least one (1) evaluator per station.

(11) An EMT-FR TC student shall pass two (2) skill stations to include:

(a) Patient assessment; and

(b) Cardiac management.

(12) On the date of the examination, an EMT-FR TC student shall, as part of the patient assessment skill station:

(a) Be tested on a trauma patient condition; and

(b) Randomly choose the scenario which shall be tested.

(13) On the date of the examination, an EMT-FR TC student shall, as part of the cardiac management skill station:

(a) Be tested on a patient with a medical condition; and

(b) Randomly choose the scenario which shall be tested.

(14) At the completion of the skills examination, an EMT-FR TC student shall be informed of his pass or fail status.

(15) If an EMT-FR TC student fails to pass the required stations, he shall be permitted one (1) opportunity to retest the same station or stations which he failed, except that on the date of the retest, he shall randomly choose the scenario for the station he is testing.

(16) The retest may be administered by the same sponsoring agency or organization, that sponsored the EMT-FR TC in which the EMT-FR was enrolled, except that the evaluator shall not be the same evaluator who evaluated the EMT-FR during his first examination.

(17) If an EMT-FR again fails to pass the required skill station examination, he shall be required to retake the entire EMT-FR TC before he may be eligible for reexamination.

(18) Until December 31, 2001, an EMT-FR may be allowed a maximum of two (2) attempts, with a maximum of one (1) retest on each attempt, to pass the accompanying practical skills examination.

(19) An EMT-FR who has not been successful in passing the skill examination retest on the second attempt by December 31, 2001, shall not be eligible for Kentucky EMT-FR certification unless he retakes and successfully completes the entire EMT-FR course.

[In-service Training or Continuing Education Requirements. (1) Prior to the renewal of an EMT-first responder certificate, an EMT-first responder shall complete the training or continuing education requirements of this section.

(2) During his certification period, he shall:

(a) Complete:

1. Twelve (12) hours of in-service training, or continuing education; or

2. A combination thereof;

(b) Be certified in cardiopulmonary resuscitation (CPR) as required by the:

1. American Heart Association; or

2. American National Red Cross; and

(c) Submit evidence of the training and certification required by this subsection to the cabinet not less than thirty (30) days prior to the expiration of his EMT-first responder certificate.

(3) An applicant for recertification shall receive credit for completion of in-service training or continuing education on a subject:

(a) Covered by the U.S. Department of Transportation EMT-First Responder curriculum; or

(b) For which instruction is authorized by the cabinet.

(4) Each subject or training course claimed shall be countersigned by the instructor of the subject or course.

(5) Training received as a requirement for continuing education in medicine, nursing, paramedic, or as an EMT in a coal mining situation required by KRS 351.127 shall be eligible for in-service training or continuing education credit if it meets the criteria of subsection (2) of this section.

(6)(a) The EMT-first responder shall submit to the cabinet a "First Responder Official Record of Continuing Education or In-service" (9-30-91) record of his in-service training or continuing education on a form:

(b) The form shall be:

1. Signed by the EMT-first responder;

2. Contain a certification as to the truth of the information supplied; and

3. A statement that misrepresentation of the information may be cause for suspension or revocation of a certificate.

(c) "First Responder Official Record of Continuing Education/In-service" (9-30-91), is incorporated by reference and may be obtained from the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday.

(7) The following shall not be eligible for credit as in-service training or continuing education:

(a) Ambulance runs, rescues, firefighting, emergency responses, or similar actual emergency activities; and

(b) Instruction in material, techniques or procedures not authorized to be performed by EMT-first responders.

Section 7. Instructor Requirements for EMT-first Responder In-service Training and Continuing Education. The following persons shall be considered qualified to conduct in-service training and continuing education courses for EMT-first responders:

(a) A physician licensed pursuant to KRS Chapter 311;

(b) A registered nurse licensed pursuant to KRS Chapter 314;

(c) A paramedic certified by the State Board of Medical Licensure;

(d) An emergency medical technician instructor or instructor trainer certified by the Cabinet for Human Resources; or

(e) An instructor who:

1. Is certified by a state or federal agency to teach a subject; and

2. Teaches a course which qualifies for EMT-first responder in-service training or continuing education.

(2) As applicable, a physician, registered nurse, paramedic or emergency medical technician instructor currently licensed or certified by another state of the United States of America shall be considered as meeting the requirements of subsection (1)(a) through (e) of this section.

Section 8. Cardiopulmonary Resuscitation Requirement. (1) During the second year of the certification period, the EMT-first responder shall obtain or renew certification in cardiopulmonary resuscitation and



related techniques as follows:

- (a) The course shall be conducted:
  1. By, or under the authority of, the American Heart Association or the American National Red Cross; or
  2. Under its authority, by an instructor certified by the American Heart Association or the American National Red Cross;
- (b) The course shall be:
  1. Taught for record; and
  2. Certified by the instructor to the American Heart Association or the American National Red Cross as meeting all applicable standards of the organization;
- (c) The course shall provide instruction and testing in:
  1. One (1) rescuer cardiopulmonary resuscitation;
  2. Two (2) rescuer cardiopulmonary resuscitation;
  3. Techniques of changing from one (1) rescuer to two (2) rescuers during the performance of cardiopulmonary resuscitation;
  4. Techniques of changing rescuers during the performance of two (2) rescuer cardiopulmonary resuscitation;
  5. Techniques for relief of obstruction of the airway;
  6. Cardiopulmonary resuscitation of infants and small children; and
  7. Mouth to mouth or mouth to nose resuscitation for adults, small children, and infants;
- (d) The course shall provide for individual skill testing of all adult and infant related skills in subsection (1) of this section.
- (2) The applicant for renewal of certification shall forward to the cabinet a copy of both sides of the CPR card issued to him indicating successful completion of the CPR course as required in Section 6(1) of this administrative regulation.]

Section 9. Authorized Procedures. A Kentucky certified EMT-FR shall be authorized to:

- (1) [first responders may] Perform any of the procedures established [set forth] in the U.S. DOT 1995 EMT-FR NSC [:
- (a) U.S. Department of Transportation] curriculum;
- (2) Possess and administer medical oxygen;
- (3) Utilize an automated external defibrillator (AED) in accordance with the requirements pursuant to 902 KAR 13:120 for an EMT-FR;
- (4) Apply a cervical collar and perform long spine board immobilization; and
- (5) Utilize a sphygmomanometer and stethoscope for obtaining blood pressure.

Section 10. Reciprocity. A person shall be eligible for direct reciprocity for Kentucky certification as an EMT-FR if he meets the requirements of Section 2 of this administrative regulation.

Section 11. Exemptions from EMT-FR Administrative Regulations. The Kentucky certification requirements for an EMT-FR shall not apply to:

- (1) United States military personnel or employees of the United States government while engaged in the performance of their official duties under federal laws; or
- (2) An EMT-FR who is certified in another state who comes into Kentucky:
  - (a) To transport a patient into or through the state; or
  - (b) For the purpose of returning a patient to:
    1. His out-of-state residence; or
    2. To a medical facility in his out-of-state residence.

Section 12. Conversion of EMT Certification to EMT-FR Certification. (1) If a Kentucky or out-of-state currently certified EMT-B requests to convert his certification status to EMT-FR, he shall:

- (a) Submit a written request to the cabinet to have his EMT-B certification converted to EMT-FR;
- (b) Have successfully completed an EMT-B TC or EMT-FR TC; and
- (c) Have successfully completed, within the past two (2) years, the continuing education requirements listed in Section 6(1)(a) of this administrative regulation.
- (2) If an EMT-B converts his certification to an EMT-FR, he shall not be allowed to convert back to EMT-B status, unless he meets

the EMT-B certification requirements of 902 KAR 13:050, Section 1.

Section 13. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The United States Department of Transportation, National Highway Traffic Safety Administration, 1995 First Responder National Standard Curriculum;
- (b) The United States Department of Transportation, National Highway Traffic Safety Administration, 1995 First Responder National Standard Curriculum Refresher Course;
- (c) The Kentucky EMT First Responder Curriculum Supplemental, (8/98);
- (d) The "Application for Emergency Medical Technician-First Responder Certification" form (EMS Branch-FR-101), revised (02/98);
- (e) First Responder Official Record of Continuing Education/Inservice form (FR-102) (old curriculum), revised 09/96;
- (f) First Responder Official Record of Continuing Education/Inservice form (FR-102A) revised (new curriculum), 11/98;
- (g) (FR-103) FR HIV/AIDS Affidavit, (06/98);
- (h) (FR-104) FR Implementing Agency Agreement, revised 06/98;
- (i) (FR-105) The EMT First Responder Course Syllabus, (6/98);
- (j) FR-107 FR Final Course Records Form, revised 03/98;
- (k) FR-108 FR Course Master Grade Sheet, revised 04/98;
- (l) FR-110 FR Certification Renewal Application, revised 02/98;
- (m) FR-111 FR Transition Course Guideline, revised 04/98;
- (n) FR-112 FR Transition Course Syllabus, revised 04/98;
- (o) FR-113 FR TC Participant Competency Record, revised 04/98;
- (p) FR-114, FR Transition Course Application, revised 04/98;
- (q) FR-115 FR Transition Course Approved Document, revised 05/98;
- (r) FR-116 FR Transition Course Supplies and Equipment, revised 05/98;
- (s) FR-117 FR Transition Course Materials Check List, revised 04/98;
- (t) FR-118 FR Transition Course Agency Application, revised 05/98;
- (u) FR-119 FR Implementing Agency Agreement, Renewal, revised 06/98;
- (v) FR-120 FR Certification Application Return Form, revised 05/98;
- (w) FR-121 FR Challenge Grade Form, revised 05/98;
- (x) FR-122 FR Challenge Attendance Sign-in Sheet, revised 06/98;
- (y) FR-123 FR Challenge Request Documentation, revised 06/98;
- (z) FR-124 FR Challenge Certification Application, revised 02/98;
- (aa) Fr-125 Transition Course Master Grade Sheet.
- (2) This material may be inspected, copied or obtained at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m. ["Emergency Medical Services: First Responder Training Course" (March 1979); and
- (b) Accompanying text entitled "First Responder," (Third Edition); (1991) The Brady Company, Prentice-Hall, Inc.]

RICE C. LEACH, MD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A tran-

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

#### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 2,000 EMT first responders.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

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

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation establishes minimum requirements for training, examination, and certification of EMT first responders that are consistent with national standards and the National Standard Curriculum.

(8) Assessment of expected benefits: This administrative regulation will establish new EMT first responder training, examination, and certification requirements to meet the training and testing requirements of the revised 1995 National Standard Curriculum, allow EMT first responders to perform additional prehospital skills, require EMT first responders to obtain registration from the National Registry of Emergency Medical Technician so that the skill level of EMT first responders in Kentucky will be comparable to the skill level of EMT first responders in other states, establish EMT first responder training in approved emergency medical institutions, and provide certification for EMT first responder instructors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health in Kentucky because EMT first responders will be required to obtain training based on the revised 1995 National Standard Curriculum and permit EMT first responders to provide additional prehospital medical care.

(b) State whether a detrimental effect on environmental and

public health would result if not implemented: No

(c) If detrimental result would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this administrative regulation applies only to the EMT first responder and EMT first responder Instructor certification of emergency medical technician (EMT).

#### 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, if a local government pays for training and recertification of emergency medical technician-first responders.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect the part or division of a local government that provides pre-hospital emergency medical services.

3. State the aspect or service of local government to which this administrative regulation relates. Prehospital emergency medical services.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation may affect a local government if the local government pays for training and recertification of emergency medical technician-first responders.

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

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

RELATES TO: KRS 205.010, 205.200(2), (3), 205.2003, 205.2005, 205.703, 45 CFR 205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, 8 USC 1611-1645, 42 USC 601 et seq., [602:] "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance[PL-104-208]

STATUTORY AUTHORITY: KRS 194B.050 [194.050(1)], 205.010, 205.200(2), (3), 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children:] The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program, [of Aid to Families with Dependent Children, now named] the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive money grants [from Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program:] be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, cooperation in child support enforcement activities, strikers,

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program.

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

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

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

(3) "Child" means an individual:

- 1. Age fifteen (15) or under;
- 2. Age sixteen (16) or seventeen (17) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school;
- 3. Age eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study:

- a. Before reaching age nineteen (19); or
- b. During the month of the 19th birthday; or
- 4. Under age eighteen (18) and a high school graduate.

(4) "Domestic violence" means "battered or subjected to extreme cruelty" as defined in subsection (1) of this section.

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

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

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

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

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

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

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

(9) "Prior labor market attachment (PLMA)" means the parent has earned not less than \$1,000 ~~(fifty (50) dollars)~~ during the twelve (12) months prior to each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for K-TAP benefits based on the deprivation of unemployment.

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

- (a) Lawfully admitted for permanent residence under 8 USC 1101 et seq.;
- (b) Granted asylum under 8 USC 1158;
- (c) A refugee who is admitted to the United States under 8 USC 1157;

(d) Paroled into the United States under 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld under:

- 1. 8 USC 1253(h), as in effect prior to April 1, 1997; or
- 2. 8 USC 1231(b)(3);

(f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522; ~~[Lawfully residing in any state and is:~~

~~1. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;~~

~~2. On active duty other than active duty for training in the Armed Forces of the United States; or~~

~~3. The spouse or unmarried dependent child of an individual described in paragraph (g) 1 or 2 of this subsection;]~~

(h) Battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or

(i) An alien, a child of an alien or a child who is an alien who has been battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent of the alien without the active participation of the alien in the battery or cruelty; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty.

(j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

2. There is a substantial connection between the battery or cruelty and the need for the benefit; and

3. The alien has been approved or has a petition pending for:

a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);

b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or

c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(11) "Qualifying parent" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP benefits based on the deprivation of unemployment.

(12) "Second chance home" means an entity that provides a minor teenage parent a supportive and supervised living arrangement in which a minor teenage parent is required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(13) "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(14) "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(15) "Unemployed parent" (UP) case means K-TAP benefits paid to a family when both parents are in the home and at least one (1) parent is unemployed.

(16) "Work" means participation in the following:

~~(a) [Except for two (2) parent cases, for all families work means at least twenty (20) hours or more per week of:~~

~~1.] Unsubsidized employment;~~

~~(b) [2.] Subsidized employment;~~

~~(c) [3.] Work experience training;~~

~~(d) [4.] Community services; or~~

~~(e) [5.] Participation in] Work programs established by the cabinet.~~

~~[(b) For two (2) parent cases work means at least thirty-five (35) hours or more per week of:~~

~~1. Unsubsidized employment;~~

~~2. Subsidized employment;~~

~~3. Work experience training;~~

~~4. Community services; or~~

~~5. Participation in work programs established by the cabinet.]~~

Section 2. Age and School Attendance. (1) The definition of a

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

"child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or  
(b) A minor teenage parent pursuant to Section 18(1) of this administrative regulation.

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

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

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

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

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

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

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

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

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

(2) Citizenship.

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

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

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

1. An alien who is admitted to the United States as a refugee under 8 USC 1157.

2. An alien who is granted asylum under 8 USC 1158.

3. An alien whose deportation is being withheld pursuant to:

- a. [under] 8 USC 1253(h), as in effect prior to April 1, 1997; or
- b. 8 USC 1231(b);

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran as defined in 38 USC 101, 107, 1101, or 1301 with a discharge characterized as an honorable discharge and not on account of alienage;

b. On active duty other than active duty for training in the Armed Forces of the United States and who fulfills the minimum active duty service requirements pursuant to 38 USC 5303A(d); or

c. The spouse or unremarried surviving spouse if the marriage fulfills the requirements in 38 USC 1304, or unmarried dependent child of an individual described in clause a or b of this subparagraph;

5. An alien who is a Cuban and Haitian entrant pursuant to 8 USC 1522; or

6. An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(d) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP, a child shall be in need and shall be deprived of parental support or care as speci-

fied in Section 1(5) ~~[(4)]~~ of this administrative regulation.

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

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

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

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

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

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

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

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

(i) The parent voluntarily leaves; or

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

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

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

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

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

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

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

(vi) Both parents are absent from the home;

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

6. Birth out-of-wedlock.

(b) Involuntary absence includes:

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

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

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

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

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

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

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

1. Present at the time of application; and

2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

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

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

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

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

(a) [a:] Field staff if the following criteria are met:

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

a. Is receiving SSI; or

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

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

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

(i) The Social Security Administration; or

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

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

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

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

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

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

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

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

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

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

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

(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;
2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and
3. Whether the disability, illness or impairment is likely to last thirty (30) days.

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

(a) The claimant's:

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

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

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

(a) Available printed materials that provide information regarding available employment opportunities shall be researched;

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

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

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

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 921 [904] KAR 2:055.

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

(2) The determination of the qualifying parent [PWE] shall include the following:

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

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

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

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

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

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

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

1. Was under the 100 hour standard in the prior two (2) months, from the month of application for K-TAP; and

2. Is expected to be under the 100 hour standard in the following month of application for K-TAP.

(c) The 100 hour requirement for unemployment in paragraphs (a) and (b) of this subsection shall apply to K-TAP applicants.

(4) PLMA shall be established if the parent:

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

1. Gross income from self-employment and farming qualify as earned income in determining PLMA; and

2. The self-employed individual does not have to realize a profit to meet this requirement.

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

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

(5) In determining whether or not criteria in subsection (4) of this section is met, two (2) semesters of [the following shall be taken into consideration:

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

(b) full-time school attendance, as defined by the school or institution, may be substituted for \$500 of the \$1000 earnings. two (2) of the six (6) calendar quarters. Qualifying activities shall be:

1. An elementary;

2. Secondary; or

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

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

(6) Restrictions. Unemployment shall not exist if the qualifying

parent [PWE]:

- (a) Is on strike;
- (b) Is temporarily unemployed:
  1. Due to weather conditions or lack of work;
  2. If there is a job to return to; and
  3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;
- (c) Is unavailable for full-time employment;
- (d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;
- (e) Has not met the criteria of unemployment for at least thirty (30) days;
- (f) Is not:
  1. Registered for work pursuant to 904 KAR 2:370, Section 4(3);

or

- 2. Subject to Kentucky Works, as specified in 904 KAR 2:370; or
- (g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to UP eligibility or during the course of receipt of UP benefits. Good cause exists if criteria specified in 904 KAR 2:370, Section 6(1) [2:016; Section 4(4)(a)1, 2, 3, or 4] are met.

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

- (1) A blood relative, including:
  - (a) Father;
  - (b) Mother;
  - (c) Grandfather;
  - (d) Grandmother;
  - (e) Brother;
  - (f) Sister;
  - (g) Uncle;
  - (h) Aunt;
  - (i) Nephew;
  - (j) Niece;
  - (k) First cousin; and
  - (l) First cousin once removed;
- (2) A relative of the half-blood;
- (3) Preceding generations denoted by prefixes of:
  - (a) Grand;
  - (b) Great;
  - (c) Great-great; or
  - (d) Great-great-great;
- (4) A stepfather, stepmother, stepbrother, stepsister;
- (5) Any person listed in subsections (1) through (4) of this section if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.
- (6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.
- (7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.
  - (a) For K-TAP eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.
  - (b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.
  - (8) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to:
    - (a) Medical care;
    - (b) Attendance at school including boarding school;
    - (c) College or vocational school;
    - (d) Emergency foster care, as verified by the cabinet [Department for Social Services]; or
    - (e) If it is intended that the child will return to the home and the

parent or specified relative maintains parental control of the child, short visits with friends or relatives.

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

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

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

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

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

(2) Rebuttal of administrative paternity may occur if:

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

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

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

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



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

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

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

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

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

Section 16. Cooperation in Child Support Enforcement Activities. (1) The Department for Community-Based Services ~~(Social Insurance)~~ shall attempt to secure parental support, and if necessary establish paternity, for children receiving K-TAP based on the following voluntary absence deprivation factors:

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

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

- (a) Identifying the noncustodial parent or obligor;
- (b) Providing information to assist in the location of the noncustodial parent or obligor;
- (c) Establishing paternity; and
- (d) Forwarding child support payments received to the agency.

(3) The Cabinet for Families and Children shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

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

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and
2. Discussion has not gone on for more than three (3) months; and
3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

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

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

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;
2. Court documents or other records indicating legal proceedings

for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the non-custodial parent or obligor, or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than three (3) months; or

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of K-TAP; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. Good cause does not exist.

(c) Advise the applicant or recipient in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 904 KAR 2:016; and

(b) The agency shall attempt to obtain a protective payee to administer the K-TAP payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely;

(b) Remove the protective payee from the case; and

(c) Not authorize back payments for the period of time for which the individual did not cooperate.

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

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

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

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

Section 18. Minor Teenage Parents. (1) A minor teenage parent shall participate in educational activities directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the minor teenage parent:

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

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

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

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

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

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

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

(a) The minor teenage parent does not have:

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

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

(b) The cabinet determines:

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

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

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

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

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

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

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

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

(8) Even if exemption criteria is met and the cabinet determines

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

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

(2) A month or months of assistance received by an otherwise eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:

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

(b) During a month or months the benefit group is not issued a K-TAP check in accordance with 921 [904] KAR 2:050.

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

(a) Is battered or subjected to extreme cruelty;

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

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

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

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

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

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

(b) The twenty-four (24) month limitation shall not be applied until the individual has been penalized for failure to participate in Kentucky Works, pursuant to 904 KAR 2:370, Section 7, for a period of six (6) cumulative months.

(7) Time limitations shall apply to a sanctioned or penalized individual as defined in 904 KAR 2:016, Section 1(22).

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

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

(a) Under a program funded under:

1. 42 USC 601 et seq.;

2. 42 USC 1396; or

3. 7 USC 2011 et seq.; or

(b) For benefits received under supplemental security income.

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

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

(a) An individual fleeing to avoid prosecution, or custody or con-

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

finement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, which is a felony; or

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

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

(3) The sixty (60) month lifetime benefit limitation in Section 19 of this administrative regulation shall apply to a benefit group containing an adult who is ineligible for K-TAP as a result of subsection (1) of this section.

Section 22. Denial of Assistance for Drug Felons. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance as defined in 21 USC 802(6), shall not be eligible for K-TAP benefits, except as provided by KRS 205.2005.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 8/97 [2/97]";

(f) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98 [4/97]";

(g) CS-333, "Facts About the Child Support Enforcement Program, edition 4/99 [5/97]"; and

(h) CS-333.1, "Facts About the Right to Claim Good Cause, edition 4/99 [5/97]".

(2) This material [incorporated by reference] may be inspected, [and] copied, or obtained at the Department for Community-Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of September 1998, approximately 47,410 families in Kentucky (monthly average) receive K-TAP, which includes 33,408 adults. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of living and employment in the geographical 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to participate in work activities, will have no additional compliance, reporting or paperwork requirements due to the amendments to this administrative regulation. K-TAP recipients in 20 hour per week work activities will be increasing minimum participation by an additional 5 hours per week, an additional 10 hours per week for FY 2000). This increase will create minimum impact to the recipient. We are clarifying that time limitations apply to the family of adults who are not eligible for K-TAP because they are considered a fugitive felon in Section 21 or drug felon in Section 22. Pursuant to KRS 205.2005, created as a result of HB 864 passed in the 1998 General Assembly, we will allow a public assistance recipient, who would otherwise be ineligible due to a conviction of a drug felony, to remain eligible if the recipient has been assessed as chemically dependent and is participating in or has successfully completed a chemical dependency treatment

program or is pregnant. A case will not be discontinued as a result of not working within 24 months unless the adult has refused to participate in Kentucky Works for at least 6 months.

2. Second and subsequent years: same

(3) Effects on the promulgating administrative body:

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

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: Adult K-TAP recipients must participate in work activities. Adults participating in Kentucky Works must participate for a minimum of 25 hours per week instead of 20 hours per week pursuant to 904 KAR 2:370 in order to meet federally mandated participation rates. To comply with 904 KAR 2:370 we are removing the 20 hour restriction from the definition of "work". We project minimal additional costs to the agency for recipients in 20 hour per week work activities to meet this 5 hour per week increase in participation, 10 hour per week increase for FY 2000). This minimal cost is for sending notices to recipients informing them of the increase of the per week minimum participation in Kentucky Works. Any additional cost for notices is budgeted for both years of the biennium. However, if this increase in minimum participation in work activities is not implemented, participation rates will not be met. A penalty resulting in a minimum of a 5 percent decrease in the TANF block grant (increasing by an additional 2 percent each year up to a maximum loss of 21 percent) would occur requiring state funds be utilized to replace the percentage loss due to the penalty. Total impact for 5 percent penalty is \$18.0 million - maximum of 21 percent penalty is \$76.0 million. A possible penalty for not meeting this increase in hours is not budgeted. Change the "prior labor market attachment" to having wages of a total of \$1,000 in the previous 12 months will have no fiscal impact to the agency. However, determining prior labor market attachment for the unemployed parent will simplify eligibility for the agency and applicant. Removing the 100 hour limitation for working for unemployed parent program recipients will comply with the minimum number of hours mandated to work as contained in 904 KAR 2:370 which is greater than 100 hours per month. We anticipate minimal impact to the agency, increasing caseloads by approximately 2 to 3 cases per month statewide. Changes to eligibility for aliens will conform with PL 105-33 which will be minimal impact to the agency. We removed the exception allowed in Section 17 for UP cases who refuse to apply for unemployment benefits so requirements regarding the potential entitlement to other program will be the same as basic K-TAP recipients. This change is no impact to the agency. Removing the 7 day timeframe for eligibility for K-TAP due to forced separation will allow victims of domestic violence to become potentially eligible for assistance sooner which will be minimal impact to the agency.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in Kentucky.

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

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

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

2. State compliance standards. KRS 205.2003; 205.2005.

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

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

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

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

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

RELATES TO: KRS 205.200(2), 205.210(1), 205.211, 205.2001, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 25 USC 1408, 42 USC 602, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

STATUTORY AUTHORITY: KRS 194B.050 [194-050(1)], 205.200(2), 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

for Families and Children is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for ~~[the Aid to Families with Dependent Children Program, now named]~~ the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 USC 601 et seq. This administrative regulation sets forth the standards of the need for and the amount of a Kentucky Transitional Assistance Program payment ~~[including Relocation Assistance Program and Family Alternatives Diversion]~~.

Section 1. Definitions. (1) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 10.

(a) The benefit group shall include:

1. The dependent child;

2. The child's parent living in the home with the needy child who is:

a. Eligible for K-TAP; or

b. Ineligible for K-TAP due to benefit time limitations pursuant to 904 KAR 2:006, Section 19; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the K-TAP Standard of Need.

(3) "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing K-TAP payment. This shall include:

(a) Beginning or ending employment;

(b) Change in employers or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangements or type of self-employment activities.

(5) "Claimant" means the individual responsible for an overpayment.

(6) "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(7) "Deduction" means an amount subtracted from gross income to determine countable income.

(8) "Excluded income" means income that is received but not counted in the gross income test.

(9) ~~["Family Alternatives Diversion (FAD) Program" means the Kentucky Transitional Assistance Program benefit paid to a FAD-eligible family to meet a short-term need.~~

~~(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.~~

(10) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in an adult basic education program, a general educational development program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school or vocational school to fulfill their definition of full time.

(11) "Gross income limitation standard" means 185 percent of the assistance standard, as set forth in Section 8 of this administrative regulation.

(12) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(13) "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 pursuant [due] to 904 KAR 2:006, Section 1.

~~[(a) Death, continued voluntary or involuntary absence of a parent;~~

~~(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or~~

~~(c) Unemployment of at least one (1) parent when both parents are in the home.]~~

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

(15) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(16) "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 904 KAR 2:006, Section 1. EXCEPTION: For the purpose of deeming income, a minor parent is a parent under the age of eighteen (18).

(17) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(18) "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(19) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement which causes a pro rata reduction in benefits of the benefit group. If otherwise eligible; a penalized individual remains a member of the benefit group.

(20) "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(21) "Recoupment" means recovery of overpayments of assistance payments.

~~[(23) "Relocation Assistance Program (RAP)" means the K-TAP benefit for a RAP-eligible K-TAP recipient to meet moving-related expenses when a specific job opportunity exists for the K-TAP recipient requiring the recipient to relocate in order to access the employment.]~~

(22) "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(23) "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(24) "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and disabled;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(25) "Unavailable" means that the income is not accessible to the K-TAP benefit group for use toward basic food, clothing, shelter, and utilities.

(26) "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions,

union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

- (a) Available to the benefit group; and
- (b) Owned in whole or in part by:
  - 1. An applicant or recipient;
  - 2. A sanctioned or penalized individual; or
  - 3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.
- (2) The amount that can be reserved by each benefit group shall not be in excess of \$2,000 equity value excluding those items specifically listed in subsection (3) of this section:
- (3) Excluded resources. The following resources shall be excluded from consideration:
  - (a) One (1) owner-occupied home;
  - (b) One (1) motor vehicle;
  - (c) Basic household items essential for day-to-day living, including:
    - 1. Furniture;
    - 2. Appliances; and
    - 3. Clothing.
  - (d) Gift or inheritance not legally available until a later date;
  - (e) Nonessential item with a value of less than fifty (50) dollars;
  - (f) All resources of a recipient of SSI or the state supplementation program living in the home;
  - (g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;
  - (h) Crops and animals raised for home consumption.
  - (i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:
    - 1. The benefit group shall agree to repay K-TAP benefits received beginning with the first month of the exemption.
    - 2. Any amount of K-TAP paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.
    - 3. The amount of the repayment shall not exceed the net proceeds of the sale.
    - 4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;
  - (j) Children's toys and bicycles;
  - (k) Household pets;
  - (l) Resources of a child excluded from the K-TAP grant;
  - (m) Resources of an individual not receiving assistance but living in the home including:
    - 1. The stepparent;
    - 2. Parent or legal guardian of a minor parent;
    - 3. The spouse of a nonresponsible specified relative; or
    - 4. The spouse of a minor dependent child;
  - (n) Amount of the K-TAP grant;
  - (o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.
  - (p) Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
  - (q) Excluded income, as specified in Section 4 of this administrative regulation;
  - (r) Principal and accrued interest of an irrevocable trust during periods of unavailability;
  - (s) One (1) burial space per K-TAP family member;
  - (t) \$1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;
  - (u) Principal of a verified loan;
  - (v) Up to \$12,000 to Aleutians and \$20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
  - (w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;
  - (x) Earned income tax credit payments in the month of receipt and the following month;

- (y) Any payment received from the Radiation Exposure Compensation Trust Fund;
- (z) A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP recipient who is not ongoing eligible for SSI, in the month paid and the next following month; and
- (aa) Up to a total of \$5,000 in individual development accounts, excluding interest accruing, pursuant to subsection (7) of this section.
- (4) Disposition of resources.
  - (a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.
  - (b) The household's application shall be denied, or assistance discontinued if:
    - 1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and
    - 2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.
  - (c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.
  - (d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.
  - (5) Lifetime care agreement.
    - (a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.
    - (b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.
  - (6) Resources held jointly by more than one (1) person.
    - (a) Bank accounts requiring one (1) signature for withdrawals.
      - 1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the K-TAP applicant or recipient.
      - 2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the K-TAP applicant or recipient's share is considered available.
    - (b) For bank accounts which require more than one (1) signature for withdrawals, determine the K-TAP applicant or recipient's share by obtaining a written statement from the other owners as to the division.
    - (c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's available share by dividing the value of the business enterprise by the number of owners.
    - (d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's share is determined by dividing the value of the resource by the number of owners.
    - (e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:
      - 1. A written statement regarding ownership, who deposits and withdraws; and
      - 2. A written statement from each of the other owners which corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and
      - 3. Verification that the applicant's or recipient's name has been removed from the resource.
  - (7)(a) To be considered an exempt resource, the individual development account shall have been established on or after May 1, 1997, funded through periodic contributions by a member of the benefit group using funds derived from earned income which was earned after May 1, 1997, for a qualified purpose.
    - (b) A qualified purpose to establish an individual development account shall be for:
      - 1. Postsecondary educational expenses which shall include:
        - a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and
        - b. Fees, books, supplies and equipment required for courses of instruction at an eligible educational institution;
      - c. An eligible educational institution shall be:
        - (i) An institution described in 20 USC 1088(a)(1) or 1141(a); or



(ii) An area vocational education school as defined by 20 USC 2471(4)(C) or (D);

2. First home purchase which includes:

- a. Costs of acquiring, constructing, or reconstructing a residence; and
- b. Usual or reasonable settlement, financing, or other closing costs;

3. Business capitalization expenditures for a business that does not contravene any law or public policy, as determined by the cabinet, pursuant to a qualified plan. A qualified plan shall:

- a. Include capital, plant, equipment, working capital, and inventory expenses;
- b. Be approved by a financial institution; and
- c. Include a description of services or goods to be sold, a marketing plan, and projected financial statements. Assistance of an experienced entrepreneurial advisor may be required; or
4. Other purpose allowed by federal regulations or clarifications.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes listed in paragraph (b) of this subsection;

(d) To be considered an exempt resource, an individual development account shall be matched by funds from:

1. A nonprofit organization; or
2. Funding permitting, a state or local government agency acting in cooperation with an organization described in subparagraph 1 of this paragraph.

Section 3. Income Limitations. In determining eligibility for K-TAP the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;
2. Income of a parent who does not receive SSI or state supplementation;
3. Income of a sanctioned or penalized individual;
4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;
5. An amount deemed available from a stepparent living in the home;
6. An amount deemed available from the spouse of a minor dependent child living in the home; and
7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) [Applicant eligibility test.

~~(a) An applicant eligibility test shall be applied if:~~

~~1. The gross income is below the gross income limitation standard; and~~

~~2. The benefit group has not received assistance during the four (4) months prior to the month of application; or~~

~~3. The benefit group has a member added to the case and that member:~~

- ~~a. Has earned income; and~~
- ~~b. Has not received assistance during the four (4) months prior to being added to the case.~~

~~(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the standard of need set forth in Section 8 of this administrative regulation:~~

~~(c) If income exceeds this standard, the benefit group is ineligible.~~

~~(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.~~

~~(3) Benefit calculation.~~

~~(a) If the benefit group meets the criteria set forth in subsection [subsections] (1) [and (2)] of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.~~

~~(b) If the benefit group's income, after subtracting excluded in-~~

come and applicable deductions, exceeds the standard of need for the appropriate benefit group size as set forth in Section 8 of this administrative regulation, the benefit group is ineligible.

~~(c) Amount of assistance shall be determined prospectively.~~

~~(3) [(4)] Ineligibility period.~~

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsection [subsections] (2) [or (3)] of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need as set forth in Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need set forth in Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded Income and Deductions. All gross non-K-TAP income received or anticipated to be received by the benefit group, sanctioned or penalized individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 of this administrative regulation, for households in which a member receives a JTPA stipend;

(e) Value of United States Department of Agriculture program benefits including:

1. Donated foods;
2. Supplemental food assistance received under 42 USC 1771;
3. Special food service program for children under 42 USC 1775;
4. Nutrition program for the elderly under 42 USC 3001; and
5. The monthly food stamp allotment;
- (f) Reimbursement for transportation in performance of employment duties, if identifiable;
- (g) The value of Kentucky Works supportive services payments authorized under 904 KAR 2:017;

(h) Nonemergency medical transportation payments;

(i) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the K-TAP program;

(j) Educational grants, loans, scholarships, and work study income, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

- a. The United States Commissioner of Education; or
- b. The Bureau of Indian Affairs.

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grants;

(n) Home produce utilized for household consumption;

(o) Housing subsidies received from federal, state or local governments;

(p) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(r) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

- 1. Foster grandparents;
- 2. Senior health aides;
- 3. Senior companions;
- 4. Service Corps of Retired Executives; and
- 5. Active Corps of Executives;

(s) Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

(t) Payments from the Cabinet for Families and Children, [Department for Social Services;] for child foster care, or adult foster care;

(u) Payments made under the Low Income Home Energy Assistance Program under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

(v) ~~[The first fifty (50) dollars of]~~ Child support payments until K-TAP is received, [collected in a month which represents the current month's support obligation;]

(w) Earnings of an individual [a dependent child] attending school who is:

1. A child; or

2. A parent who is:

a. Under the age of eighteen (18); or

b. Age eighteen (18) or nineteen (19);

(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;

(y) Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

(z) The principal of a verified loan;

(aa) Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

(bb) Income of an individual receiving SSI;

(cc) The essential person's portion of the SSI check;

(dd) Income of an individual receiving mandatory or optional state supplementary payments;

(ee) The advance payment or refund of earned income tax credit;

(ff) Payments made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) Child support received in a month for which the K-TAP payment is suspended;

(hh) In-kind income;

(ii) Income of a technically ineligible child;

(jj) Payments made from the Agent Orange Settlement Fund;

(kk) K-TAP back payments;

(ll) Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(mm) Payments made from the Radiation Exposure Compensation Trust Fund;

(nn) Up to \$2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; [and]

(oo) Payments made to individuals because of their status as victims of Nazi persecution; and

(pp) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census.

(2) Benefit calculation. [Applicant eligibility test:] Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(b) On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP;

c. A sanctioned individual whose earned income is considered available to the K-TAP household;

d. At the option of the recipient, a K-TAP case which would otherwise be ineligible for K-TAP without the benefit of the disregard for child care; or

e. The month of application for K-TAP benefits; and

2. Shall not exceed:

a. \$175 per month per individual for full-time employment; or

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2).

~~[(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection;]~~

~~(c) [(a)]~~ Child support payments assigned and actually forwarded or paid to the department; and

~~(d) [(b)]~~ First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall ~~[not]~~ be applied to ~~each member's~~ [an individual after the fourth consecutive month it has been applied to his] earned income ~~for four (4) months.~~

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has earnings reported timely from new employment ~~[not been a recipient for twelve (12) consecutive months];~~ and

~~(e) [(e)]~~ For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings.

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient.

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard.

~~(3) [(4) Exceptions:]~~ Deductions from earnings in subsection ~~[subsections]~~ (2)(a), ~~[and]~~ (b) and ~~(d) [(3)(b)]~~ of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists pursuant to 904 KAR 2:370, Section 6(1). ~~[as follows:~~

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the applicant or recipient; or

6. The available child care does not meet the needs of the child, for example, a child with a disability; or

7. The parent is temporarily absent from work on approved educational leave; or

8. The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care;]

(b) Requests assistance be terminated for the primary purpose of

evading the four (4) month limitation on the deduction in subsection (2)(d) [(3)(b)] of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;
  2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or
  3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.
- (4) [(5)] Changes in income and resources of the benefit group that contains a member who is participating in the wage supplementation component of Kentucky Works pursuant to 904 KAR 2:370 shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5. Child Care Payments. With the exception of those circumstances outlined in Section 4(2)(b) of this administrative regulation [~~on or after November 1, 1995,~~] child care expenses incurred as a result of employment shall be paid according to 905 KAR 2:160 [2:150].

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

- (a) A stepparent;
  - (b) The spouse of a minor dependent child;
  - (c) The spouse of a specified relative other than a parent;
  - (d) A parent barred from receiving assistance due to failure to meet alien status; or
  - (e) A parent of a minor parent.
- (2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:
- (a) The first ninety (90) dollars of the gross earned income;
  - (b) An amount equal to the K-TAP standard of need for the appropriate family size, as set forth in Section 8 of this administrative regulation for:
    1. The support of the individual; and
    2. Any other person living in the home if:
      - a. His needs are not taken into consideration in the K-TAP eligibility determination; and
      - b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.
    - (c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;
    - (d) Payments for alimony or child support to a person not living in the home by the individual;
    - (e) Income of an SSI recipient who is listed in subsection (1) of this section; or
    - (f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the K-TAP unit in the month received, in any subsequent month.
  - (3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.
  - (4) Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor. This subsection and subsections (2), (3), (4), (5), and (6) of this section apply to immigrants who have an agreement executed other than pursuant to 8 USC 1183a.

(2) The gross non-K-TAP income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the in-

come and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
  - (b) Does not have the financial ability to meet the alien's needs.
- (6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) or (7) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP standard of need for the appropriate family size as set forth in Section 8 of this administrative regulation of:

- a. The sponsor; and
- b. Other persons living in the household:
  - (i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and
  - (ii) Whose needs are not considered in making a determination of eligibility for K-TAP;

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or K-TAP.

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP applicant in this state, less \$1,500.

(7)(a) For sponsored aliens who enter the United States on or after December 19, 1997, who are required to complete a sponsorship agreement pursuant to 8 USC 1183a, the total gross income and resources of an alien's sponsor and sponsor's spouse shall be deemed available to the alien. The sponsor's obligation shall be available until:

1. The immigrant;
  - a. Becomes a United States citizen;
  - b. Can be credited with forty (40) quarters of work; or
  - c. Ceases to hold the status of an alien lawfully admitted for permanent residence; or
2. The sponsor dies.
- (b) The immigrant shall provide the sponsorship agreement pursuant to 8 USC 1183a.

(8) If an amount less than the amount in the sponsorship agreement is made available to the immigrant, the actual amount provided by the sponsor shall be considered for a period up to twelve (12) months from the month of the determination if an alien is determined indigent. An alien is determined indigent if:

- (a) The amount of the sponsor's income and resources given to the alien is less than the amount in the agreement; and
- (b) Without K-TAP assistance and after consideration of the alien's own income, cash, food, housing or assistance provided by other individuals including the sponsor, the alien would be unable to obtain food and shelter;

(9) Deeming of the sponsor's income shall not apply for twelve (12) months if:

- (a) The alien or alien's child has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live with the child or parent if committed by:

1. A spouse or parent; or
2. A spouse or parent's family living with the alien or alien's child and the spouse or parent allows the cruelty or battery; or
- (b) The alien is a child who lives with a parent who has been subjected to extreme cruelty or battery while living in the United States and the individual committing the battery or extreme cruelty does not live the child or parent if committed by:

1. A spouse; or
2. A member of the spouse's family living in the same household

and the spouse allows the cruelty or battery.

Section 8. Payment Maximum. (1) The K-TAP payment maximum includes amounts for food, clothing, shelter, and utilities.

(2)(a) Countable income, as determined by the provisions of Section 9 of this administrative regulation, is subtracted in determining eligibility for and the amount of the K-TAP assistance payment, as follows:

Effective December 1, 1995		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$394
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit is as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$ 729
2 Persons	\$ 851
3 Persons	\$ 974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more Persons	\$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

(b) As a result of applying the forty-five (45) percent ratable reduction listed in subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated in accordance with KRS 205.200(2).

Section 9. Best Estimate. (1) The agency shall compute the benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to calculate a best estimate:

(a) For cases with earned income, other than self-employment earned income:

1. The agency:

a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but

b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.

3. The agency shall determine a monthly amount by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;

3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for cases with:

1. Earned or unearned income other than self-employment; or

2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;

(c) Whenever the agency becomes aware of a change in circumstances; or

(d) To reflect a mass change in the standard of need or payment maximum standard as set forth in Section 8 of this administrative regulation.

Section 10. K-TAP Recoupment. Except for those overpayments in administrative regulation 904 KAR 2:017, the following provisions are effective for an overpayment [all overpayments] discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup an overpayment [any overpayments].

(2) An overpayment [Overpayments], including assistance paid pending hearing decisions, shall be recovered from:

(a) The claimant;

(b) The overpaid benefit group [assistance-unit];

(c) Any benefit group [assistance-unit] of which a member of the overpaid benefit group [assistance-unit] has subsequently become a member; or

(d) Any individual member of the overpaid benefit group [assistance-unit] whether or not currently a recipient.

(3) An overpayment [Overpayments] shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future K-TAP benefits, which shall result in the benefit group [assistance-group] retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8 of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 921 [904] KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP recipient may voluntarily return a benefit check to avoid an overpayment if:

- (a) The case is totally ineligible for the month for which the check is issued; and
- (b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient is due a refund as described in Section 12 of this administrative regulation.

Section 12. Refund. A recipient shall be due a refund in the following situations:

- (1) The agency recoups an amount in excess of the actual overpayment;
- (2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient;
- (3) A recipient voluntarily returns a K-TAP check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the K-TAP check was intended to cover, leaving a balance owed to the recipient.

Section 13. Correction of Underpayments. The following provisions apply to all K-TAP payments:

- (1) The department shall promptly correct an underpayment to:
  - (a) A current K-TAP recipient; and
  - (b) One (1) who would be a current recipient if the error causing the underpayment had not occurred.
- (2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.
- (3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:
  - (a) The month the payment is paid; or
  - (b) The next following month.

Section 14. Incorporation [Family Alternatives Diversion (FAD)]. (1) The cabinet shall make available in limited areas family alternatives diversion assistance to eligible families to allow the family to maintain self-sufficiency. The cabinet shall expand the program into additional areas until statewide implementation is completed:

(2) To qualify for family alternatives diversion benefits, the K-TAP benefit group as defined in Section 1(1) of this administrative regulation shall:

- (a) Meet K-TAP income and resource requirements pursuant to Sections 2, 3(1), 4(1), and 6 of this administrative regulation;
- (b) Meet technical requirements of K-TAP pursuant to 904 KAR 2:006;
- (c) Not be currently receiving ongoing K-TAP benefits;
- (d) Have a verified short-term need to include:
  - 1. Transportation;
  - 2. Child care;
  - 3. Child support;
  - 4. Housing; or
  - 5. Employment related problem.
- (e) Be determined by the cabinet to be self-supporting or would be self-supporting if the short-term need is met; and
- (f) Not have received a FAD payment anytime during the previous twelve (12) months.

(3) The Transitional Assistance Self-assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP and to determine eligibility for FAD along with the FA-2, Family Alternatives Assessment form.

(4) The cabinet shall determine through the screening process if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.

(5)(a) The benefit group's countable gross income shall include the earned and unearned income listed in Sections 3 and 4 of this administrative regulation.

(b) The benefit group's gross income shall be computed using the

best estimate of income pursuant to Section 9 of this administrative regulation:

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to Section 8(2)(b) of this administrative regulation:

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to Section 8(2) of this administrative regulation, the family shall not be eligible for a FAD payment.

(e) The total FAD payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed \$1,500 per application for FAD:

(f) The amount of the eligible FAD payment may be issued in one (1) or more checks or vouchers to the eligible FAD benefit group or to a vendor for payment of the short-term need, as determined by the cabinet.

(g) For an eligible family, only one (1) approval shall be necessary to issue one (1) or more checks, as needed, to resolve one (1) or more emergencies during the twelve (12) month FAD application period, not to exceed a total of \$1,500.

(6) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless non-receipt would result in:

- (a) Abuse or neglect of a child, as determined by the cabinet; or
- (b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(7) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

- (a) Food stamps;
- (b) Medicaid; and
- (c) Child care.

(8) For a FAD eligible benefit group, referrals for other services shall be made as needed to:

- (a) Other agencies including:
  - 1. The Division of Child Support Enforcement;
  - 2. The Department for Social Services;
  - 3. The Cabinet for Health Services; and
  - 4. The Department for Employment Services; or
- (b) Charitable organizations.

(9) Other services shall be offered as needed through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

- (a) Job search;
- (b) Job readiness assessment; and
- (c) Life skills.

(10) Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 15. Relocation Assistance Program. (1) If an employment opportunity exists for a K-TAP recipient and relocation to the area of the employment would be required in order to access the employment, the K-TAP recipient may qualify for a Relocation Assistance Program payment. To qualify the applicant for the Relocation Assistance Program shall:

- (a) Be a current recipient of K-TAP;
  - (b) Have a verified offer of employment with wages in an amount equal to thirty (30) hours or more per week at the minimum hourly wage rate; and
  - (c) Be required to move to access the verified offer of employment and have a new residence available.
- (2) The eligible payment shall be issued to assist an eligible K-TAP recipient in meeting moving related expenses. Moving related expenses shall include:

- (a) Moving van rental to the area of the verified employment;
- (b) Apartment or house rental for the first month's rent in the area of the verified employment; and
- (c) Security deposit, utility hook-up fees, or other moving related fees approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.

(3) The Relocation Assistance Program payment amount shall be a payment of:

(a) \$500; or  
(b) Up to \$900 based on the actual verified moving related expenses as listed in subsection (2) of this section.

(4) An otherwise eligible recipient of the Relocation Assistance Program shall receive no more than two (2) payments in a five (5) year period; however, additional payments may be received with approval of management staff of the Department for Social Insurance.

(5) The cabinet shall assist the applicant for relocation assistance to determine if income received from employment from the new location is sufficient to cover living expenses at the new residence including the completion of a household budget with the applicant in order to make this determination.

(6) The offer of employment, including hourly wage and number of hours, and the availability of a new residence shall be verified by written statement or phone contact.

(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) Families who are not currently receiving K-TAP but would be eligible for K-TAP may receive assistance to relocate through FAD.

(9) A K-TAP recipient may refuse without penalty any offer of employment which would require relocation.

(10) Hearing rights for the Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 16. Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary for the determination of financial eligibility and recovery of overpayments in the K-TAP program are incorporated. These forms include:]

- (a) PA-30.2, "Payment Receipt, edition 2/97";
- (b) PA-35, "Sale of Property Agreement to Repay K-TAP Benefits to the Commonwealth of Kentucky, edition 8/97";
- (c) [PA-37, "Bridge-the-Gap Payment Form, edition 5/97";
- (d) FA-1, "Transitional Assistance Self-assessment, edition 5/99 [2/97]";
- (e) FA-2, "Family Alternatives Assessment, edition 8/97";
- (f) RA-1, "Application for Relocation Assistance, edition 2/97".

(2) These forms may be inspected and copied at the Department for Community-Based Services [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: January 5, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is

called Kentucky Works. As of September 1998, there were a total of 46,532 basic K-TAP cases and 878 UP cases (Unemployed Parent cases), for a total of 47,410 K-TAP cases. In September 1998, there were approximately 33,408 adults in those cases. Adults receiving K-TAP are required to participate in work activities.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of living and employment in the geographical 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: The applicant eligibility test is being eliminated; however, the gross income scale and current budget calculations are being retained. Also, until the first K-TAP check is received, disregard all child support payments, instead of the first \$50. These 2 changes will simplify eligibility determinations and will insignificantly increase the number of eligible recipients therefore no fiscal impact to the agency. To encourage working, in cases when the 4 months of the 1/3 deduction have been used, we are eliminating the 12 month waiting period to allow the deduction to be applied again when earnings, reported timely, have been received from new employment. We anticipate negligible fiscal impact to the agency. To comply with Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997, we are amending the alien income and resources section regarding the methods of calculating the deeming of sponsor's income. We anticipate no fiscal impact to the agency. We are clarifying that the exclusion of earnings of a child attending school also includes the earnings of a minor teenage parent under age 18. We are excluding the earnings of a teenage parent age 18 or 19 attending school. These changes will encourage school attendance and working for these individuals with negligible fiscal impact to the agency. We are clarifying that all work study income and income received from temporary Census employment is disregarded. We anticipate negligible impact to the agency. Due to the subject matter and to comply with KRS Chapter 13A requirements, we are transferring the Family Alternatives Diversion program in Section 14 and Relocation Assistance Program in Section 15 to new topical regulations. We are concurrently filing 904 KAR 2:500, Family Alternatives Diversion (FAD) and 904 KAR 2:510, Relocation Assistance Program.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: 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: Federal funds and state funds.

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were



received regarding the economic impact in the geographical area.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to eliminate the applicant eligibility test and until the first K-TAP check is received, disregard all child support payments, instead of the first \$50 will simplify eligibility determinations for recipients and the agency. To encourage working we are eliminating the 12 month waiting period to allow the deduction to be applied again when earnings, reported timely, have been received from new employment. To encourage school attendance and working for these individuals, we are clarifying that the exclusion of earnings of a child attending school also includes the earnings of a minor teenage parent under age 18 and we are excluding the earnings of a teenage parent age 18 or 19 attending school. To comply with Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997, we are required to amend the alien income and resources section regarding the methods of calculating the deeming of sponsor's income.

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

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

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

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

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

(10) Any additional information or comments: None

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

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

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

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

904 KAR 2:017. Kentucky Works [child care and] supportive services.

RELATES TO: KRS 205.200(2), 205.211, 205.2003, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050 [194.050(1)], 205.200(2), 205.2003, 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children is required to administer 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 601 et seq. and federal regulations. KRS 205.2003 requires administrative regulations for the development of a work program for recipients of public assistance to provide for immediate employment or preparation for employment and to provide supportive services to assist in the pursuit of work and self-sufficiency. This administrative regulation sets forth the requirements for receiving Kentucky Works [child care and] supportive 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) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(6) "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.

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

(8) "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(9) "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(10) "Preemployment" means a waiting period between the dates of hiring and employment commencement.

(11) "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. Payment Entitlement. (1) Except for the exclusions listed in this administrative regulation, those individuals participating in the Kentucky Works Program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved Kentucky Works activity, as described in Section 10 of this administrative regulation.

(2) Kentucky Works activities are described in 904 KAR 2:370, Section 2(2)(c).

Section 3. [Child Care Eligibility in Kentucky Works Components: (1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or  
(d) Would be a dependent child except for the receipt of benefits under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

- (a) Precomponent;
- (b) Component preparation;
- (c) Component participation;
- (d) Preemployment; or
- (e) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 4. Child Care Payments. Child care payments shall be paid pursuant to 905 KAR 2:150.

Section 5. Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 6. Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred; or

(2) The participant is penalized for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 7. Transportation Payments in Kentucky Works components. Transportation reimbursement shall be paid in the following situations:

- (1) Precomponent;
- (2) Component preparation;

(3) Component participation, with the exception of OJT and unsubsidized employment, while the K-TAP case remains active. Transportation expenses for individuals in unsubsidized employment are covered by the work expense standard deduction as defined in 904 KAR 2:016, Section 1;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from K-TAP, until the end of the component placement.

Section 4. [8:] Transportation Payment Amount and 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 through:

(a) Arrangement by the state K-TAP agency or contractor; and

(b) After receipt of verification a direct payment to the individual shall be made through the System Tracking for Employability Program (STEP), as follows:

1. If low-cost transportation is available and meets the needs of the individual, actual transportation costs shall be paid up to the maximum payment rates listed in subparagraph 2 of this paragraph; or

2. If free or low-cost transportation that meets the needs of the individual is unavailable, a direct payment shall be made to the individual per month as follows:

a. Nine (9) dollars for less than four (4) days per month;

b. Thirty-five (35) dollars for four (4) to sixteen (16) days per month; or

c. Sixty (60) dollars for seventeen (17) or more days per month.

(c) For a special circumstance, as determined by the cabinet, when actual transportation costs exceed the maximum payment rates in paragraph (b) of this subsection, if approved by the cabinet, the actual negotiated rate not to exceed \$100 per month may be paid.

(d) Payments shall be made as specified in 921 [904] KAR 2:050.

(2) [Transportation payments shall be limited in the same manner as child care payments.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments 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 5. [9:] Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

(1) Appropriate verification is not returned by the end of the month prior to the month in which the cost will be incurred;

(2) The participant is penalized for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370.

Section 6. Transportation Services in a Regional Capitated Transportation Network. Initially in limited areas until statewide implementation is completed, the transportation service shall be provided pursuant to 904 KAR 2:018, Section 2 and 603 KAR 7:080.

Section 7. [10:] Other Supportive Services in Kentucky Works Components. (1) Other supportive services shall be provided if necessary for participation in the approved Kentucky Works activities of:

- (a) Component preparation;
- (b) Component participation while the K-TAP case remains active;
- (c) Transitional extension;
- (d) OJT participants discontinued from K-TAP, until the end of the component placement; or
- (e) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except when an item is required as a condition of being hired by the employer; or

2. Is employed;

(2) Other supportive services shall be approved by the cabinet. Items and services that shall be approved are the purchase of an item or service needed by the K-TAP recipient for participation in the Kentucky Works activity, as determined by the cabinet. [:

(a) Drug screening test if:

1. Required by a potential employer; and

2. Paid directly to the potential employer with no reimbursements allowed to an individual who has paid his own test fee;

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) Uniforms or specialized clothing particular to a service, profession or company excluding clothing used for every day wear at work or elsewhere;

(e) School supplies other than books;

(f) Licensing fees which include:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee;

(g) Timepieces that are necessary for training or employment including watches and alarm clocks;

(h) GED test fee if the following criteria are met:

1. The individual does not have a high school diploma or GED and the individual is expected to pass the test;

2. The test is required as a condition of employment;

3. The fee is paid directly to the test agency with no reimbursement allowed to the individual; or

4. A fee is required at the completion of the GED preparation;

(i) The cost to have a photo identification made in order to take a GED test;

(j) The cost of a criminal records check fee if the provider or employer requires verification;

(k) Driver's education; or

(l) Tools required for employment.]

(3) Other supportive services shall be a cumulative limit of \$600 [400] in a twelve (12) month period, beginning with the first day of the month in which the appropriate verification [form] is issued.

(4) A payment may be authorized for an eligible parent or other adult included as a specified relative pursuant to Section 10 of 904 KAR 2:006;

(5) Penalized and sanctioned K-TAP ineligible adults are not eligible for other supportive services;

(6) A retroactive payment for other supportive services shall not

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

be made for an item purchased by a penalized or sanctioned individual who later cures the penalty. After the parent or other adult cures the penalty or sanction, eligible expenses may be authorized.

(7) Except as allowed by Section 8 of this administrative regulation, a medical service or item shall not be an allowable supportive service.

Section 8. Allowable Medical Service or Item. If non-TANF funding is used and as long as funding is available, the purchase of the following item or service shall be allowed for a K-TAP recipient, if needed for participation in the Kentucky Works activity, as determined by the cabinet and limited to:

- (1) Eyeglasses or corrective lens;
- (2) Dentures; and
- (3) Hearing aids.

Section 9. [11:] Car Repairs. (1) Car repairs shall be provided if necessary for participation in the approved Kentucky Works activities of:

- (a) Component preparation;
- (b) Component participation, including unsubsidized employment while the K-TAP case remains active;
- (c) Transitional extension; or
- (d) OJT participants discontinued from K-TAP, until the end of the component placement.

(2) Car repair expenses shall meet the following criteria to be considered for payment:

- (a) Car repair which makes the car functional;
- (b) Property taxes on vehicle;
- (c) Vehicle registration;
- (d) Licenses fees; ~~and~~
- (e) ~~Three (3) months of~~ Liability insurance to drive a vehicle; and
- (f) Other car expense needed by the K-TAP recipient which would allow participation in the Kentucky Works activity, as determined by the cabinet.

(3) All car repair expenditures listed in subsection (2) of this section shall require:

- (a) An estimate of the cost; and
- (b) Approval by the cabinet.
- (4) All auto repair work shall be completed by garages;
- (5) Prior to approval of car repair expenditures, the cabinet shall verify the participant owns the vehicle;
- (6) The payment maximum for car repair expenditures shall be up to a maximum of \$500 [300] per year per eligible family.

Section 10. [12:] Short-term Training. A fee for a short-term training program shall be eligible for payment for a K-TAP recipient if the training program:

- (1) Is not eligible for federal financial aid; and
- (2) Is likely to lead to paid employment and is in accordance with the participant's Transitional Assistance Agreement, form KW-202, "K-TAP Transitional Assistance Agreement", as determined by the cabinet.

Section 11. [13:] Other Fees. (1) The following fee payments may be made for an eligible recipient:

- (a) Registration fees;
- (b) Financial aid application fees;
- (c) Testing fees;
- (d) Application fees required by vocational schools for specified programs;
- (e) Liability insurance fees;
- (f) Copy of records;
- (g) Activity fees if mandated by the institution; and
- (h) Other required fees.
- (2) Other fees shall not exceed \$200 per each payment.

Section 12. Work Incentive Bonus. (1) A job retention bonus of \$250 shall be paid to a K-TAP adult who:

- (a) Obtains full-time unsubsidized employment which shall be at least thirty (30) hours per week at no less than the federal minimum wage;
- (b) Reports and provides timely verification of the wages;

(c) Remains K-TAP eligible or becomes ineligible for K-TAP due to the reported earnings;

(d) Maintains employment for at least ninety (90) days, whether or not the K-TAP case is active during the entire ninety (90) days; and

(e) At the end of the ninety (90) day period:

- 1. Requests the bonus within thirty (30) days; and
- 2. Provides the cabinet with a current mailing address.

(2) The work incentive bonus shall be limited to one (1) time only during the lifetime of the K-TAP adult.

Section 13. Educational Bonus. (1) An educational bonus of \$250 per individual shall be paid to a K-TAP adult or child who reports and verifies receiving a:

- (a) High school diploma;
- (b) GED certificate; or
- (c) Postsecondary school certificate or degree;

(2) Short-term training programs shall not qualify for postsecondary education.

Section 14. Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

- (1) Verification is not returned [by the service provider]; or
- (2) The participant is penalized for noncompliance with Kentucky Works activities, as specified in 904 KAR 2:370, or is ineligible.

Section 15. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

Section 16. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary for verification of child care and supportive services payments in the Kentucky Works program are incorporated. These forms include:]

- (a) PA-32, "Authorization for Supportive Services Payments, edition 8/97";
- (b) PA-33, "Verification of Education/Training, [Child Care,] and Transportation, edition 1/98 [4/97]"; and
- (c) PA-33N, "Verification of Education/Training, [Child Care,] and Transportation, edition 1/98 [4/97].

(2) This material [These forms] may be inspected, [and] copied, or obtained at the Department for Community-Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [-Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 5, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). As of September 1998, approximately 47,410 families in Kentucky (monthly average) receive K-TAP, which includes 33,408 adults.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of living and employment in the geographical 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of doing business in the geographical area.

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

1. First year following implementation: The individuals who are applicants or recipients of K-TAP will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: (The following figures are for the remainder of SFY 99).

a. Increase in "other supportive" services from \$400 to \$600 cumulative limit. \$125,000 cost to the agency (federal TANF funds).

b. Increase in "car repairs" services from \$300 to \$500 cumulative limit. \$50,000 cost to the agency. (federal TANF funds)

c. The addition of state funded only supportive services to provide for the purchase of dentures, eyeglasses or corrective lens, and hearing aids. These services will be provided as long as funding is available. \$100,000 cost to the agency for the remainder of SFY 99 (state funds)

d. Job retention bonuses of \$250 per individual. \$156,200 cost to the agency (federal TANF funds).

e. Educational bonuses of \$250 per individual. \$156,200 cost to the agency (federal TANF funds).

f. Replacing the list of other supportive services in Section 7(2) with language that will allow for a wider range of necessary items or services needed for participation in Kentucky Works activities, as determined by the cabinet, is no fiscal impact to the agency.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: (SFY 2000)

a. Increase in "other supportive" services from \$400 to \$600 cumulative limit. \$500,000 cost to the agency (federal TANF funds).

b. Increase in "car repairs" services from \$300 to \$500 cumulative limit. \$200,000 cost to the agency. (federal TANF funds).

c. The addition of state funded only supportive services to provide for the purchase of dentures, eyeglasses or corrective lens, and hearing aids. These services will be provided as long as funding is available. \$300,000 cost to the agency for SFY 2000 (state funds).

d. Job retention bonuses of \$250 per individual. \$625,000 cost to the agency (federal TANF funds).

e. Educational bonuses of \$250 per individual. \$625,000 cost to the agency (federal TANF funds).

f. Replacing the list of other supportive services in Section 7(2) with language that will allow for a wider range of necessary items or services needed for participation in Kentucky Works activities, as determined by the cabinet, is no fiscal impact to the agency.

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 funds (TANF block

grant funding) and state funds.

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

(a) Geographical area in which administrative regulation will be implemented: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated requirements found in 42 USC 601 et seq., and to implement supportive services for the Kentucky Transitional Assistance Program (K-TAP) pursuant to KRS 205.2003.

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

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services, such as transportation, which enables the parent to remain employed.

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

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

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

(10) Any additional information or comments: None

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200; 205.2003.

3. Minimum or uniform standards contained in the federal mandate. None

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

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

#### CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

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

RELATES TO: KRS 194B.050, 45 CFR 96 Subpart H [+94-050], 42 USC 8621 et seq., EO 98-731 [96-862]

STATUTORY AUTHORITY: KRS 194B.050, 45 CFR 96 Subpart H [+94-050], 42 USC 8621 et seq.

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet

# VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

for Families and Children has responsibility as prescribed by 42 USC 8621 et seq., as amended, to administer the Low Income Home Energy Assistance Program (LIHEAP) to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. This administrative regulation states the eligibility and benefits criteria for heating assistance.

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

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

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

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

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

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

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

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

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

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

(11) "Principal residence" means the place:

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

(b) He considers home;

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

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

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

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

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

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

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

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

(b) Excluded from income are:

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

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

3. Loans;

4. Reimbursements for expenses;

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

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

7. Supplemental medical insurance premiums;

(2) Liquid assets.

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

(b) Excluded assets are:

1. Cars;

2. Household or personal belongings;

3. Principal residence;

4. Cash surrender value of insurance policies;

5. Prepaid burial policies;

6. Real property; and

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

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

(4) Crisis component.

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

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

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

(d) Have an inoperable heating system; or]

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

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

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

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

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

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

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

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

(c) The benefits for a household threatened with eviction whose heat is an undesignated portion of the rent shall not receive more than the maximum allowable for the primary heating which is the cost for delivery of one (1) ton of coal, one (1) cord of wood, 100 gallons of propane, 100 gallons of fuel oil, 100 gallons of kerosene, or \$100 for

natural gas and electric minus any copayment required of the household, [fuel as determined prior to component implementation:

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

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

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

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

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

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

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

Section 6. Right to a Fair Hearing. Any individual who has been denied assistance or whose application has not been acted upon with reasonable promptness has a right to request and receive a fair hearing in accordance with 921 [904] KAR 2:055.

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

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

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

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

(d) Prior to being accepted as a vendor, the vendor shall sign an agreement to comply with the requirements in Section 11 of this administrative regulation and agree to the following:

1. Allow contracting agency and authorized federal or state representatives to inspect records upon request;
2. Maintain records to financial transactions regarding HEAP for a period of three (3) years;
3. Provide information to the agency on any instances where the vendor may be aware that a household has been approved for benefits by misrepresentation of the household's situation;
4. Provide fuel as specified and at the price quoted;
5. Comply with the Equal Employment Opportunity standards; and
6. Comply with billing procedures established by the agency.

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

(2) Crisis component.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Reconnection of utilities and delivery of fuel during the crisis component shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program;

(3) HEAP recipients shall be treated the same as households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

DIETRA PARIS, Commissioner  
VIOLA P. MILLER, Ed.D., Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 6, 1999

FILED WITH LRC: January 8, 1999 at 2 p.m.



**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 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: Tresa Short, Director

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Assessment of expected benefits:

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

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

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

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Federal statutes mandate that eligibility requirements be in a like manner on a statewide basis; therefore, tiering is prohibited.

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

households to maintain service.

# FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 8621, and 45 CFR 96, Subpart H.

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

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

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

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

## CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (Amendment)

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

RELATES TO: KRS 205.200(7), 205.2003, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050 [194.050(+)], 205.200(2), 205.200(7), 205.2003, 42 USC 601 et seq., EO 98-731 [96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program for [of Aid to Families with Dependent Children, which is now called] the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.2003 [205.200(2)] requires that a work program for recipients of Kentucky Transitional Assistance Program [the conditions of eligibility to receive money grants from the Kentucky Transitional Assistance Program] be prescribed by administrative regulations [in conformity with 42 USC 601 et seq. and federal regulations]. This administrative regulation sets forth the technical

requirements of the Kentucky Works Program participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program.

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

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

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

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

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

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

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

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

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

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

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

1. Through September 30, 1999, twenty-five (25) hours per week; five (5) hours per week which may be satisfied through education activities defined in paragraph (c)7, 8, and 9 of this subsection or in literacy or adult education.

2. On or after October 1, 1999, a minimum of thirty (30) hours per week; ten (10) hours per week which may be satisfied through education activities defined in paragraph (c)7, 8, and 9 of this subsection or in literacy or adult education.

(b) ~~[For] A two (2) parent household shall participate in a specific activity no less than the number of hours per week required in the activity, as determined by the cabinet. The activity shall be required to have at least a minimum of:~~

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

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

a. The family receives federally-funded child care assistance; and  
b. An adult in the family is not disabled pursuant to 904 KAR 2:006; or

c. An adult is not needed to care for a child in the home with a severe disability pursuant to 904 KAR 2:006.

3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.

4. A two (2) parent household eligible for K-TAP based on the deprivation of incapacity, pursuant to 904 KAR 2:006, shall meet the number of hours of participation in a work activity listed in paragraph (a) of this subsection.

(c) Specific activities to be in compliance with program participa-

tion requirements in Kentucky shall include:

1. Unsubsidized employment;
2. Subsidized employment;
3. Work experience training;
4. On-the-job training;
5. Job search and job readiness assistance;
6. Community service;

7. Vocational education not to exceed twelve (12) months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

8. Full-time enrollment, as defined by the school, in post secondary education not to exceed twelve (12) months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

9. Satisfactory attendance at secondary school or equivalent in the case of a recipient who has not completed secondary school or equivalent coupled with work or work activities in the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

10. Provision of child care services to an individual participating in community service;

11. Based on the findings of the assessment, the agency or cabinet designee and the participant may determine placement in a work preparation activity which includes:

- a. Domestic violence counseling;
- b. Life skills training;
- c. A substance abuse program;
- d. Mental health counseling;
- e. Vocational rehabilitation;
- f. Literacy; and
- g. Adult education;

12. ~~[h:]~~ Wage supplementation, which shall be available in limited areas and shall expand into additional areas until statewide implementation is complete; ~~[and]~~

13. ~~[i:]~~ Participation in work programs approved by the cabinet; and

14. Participation in other activities approved by the cabinet.

Section 3. Exceptions to Program Participation. (1) A Kentucky Transitional Assistance Program recipient who is a single head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age shall be deemed to be engaged in work for any month in a fiscal year if the recipient:

(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(b) Participates in education that is directly related to employment for at least twenty (20) hours a week.

(2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with program participation requirements for up to twelve (12) months if the adult is an individual caring for a child who has not attained twelve (12) months of age;

(b) The twelve (12) months of exemption from work participation requirements shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or
2. Cumulative.

(3) For a Kentucky Transitional Assistance Program recipient where compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence or who is at risk of further domestic violence, as determined by the cabinet, compliance shall not be mandated.

(4) A Kentucky Transitional Assistance Program recipient shall be deemed to be engaged in work for any month if the recipient is:

(a) The only parent or caretaker relative in the family with a child who has not attained six (6) years in age; and

(b) Engaged in work for an average of at least twenty (20) hours per week during the month.

(5) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works listed in Section 3 of this administrative regulation.

Section 4. Program Participation Requirements. (1) Assessment.

(a) The cabinet or another entity designated by the cabinet shall make an assessment of the individual's employability;

(b) Other agencies shall assist in the assessment process as needed;

(c) The assessment shall include:

1. Consideration of basic skills;
2. Occupational skills; and
3. Concerns and other relevant factors.

(2) The self-sufficiency plan. Based on the findings of the assessment, the agency or cabinet designee and participant shall jointly develop a self-sufficiency plan by completing the Transitional Assistance Agreement. This plan shall contain:

(a) An employment goal for the participant;

(b) Services to be provided by the agency (including child care);

(c) Activities to be undertaken by the recipient to achieve the employment goal; and

(d) Other needs of the family.

(3) An adult applicant or recipient of the K-TAP benefit group shall register for work except for a member who is:

(a) Under age eighteen (18);

(b) Age sixty (60) or over;

(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance as set forth in Section 1~~(10)~~ ~~[(11)]~~ of 904 KAR 2:016;

(d) Receiving benefits based on 100 percent disability;

(e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or

(f) Employed thirty (30) hours or more per week at minimum wage or more.

Section 5. Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a Kentucky Works participant;

(b) At the request of a service provider; or

(c) When a situation is identified which could result in a penalty (as specified in Section 7 of this administrative regulation).

(2) The conciliation shall be conducted by the cabinet or contractor:

(a) During conciliation, the agency shall determine if additional services are needed to assist with Kentucky Works participation.

(b) During conciliation, participation shall be monitored for up to fifteen (15) days following the issuance of form KW-204, "Conciliation Contract".

(c) The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 6. Excused from Penalties. (1) A (K-TAP) recipient shall be excused from penalties for failure to comply with the Kentucky Works Program, as specified in Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met:

(a) The individual is a single custodial parent caring for a child under age six (6) and child care is unavailable, as determined by the cabinet;

(b) Dependent care is not available for an ~~[any]~~ incapacitated individual living in the same household as a dependent child;

(c) Child care is terminated through no fault of the applicant or recipient;

(d) Child care does not meet the needs of the child, for example, a child with a disability;

(e) The individual is unable to engage in employment or training for mental or physical reasons as verified by the cabinet~~[-Deprivation based on incapacity is determined according to 904 KAR 2:006, Section 8];~~

(f) [(d)] Illness of another household member requiring the presence of the participant as documented by medical evidence or by reliable information from other sources as verified by the cabinet;

(g) [(e)] The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;

(h) [(f)] The agency determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;
2. Race;

3. Sex;
4. Color;
5. Disability;
6. Religious beliefs;
7. National origin; or
8. Political beliefs;

(i) [(g)] Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or
2. The presence of a risk to the individual's health or safety;

(j) [(h)] Wage rates are decreased subsequent to acceptance of employment;

(k) [(i)] The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize.

(2) A referral to the Department of Vocational Rehabilitation shall be required for a K-TAP adult who is determined unable to engage in employment or training for mental or physical reasons.

(3) The duration of good cause criteria may vary according to individual circumstances.

Section 7. Penalties. (1) When a Kentucky Transitional Assistance Program recipient fails to comply with the requirements of the Kentucky Works Program, he shall be subject to Kentucky Works and Kentucky Transitional Assistance Program penalties. Failure to comply shall be found when the participant:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in required activities, including:

1. An assessment interview;
2. An assessment; or
3. Self-sufficiency plan development including completion of the Transitional Assessment Agreement, KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in the program activities as defined in the Transitional Assessment Agreement, KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment;

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation; or

(e) Unless an exception in Section 4(3) of this administrative regulation applies, fails to register for work.

(2)(a) Except for requirements listed in paragraph (b) of this subsection, a K-TAP recipient who has failed to comply with Kentucky Works requirements without good cause, pursuant to Section 6 of this administrative regulation, or register for work unless an exception in Section 4(3) of this administrative regulation applies, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

(b) Assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an assessment interview; or
2. Complete an assessment, pursuant to Section 4 of this administrative regulation.

(c) The penalty in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with program requirements.

(d) The penalty in paragraph (a) or (b) of this subsection shall not be applied until after conciliation procedures are conducted pursuant to Section 5 of this administrative regulation.

Section 8. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

Section 9. Work Experience Program Training Site Agreement. (1) Costs incurred by the training site agency because of participation in WEP shall not be reimbursed.

(2) A WEP participant shall not be involved in partisan politics.

(3) A WEP participant shall not be removed from training without prior notice to the Department for Community-Based Services [Social Insurance].

(4) A WEP participant shall not infringe upon the promotional

opportunities of a currently employed individual.

(5) An individual shall not be subjected to discrimination, or denied training or employment or benefits, in the administration of, or in connection with, the training program because of:

- (a) Race;
- (b) Color;
- (c) Religion;
- (d) Sex;
- (e) National origin;
- (f) Age;
- (g) Disability; or
- (h) Political belief or affiliation;

(6) A training site agency shall:

(a) Complete Department for Community-Based Services [Social Insurance] questionnaires relating to the operation of the training site agreement;

(b) Not displace a currently employed worker by a WEP participant, including a partial displacement such as a reduction of the:

1. Hours of nonovertime work;
2. Wages; or
3. Employment benefits;

(c) Comply with the Americans with Disabilities Act;

(d) Shall report a personnel problem to the departmental representative designated by department;

(e) Shall maintain accurate time and attendance records for each WEP participant;

(f) Verify time and attendance records for each WEP participant on Form PA-33, "Certification of Education or Training, Child Care and Transportation" that will be submitted by a WEP participant;

(g) Shall grant access for the Department for Community-Based Services [Social Insurance] to the training site during working hours to counsel participants and to monitor the site;

(h) Shall immediately report an injury to the designated representative;

(i) Shall conduct investigations and submit reports upon the request of the Department for Community-Based Services [Social Insurance];

(j) Not encourage or require a WEP participant to take part in partisan political activity, or involve a WEP participant in partisan political activity;

(k) Except as authorized by law, or in writing by a WEP participant, shall maintain the confidentiality of information, in any form, provided by or about a WEP participant who seeks or receives services under the Training Site Agreement;

(l) Hold the cabinet harmless from losses, claims, expenses, actions, causes of action, costs, damages, and obligations arising from a negligent act or omission of the training site agency, its agents, employees, licensees, invitees, or WEP participants that results in injury to a person, or damages or losses relative to a person, corporation, partnership, or other entity;

(m) Provide:

1. Sufficient training to ensure development of appropriate skills;
2. New tasks after mastery of each skill; and
3. Adequate participation instruction and supervision at all times.

(7) A training site agency shall:

(a) Provide participants a safe training place;

(b) Assure that if participants are engaged in activities that are not covered under the Occupational Safety and Health Act of 1970, as amended, they shall not be required or permitted to be trained, or receive services, in buildings, or surroundings, or under training conditions that are unsanitary, hazardous, or dangerous to the health and safety of participants; and

(c) Provide adequate material to complete each training activity in a safe environment;

(8) A WEP participant shall have the right to request a public hearing relating to a grievance or complaint.

(9) A training site agency shall sign a "WEP Training Site Agreement" with the cabinet containing a statement of:

(a) Each of the conditions established by subsections (1) through (8) of this section; and

(b) The period covered by the agreement, including the number of hours of participation required each week.

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

Section 10. Incorporation [Material Incorporated] by Reference. (1) The following material is incorporated by reference: [Forms necessary for participation in the Kentucky Works Program are being incorporated. These forms include:]

(a) PA-33, "Verification [Certification] of Education or Training; Child Care and Transportation edition 1/98 [(4/97)]";

(b) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97";

(c) PA-218A, "New Chance Referral, edition 4/97";

(d) PA-219, "Kentucky Works Program Fact Sheet, edition 11/98 [5/97]";

(e) KW-105, "Kentucky Works Referral Form (Participant), edition 6/97 [4/97]";

(f) KW-200, "Kentucky Works Assessment Form, edition 5/97 [4/97]";

(g) KW-202, "K-TAP Transitional Assistance Agreement, edition 4/97";

(h) KW-204, "Conciliation Contact, edition 3/98 [5/97]";

(i) KW-205, "Conciliation Results, edition 3/98 [5/97]";

(j) KW-211, "Noncompliance Contact, edition 5/97";

(k) KW-230, "Wage Supplementation Program Participant Agreement, edition 4/99";

(l) KW-240, "Work Experience Training Program Participant Agreement, edition 1/98";

(m) ~~(h)~~ KW-244, "WEP Training [Work] Site Agreement Amendment, edition 1/98";

~~[(m)] KW-241 "WEP Work Site Agreement, edition 2/98";~~

(n) KW-245 "Notice of WEP Discontinuance, edition 1/98";

(o) KW-246 "WEP Referral Form, edition 1/98";

~~(p) KWET-241, "WEP Training Site Agreement, edition 9/98".~~

(2) This material [incorporated by reference] may be inspected, [and] copied, or obtained at the Department for Community-Based Services [Social Insurance], 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [- Office hours are] 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 14, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of September 1998, approximately 47,410 families in Kentucky (monthly average) receive K-TAP, which includes 33,408 adults. Adults receiving K-TAP are required to participate in the Kentucky Works Program unless the recipient meets exemption criteria delineated in the administrative regulation. The number of hours an adult is required to participate in activities in-

creases from a minimum of 20 hours per week to 25 hours per week. The minimum number of hours per week for an individual who is an only parent or caretaker relative in the family with a child who has not attained 6 years in age will remain at 20 hours per week.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: A hearing was held on October 30, 1998, as a result of a request. However, no written or oral comments were received regarding cost of living and employment in the geographical 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 comment received: A hearing was held on October 30, 1998, as a result of a request. However, no written or oral comments were received regarding cost of doing business in the geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to comply with Kentucky Works provisions will have no additional compliance, reporting or paperwork requirements due to the amendments to this emergency regulation. K-TAP recipients participating in work activities for 20 hours per week will be required to increase minimum participation in work activities by an additional 5 hours per week for FY 1999 and 10 hours per week for FY 2000. This increase should create minimum impact to the recipient. In response to a public comment as a result of the public hearing held on October 30, 1998, we added clarification that the required hours per week to be in Kentucky Works may be satisfied through 5 hours per week of education activities.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: Beginning FY 1999, K-TAP recipients must participate in Kentucky Works activities for a minimum of 25 hours per week instead of 20 hours per week. We project minimal additional costs to the agency for recipients to meet this 5 hour per week increase in participation, 10 hour increase for FY 2000. This minimal cost is for sending notices to recipients notifying them of the 25 hours per week instead of 20 hours per week minimum participation in Kentucky Works. Any additional cost for notices is budgeted for both years of the Biennium. However, if participation rates are not met, a penalty resulting in a minimum of a 5 percent decrease in the TANF block grant (increasing by an additional 2 percent each year up to a maximum loss of 21 percent) and the requirement that state funds be utilized to replace the percentage loss due to the penalty. Total impact for 5 percent penalty is \$18.0 million - maximum of 21 percent penalty is \$76.0 million. A possible penalty for not meeting this increase in hours is not budgeted.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed below: See impact in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds would have to be used to cover a penalty. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: A hearing was held on October 30, 1998, as a result of a request. However, no written or oral comments were received regarding the economic impact in the geographical area.

(b) Kentucky: A hearing was held on October 30, 1998, as a

result of a request. However, no written or oral comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state does not want to incur a penalty; therefore, the increased hours in required participation will be met.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the minimum number of hours per week to participate in work activities requirements found in 42 USC 607(c). A parent or caretaker relative receiving assistance, is required to work or participate in approved work activities a minimum of 25 hours per week for FY 1999 and 30 hours per week for FY 2000.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Title IV-A Block grant funding (K-TAP) for public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by 42 USC 601 et seq. If this increase in minimum participation in work activities is not implemented, participation rates will not be met resulting in penalties and loss of federal funds. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services which enables the parent to remain in the work activity. However, it is the intent of the Cabinet for Families and Children to implement the increase in participation and not incur a penalty.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: A hearing for the Notice of Intent was held on October 30, 1998, as a result of a request. A Statement of Consideration was completed in response to written and oral comments received.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 607(c).

2. State compliance standards. KRS 205.2003

3. Minimum or uniform standards contained in the federal mandate. The minimum number of hours that a recipient must participate in work activities is set in 42 USC 607(c)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Substance Abuse (Amendment)

**908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs. [Administrative procedures for DUI facilities and programs.]**

RELATES TO: KRS Chapters 189A, 216B, 222

STATUTORY AUTHORITY: KRS 189A.040(6), 194A.030, 194A.050 [194.030(9)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter

189A requires the Cabinet for Health Services [Human Resources] to promulgate administrative regulations to prescribe standards for the licensing and operation of the alcohol and other drug education and treatment facilities and programs that provide [-for offenders receiving] assessment, education, and [or] treatment services to offenders convicted of driving under the influence pursuant to KRS 189A.010. KRS 194A.030 places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation establishes certification requirements and minimum standards, for an individual or other entity operating a DUI program. [under the driving while impaired law.]

Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent College Handbook published by College Board Publications, P.O. Box 886, New York, New York 10023-0886.

(2) "Affidavit of indigency" means a sworn statement issued by a court to certify that a defendant has limited income and resources and does not have the ability to pay for the services delivered.

(3) "Alcohol and other drug-free workplace" means a program's policy to prohibit the unlawful manufacture, distribution, possession or use of a controlled substance and to establish the disciplinary action to be taken if the policy is violated.

(4) "Assessment" means a procedure administered to an individual convicted of DUI that includes the administration of a computerized assessment instrument, a clinical interview, a determination by the assessor of a client's needs, a discussion of available options and referral to services that provide an appropriate level of care in relation to the client's needs as determined by the assessment.

(5) "Cabinet" means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(6) "Case coordination" means the monitoring of a client's progress, including consultation with other services providers and the court to ensure the coordination of a client's services from assessment to completion.

(7) "Case review" means the process in which a clinical services supervisor reviews the client records of a clinician to ensure that appropriate treatment decisions are made.

(8) "Certification" means the process by which the division recognizes and authorizes a program, assessor, and instructor to provide services to a client convicted of DUI.

(9) "Certified alcohol and drug counselor" is defined in KRS 309.080.

(10) "Certified assessor" means an individual who has been trained and approved by the division to evaluate the needs of a client and to recommend appropriate services by conducting assessments in a DUI program.

(11) "Certified instructor" means an individual who has been trained and approved by the division to provide education services in a DUI program.

(12) "Certified program" means a public or private entity approved by the division to deliver assessment, education and treatment services to a client convicted of DUI.

(13) "Client" means an individual who receives services in a DUI program.

(14) "Clinical services supervisor" means an individual responsible for monitoring and directing assessment and treatment services and providing consultation and instruction to staff that deliver assessment and treatment services.

(15) "Conflict of interest" means a private relationship exists between a client and a program, that will result in a conflict between the program's interests and the interests of the client, and a situation will be created where a program's personal or financial interest conflicts with professional responsibility.

(16) "Court" means the court in which a client is convicted of DUI.

(17) "Courtney disposition system" means a statewide database maintained by the Kentucky Administrative Office of the Courts, that contains criminal conviction data from both state and local law enforcement agencies in Kentucky.

(18) "Detoxification treatment" means a twenty-four (24) hour medical or nonmedical program providing supervised management



of physical and psychological withdrawal symptoms from a substance to which an individual has been addicted or abusing and an assessment of the individual's need for further care or referral to appropriate resources.

(19) "Division" means the Division of Substance Abuse, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 100 Fair Oaks Lane, 4E-D, Frankfort, Kentucky 40621-0001.

(20) "DUI" is defined in KRS Chapter 189A.

(21) "DUI services" means assessment, education, or treatment services provided to a client convicted pursuant to KRS 189A.010.

(22) "Education" means a curriculum approved by the division that provides information about the risks of alcohol and other drugs.

(23) "Education agreement" means a written plan outlining what a client referred for education must complete to satisfy the program's requirements.

(24) "Enrollment" means the act of registering at a certified DUI program and receiving an assessment.

(25) "Facility" means the physical area including the grounds and building in which a program delivers services.

(26) "Fee agreement" means a written statement of charges to a client for services delivered by a program that specifies the arrangements for payment of the fees.

(27) "First offender" is defined in KRS 189A.010.

(28) "Halfway house" means a therapeutic group setting in which counseling is not provided by staff and in which a client resides twenty-four (24) hours a day, and where the client makes a social and vocational adjustment prior to returning to family or independent living in the community.

(29) "Immediate danger" means a condition in a program that could or has caused death or serious physical injury.

(30) "Indigent" is defined in KRS 31.100(3).

(31) "Inpatient treatment" means a hospital-based residential service provided postwithdrawal, to an individual with a primary or secondary diagnosis of alcohol or other drug abuse or dependency, that is designed to reduce or eliminate alcohol or other drug abuse behavior and dependency.

(32) "Intensive outpatient treatment" means a structured intensive substance abuse rehabilitation program provided for an individual and his family experiencing a problem related to alcohol or other drug abuse or dependency.

(33) "Location code" means a six (6) digit number issued by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration to each of a program's facilities.

(34) "Means test" means an objective method used by a program to determine a client's income and resources to evaluate his ability to pay for services received.

(35) "Memorandum of understanding" means a written agreement between two (2) programs that outlines the duties and responsibilities of a program regarding a client referral that remains in effect until one (1) of the programs terminates the agreement in writing.

(36) "Multiple offender" means a second, third or subsequent offender as defined in KRS 189A.010.

(37) "Off the grounds" means a facility is separated from another facility by a public road.

(38) "Outpatient treatment" means individual and group therapeutic activities provided in a nonresidential setting on a scheduled and unscheduled basis where a client is assisted in recovering from alcohol and other drug abuse.

(39) "Plan of correction" means a program's written plan including the planned correction and a date when a correction will be made that is submitted to the division by a program if deficiencies are cited by the division in a program review.

(40) "Program administrator" means an individual or the designee of the individual in charge of the operation of a program who is responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes the required services.

(41) "Program code" means an alphanumeric identifier that is issued to a program by the division at the time a program is certified.

(42) "Progress note" means a written entry in a client's record to

document client contacts, the delivery of services, or how well the goals of a client's treatment plan are being addressed.

(43) "Referral plan" means the identification in writing of a client's needs that cannot be met by a program and the program and community resources to which a client is referred.

(44) "Regional program manager" means an individual responsible for the management of a program's county offices when a program operating statewide has multiple county locations.

(45) "Residential treatment" means a residential service provided postwithdrawal to an individual with a primary or secondary diagnosis of alcohol or other drug abuse or dependency, that is designed to reduce or eliminate alcohol or other drug abuse dependency.

(46) "Residential transitional treatment" means a residential program that provides an organized therapeutic environment in which an individual may receive vocational rehabilitation, outpatient counseling, case management, and other support services including assistance seeking employment.

(47) "Revocation" means withdrawal by the division of a program's or an individual's right to deliver services to a client convicted of DUI.

(48) "Self-help group" means activities provided in a self-directed peer group setting for a person recovering from alcohol and other drug abuse or the provision of support services that address the effects of another person's alcohol and other drug abuse and the emphasis on a positive direction in achieving and maintaining an alcohol and drug-free lifestyle or in learning to cope with a problem related to another person's alcohol and other drug abuse.

(49) "Sliding fee scale" means a program's formula for providing a service to a client at a rate lower than the program's maximum published fee.

(50) "Twenty (20) hour education" means an education curriculum for first offenders assessed as low-risk, that do not have an alcohol or other drug problem requiring treatment, or as a supplement to treatment for a first or multiple offender.

(51) "Treatment" means services delivered in a licensed outpatient, intensive outpatient, inpatient, residential, residential transitional, detoxification or halfway house program.

(52) "Treatment plan" means the process by which a client and a clinician identify and rank a client's problems needing resolution, establish agreed upon immediate and long-term specific and measurable goals and decide on a treatment process and the resources to be utilized.

(53) "Uniform citation" is defined in KRS 431.450. ("Cabinet" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(2) "Division" means the Cabinet for Human Resources, Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601.

(3) "DUI" means driving while under the influence of alcohol, drugs or intoxicating substances.

(4) "Program" means any public, private or government entity eligible to deliver DUI assessment, education and treatment services.

(5) "Certification" means the process by which the Division of Substance Abuse recognizes and authorizes any program, assessor or instructor to provide DUI services.

(6) "Services" means the level of care appropriate for a client based on an evaluation of the client's needs.

(7) "Assessment" means the procedure used to obtain information about a client's use of alcohol and other drugs and to determine the problems and needs of a client in order to recommend appropriate services.

(8) "Education" means a course which delivers factual information about alcohol and other drugs to increase awareness, knowledge, and change a client's attitude and behavior in relation to substance abuse.

(9) "Treatment" means outpatient, intensive outpatient, inpatient, residential, or detoxification services provided to clients in need of substance abuse services.

(10) "Program administrator" means the person responsible for the services provided in a program and who has responsibility for determining if a client satisfactorily completes all required services.

(11) "Certified assessor" means a person who has been trained and approved by the division to evaluate the needs of clients and to recommend appropriate services.

(12) "Certified instructor" means a person who has been trained and approved by the division to provide education services in a DUI program.

(13) "Approved curriculum" means:

(a) "Talking about alcohol driving unimpaired nine (9) hour";

(b) "Talking about alcohol driving unimpaired twenty (20) hour";

(c) "Kentucky alcohol and other drug education program nine (9) hour"; and

(d) "Kentucky alcohol and other drug education program twenty (20) hour."

(14) "Computerized screening instrument" means the Kentucky driver risk inventory (DRI).

(15) "Case management" means an administrative function to insure coordination of client services and continuity of care.

(16) "Court" means the court where a client is convicted of DUI.

(17) "Client" means any individual receiving services in a DUI program.

(18) "First offender" means a person convicted of DUI for the first time within a five (5) year period.

(19) "Multiple offender" means a person convicted of a second or subsequent DUI within a five (5) year period.

(20) "Satisfactorily completed" means a client has fulfilled all requirements of the program and has received maximum benefits from the services received.

(21) "DUI services" means assessment, education, or treatment services provided by an eligible DUI program.

(22) "Facility" means the physical area, including the grounds and buildings where program functions take place.]

Section 2. Licensing Requirements. (1) It shall be unlawful for an individual or other entity [desiring] to provide DUI assessment, education or treatment services unless it is in a certified program;

(a) Licensed by [as an assessment facility and program, education facility and program, or treatment facility and program shall first obtain a license from] the cabinet in accordance with 908 KAR 1:370;

(b) [the drug abuse treatment and education center (DATE center) regulations, 908 KAR 1:150 through 908 KAR 1:260; and the non-medical alcohol treatment and education center (NATE center) administrative regulations, 908 KAR 1:010 through 908 KAR 1:140;

(2) Programs] Conducted in a [facility established and maintained by a] licensed federal hospital [shall be exempt from state licensing requirements, as such facilities are created] subject to federal licensure and regulatory requirements pursuant to [in accordance with] 38 USC 301, 38 USC 1720A, 38 USC 7333, and 38 USC 7334; or

(c) [(3) Programs] Conducted on the grounds of [in a facility established and maintained by] a hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180 [shall be exempt from obtaining a DATE or NATE center license in accordance with 908 KAR 1:160, Section 1(1)(c)].

(2) A hospital licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180 that operates a DUI program in a facility off the grounds of the hospital shall have the separate facility where a DUI program is located licensed by the cabinet in accordance with subsection (1) of this section.

(3) A DUI program established, conducted, and maintained in a jail, prison, or correctional facility shall be licensed by the cabinet in accordance with subsection (1) of this section. [(4) The cabinet shall notify the division in writing when an individual or entity:

(a) Is granted a license as a DATE or NATE center;

(b) Has stated in its application that it desires to provide DUI services; and

(c) If its license has been renewed, suspended or revoked.]

Section 3. Program Certification Requirements. (1) General requirements.

(a) A licensed entity desiring to provide DUI assessment or education services shall be certified by the division as a DUI program before providing a service at any location.

(b) A certified DUI program may deliver assessment, education or treatment services statewide if it is licensed by the cabinet and

certified by the division at each service location.

(c) A program may be certified to provide only assessment or only education services or both assessment and education services at a location.

(d) The division shall not certify a program desiring to provide only education at all locations.

(e) A treatment facility licensed by the cabinet pursuant to 902 KAR 20:160 or 902 KAR 20:180, an out-of-state treatment facility licensed by the state where the facility is located, and a federally licensed hospital may provide treatment services to a client referred by a certified DUI program without receiving DUI program certification from the division.

(f) The division shall notify a program, in writing, if certification is issued, renewed or revoked.

(g) The division shall notify the Transportation Cabinet, in writing, if an action is taken to revoke a DUI program's certification and if an action by the division is appealed by a program.

(h) If more than one (1) certified DUI program is operated at the same location each program shall maintain a separate identity by:

1. Posting a sign conspicuously in a public area showing the name of the program;

2. Posting each program's license conspicuously in a public area;

3. Using a separate logo or letterhead on written materials;

4. Maintaining client records separately; and

5. Delivering services separately.

(i) A certified DUI program shall:

1. Deliver education and treatment services in a facility that provides at least seven (7) square feet of individual space for a client while he is receiving a service;

2. Maintain an alcohol and other drug-free work place;

3. Obtain a criminal background check from the Administrative Office of the Court's Courtnet Disposition System for the administrator, and all clinical and certified staff, that begin working in the program after the effective date of this administrative regulation;

4. Ensure that an owner, program administrator, and all clinical and certified staff that begin working in a program after the effective date of this administrative regulation have not been released from incarceration or probation or parole for the conviction of a violent crime, hate crime, or sex crime within two (2) years from his date of employment with the program; and

5. Maintain professional malpractice insurance to cover all clinical and certified staff in the minimum amount of \$100,000 per occurrence.

(2) Staffing requirements.

(a) General requirements.

1. A program shall have staff certified by the division in accordance with Section 4 of this administrative regulation to deliver assessment and education services.

2. Certified, clinical and administrative staff shall not currently be employed as:

a. A law enforcement officer;

b. A correctional officer, other than in a certified DUI program that is located in a jail, prison or correctional facility;

c. A probation and parole officer;

d. An attorney;

e. An employee of the Administrative Office of the Courts;

f. An employee of the division; or

g. A judge.

(b) Program administrator.

1. A program administrator shall be responsible for the services delivered in a program and knowledgeable of:

a. The standards in this administrative regulation, KRS 189A.040 and 189A.045;

b. In a federally assisted program, the requirements for confidentiality pursuant to 908 KAR 1:320; and

c. In a nonfederally assisted program, the requirements for confidentiality pursuant to KRS 222.271(1).

2. A program administrator shall ensure:

a. A program implements and complies with all applicable regulations and statutes;

b. Staff having primary responsibility for delivering DUI services, including regional program managers, comply with:

VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

- (i) The standards in this administrative regulation, KRS 189A.040 and 189A.045;
- (ii) In a federally assisted program, the requirements for confidentiality pursuant to 908 KAR 1:320; and
- (iii) In a nonfederally assisted program, the requirements for confidentiality pursuant to KRS 222.271(1);
- c. An individual involved in the operation of the program or in the delivery of client services engages in ethical practices and abides by the code of ethics contained on the application for DUI program certification;
- d. A program does not accept a client if a conflict of interest exists between the program and the client;
- e. Staff providing assessment and education services are certified by the division and that they complete training required by the division;
- f. Staff providing assessment, education, and treatment services are supervised in accordance with the requirements in subsection (3) of this section; and
- g. Attendance by a client is documented in a client's record.
3. A program administrator shall:
- a. Maintain documentation of annual in-service training that the division requires of staff delivering DUI services;
- b. Investigate a complaint received from the division and shall, upon request, provide the division with records pertaining to a complaint; and
- c. Attend at least one (1) statewide DUI meeting annually. The division conducts statewide DUI meetings on a semiannual basis.
- (c) Clinical services supervisor.
1. There shall be a clinical services supervisor for each program location that meets one (1) of the following requirements:
- a. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, with at least two (2) years full-time clinical work experience postcertification, and an academic degree if required for certification, from an accredited college or university;
- b. A certified or licensed professional, with at least two (2) years postdegree work experience in the alcohol and other drug treatment field, who has completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to assuming responsibility as a clinical services supervisor in a DUI program, and is one (1) of the following:
- (i) Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;
- (ii) Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;
- (iii) Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology pursuant to KRS 319.050;
- (iv) Certified psychologist with autonomous functioning, certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology, pursuant to KRS 319.056;
- (v) Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist pursuant to KRS 319.064;
- (vi) Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work pursuant to KRS 335.100;
- (vii) Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for the independent practice of clinical social work pursuant to KRS 335.080;
- (viii) Registered nurse licensed by the Kentucky Board of Nursing pursuant to KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;
- (ix) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing pursuant to KRS 314.042;
- (x) Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists pursuant to KRS Chapter 335;
- (xi) Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors pursuant to KRS Chapter 335; or
- (xii) Certified art therapist certified by the Kentucky Board of Art Therapists pursuant to KRS 309.130.
2. A clinical services supervisor shall complete a division approved training in clinical supervision, within six (6) months of assuming responsibility as the clinical services supervisor in a DUI program, and shall complete twenty (20) hours of training in alcohol and other drug abuse treatment annually.
3. A clinical services supervisor shall assist a program administrator in the investigation of a complaint against a program if a complaint concerns an assessment, education, or a treatment service.
- (3) Supervision requirements.
- (a) General requirements.
1. A clinical services supervisor shall supervise certified and clinical staff delivering assessment and treatment services.
2. A clinical services supervisor shall sign an agreement stating he will not supervise his spouse, live-in partner, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law.
3. A clinical services supervisor shall develop annually an individual written plan of supervision for an assessor and clinician he supervises that:
- a. Reflects a staff member's strengths and weaknesses; and
- b. States measurable objectives designed to assist a staff member to:
- (i) Improve the quality of services delivered to a client; and
- (ii) Develop skill and knowledge of the twelve (12) core functions of an alcohol and drug counselor established by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc. necessary for the level of services the staff member delivers.
4. The individual providing supervision shall document the supervision after each session and include an attendance record and the minutes of a group supervision session.
- (b) Supervision of assessors. A clinical services supervisor shall provide a certified assessor who meets the requirements in Section 4 (2)(a)3 of this administrative regulation with at least four (4) hours of face-to-face individual or group supervision monthly that includes:
1. Observation of a clinical interview;
2. Review and cosigning of assessments;
3. Review of progress notes;
4. Training in assessment, progress note documentation, and case coordination;
5. Bimonthly review of a record for a client completing education or treatment at another program for which the assessor is responsible for providing case coordination; and
6. Verification that the assessor is in compliance with the standards established in this administrative regulation, KRS 189A.040, 189A.045 and with his professional continuing education requirements.
- (c) Supervision of instructors.
1. A program administrator shall ensure that a certified instructor receives supervision in accordance with a plan of supervision developed by the program.
2. A program's plan of supervision shall include:
- a. The designation of an individual familiar with a curriculum who will be responsible for providing supervision;
- b. The method and content of supervision to include at least the observation of an instructor delivering a curriculum;
- c. The length and frequency of a supervisory session;
- d. A system for providing feedback, consultation and training if needed; and
- e. Verification that an instructor is in compliance with the standards in this administrative regulation, KRS 189A.040, 189A.045 and with his professional continuing education requirements.
- (d) Supervision of clinicians.
1. A clinical services supervisor shall provide at least four (4) hours of face-to-face individual or group supervision monthly to a clinician meeting the requirements for an assessor in Section 4(2)(a)3 of this administrative regulation who provides treatment to a client convicted of DUI.
2. The supervision shall include:

a. Review of a plan of supervision;  
b. Treatment plan review and cosigning of treatment plans;  
c. Observation of an individual or group treatment session at least semiannually;

d. Review of records and progress note documentation;  
e. Case consultation; and  
f. Verification that a clinician complies with the standards in this administrative regulation, KRS 189A.040, 189A.045 and with his professional continuing education requirements.

(4) Application for program certification.

(a) An individual or other entity seeking DUI program certification shall:

1. Submit a written application to the division;  
2. Submit a program survey form for each location where the applicant desires to provide DUI assessment or education services;  
3. Sign a statement of ethical practice contained on the application for DUI program certification; and  
4. Sign a statement contained on the application for DUI program certification agreeing to comply with:

a. The standards in this administrative regulation, KRS 189A.040 and 189A.045;

b. In a federally-assisted program, the requirements for confidentiality pursuant to 908 KAR 1:320; and

c. In a nonfederally assisted program, the requirements for confidentiality pursuant to KRS 222.271(1).

(b) A program survey form shall be completed for each location at the time of application for program certification and recertification and if a program opens a new location.

(c) A program survey form shall contain:

1. Type of services provided;  
2. Maximum fee for a service;  
3. Name of the curriculum delivered at a location;  
4. Name and telephone number of the contact person for a location;  
5. Hours of operation when an office is staffed;  
6. Address of the office where the client files for a location are maintained and stored;  
7. Name and title of each certified staff person providing assessment or education services at a location; and  
8. Name of the clinical services supervisor for a location.

(d) The division shall review an application, verify the information and certify a program that meets the following requirements for certification:

1. Submits an application for program certification to the division;  
2. Is a licensed entity in accordance with Section 2 of this administrative regulation; and  
3. Has staff certified by the division to deliver the required services.

(e) The division shall assign a program code and issue a letter and certificate of certification if a program is certified. The program code shall be used for verification of program certification on correspondence to the court, the Transportation Cabinet, and the division.

(f) Each program location shall have an additional location code issued by the division that shall be used in conjunction with a program code and will identify a program and the exact location where a service is delivered.

(g) Program certification shall be issued by the division for a period of two (2) years, and is renewable unless previously revoked.

(h) Program certification shall not be transferred and applies only to the individual or other entity named in the application for DUI program certification approved by the division.

(i) If there is a change of ownership the new owner shall apply for program certification in accordance with the requirements in this subsection.

(5) Application for program recertification.

(a) A program administrator shall request program recertification on an application for DUI program recertification at least thirty (30) calendar days prior to the expiration of his program's certification.

(b) If program certification expires, a program administrator may submit an application for DUI program recertification. The program shall be considered a new applicant if an application for program recertification is not made within sixty (60) calendar days of the expi-

ration date.

(c) If program certification lapses for sixty (60) calendar days or more the division shall notify a program administrator, in writing, that the program is not eligible to deliver DUI services and the program shall:

1. Notify active clients in writing;  
2. Refer a client and transfer case-coordination responsibility of a client's case to a program of his choice; and

3. Submit to the division a list of active clients with a copy of each client's referral form stating the name of the program to which a client is referred.

(d) A program administrator shall meet the requirements in subsection (2)(b)3c of this section before a program is recertified.

(6) Denial of program certification and recertification. The division may deny a program's application for certification or recertification if:

(a) A program fails to meet certification requirements;

(b) Program certification has been denied or revoked by the division within the last three (3) years;

(c) The owner, program administrator, clinical services supervisor, or other principal had his assessor or instructor certification revoked by the division within the last three (3) years; or

(d) The division is in the administrative hearing process to revoke the assessor, or the instructor certification of an owner, program administrator, or clinical services supervisor.

(7) Program changes.

(a) A program administrator shall notify the division and the cabinet, in writing, if there is a change in ownership, program name, or program location.

(b) A program administrator shall notify the division, in writing, if an individual certified by the division as an assessor or instructor begins employment with a program or terminates employment with a program.

(c) A program administrator shall notify the division, in writing, on a report of change form that is incorporated by reference in this administrative regulation, if there is a change at a location in:

1. Services delivered;  
2. Maximum fee charged for a service;  
3. Hours of operation when an office is staffed;  
4. Location of client records;  
5. Scheduling telephone number;  
6. Contact person;  
7. Clinical services supervisor; and  
8. Other program information printed in the DUI directory.

(8) Records.

(a) General requirements.

1. A program shall designate on a program survey form, at the time of application for program certification, where the client records for each location and the administrative records for the program will be maintained and stored.

2. A program administrator shall notify the division, in writing, on a report of change form, if a program changes the location where client and administrative records are maintained and stored.

3. A program administrator shall ensure that written and electronic client and administrative records are:

a. Stored in a locked cabinet or computer only accessible to authorized staff;

b. Kept confidential in a federally assisted program pursuant to 908 KAR 1:320 and in a nonfederally assisted program pursuant to KRS 222.271(1);

c. Retained for at least five (5) years from the last date of service or action taken; and

d. If destroyed after a five (5) year period of retention, a record is burned, shredded or deleted electronically and is unrecoverable.

4. A program shall maintain a record of fees paid by a client.

(b) Administrative records. A program shall maintain administrative records that include:

1. Policy and procedure manual;  
2. Copies of curricula, handouts, and videos;  
3. Hours of operation for each location;  
4. Fee schedule and means test for determining indigency;  
5. Record of indigent services delivered;  
6. Cabinet report from most recent licensure inspection;

7. Memoranda of understanding;
  8. Copies of the division's certification letters for assessors and instructors on staff;
  9. Clinical supervision reports;
  10. Complaint file;
  11. Assessment, education, and treatment rosters or sign in sheets; and
  12. Documentation of all training and continuing education completed by staff.
- (c) Client records.
1. A program may release a client's record or disclose confidential information about the client with the client's written permission through a signed authorization for release of information.
  2. A program shall release a client's record, with the client's written authorization for release of information, if the court orders a record released, the division requests release of a record, or a client is referred to another program for education or treatment services.
  3. A program shall open a separate written or electronic record for a client at the time of assessment, or upon enrollment in education or admission to treatment if a client is referred to another program after receiving an assessment;
  4. Client records shall include the following forms signed by a client:
    - a. Client rights statement;
    - b. Client notice of confidentiality and confidentiality agreement;
    - c. Fee agreement; and
    - d. Authorization for release or disclosure of information.
  5. If a client receives an assessment his record shall include the items established in subparagraph 4 of this paragraph and:
    - a. An AOC 494 form, that is incorporated by reference in this administrative regulation or a court order;
    - b. Uniform citation;
    - c. Kentucky DUI Assessment Instrument printout;
    - d. Clinical interview and interview notes;
    - e. Freedom of choice statement;
    - f. Confirmation and acceptance of assessment statement;
    - g. Referral agreement;
    - h. Certificate of enrollment;
    - i. Case coordination contacts; and
    - j. Certificate of completion or notice of noncompliance;
  6. If a client receives education his record shall include the items established in subparagraph 4 of this paragraph and:
    - a. An education agreement signed by a client; and
    - b. A record of attendance.
  7. If a client receives treatment his record shall include the items established in subparagraph 4 of this paragraph and:
    - a. A treatment plan and treatment plan reviews signed by a client and a clinician;
    - b. Progress notes signed and dated by a clinician, recorded after each client contact and if the contact is the delivery of a professional service, include the service provided, an observation of the client's response to the service, and the client's progress toward meeting the goals and objectives of his treatment plan; and
    - c. A discharge summary documenting completion or noncompliance signed and dated by a clinician.
- (9) Fees.
- (a) The fee for assessment, education, and treatment shall be established by a program and paid by a client pursuant to KRS 189A.040.
  - (b) The fee schedule published in the DUI directory, shall be posted in a public area of each facility visible to a client.
  - (c) The fee a client is charged shall not exceed a program's maximum published fee.
  - (d) A program shall explain fee and program requirements for the payment of a fee to a client at the time of his assessment or upon enrollment in education or admission to treatment if a client is referred to another program after receiving an assessment.
  - (e) A program shall not charge a client a fee unless the client has signed a fee agreement.
  - (f) A program's sliding fee scale shall be based on a means test and applied objectively to a client to determine a client's ability to pay;
  - (g) If a client states he is indigent a program shall refer him to

the court to have an affidavit of indigency executed by the court, and a program shall accept a client determined indigent by the court, and deliver services free of charge or for the amount specified by the court.

(h) A DUI program shall maintain a written record showing the number of indigent clients served and this information shall be made available to the division upon request.

(10) DUI directory.

(a) The division shall publish annually on July 1, of each year, a directory of all certified DUI programs and may issue additions, revisions, and corrections quarterly on October 1, January 1, and April 1, of each year as changes occur.

(b) The directory shall include DUI programs certified to provide DUI assessments and shall be distributed to:

1. District court judges;
2. Circuit clerks;
3. Certified DUI programs; and
4. The public upon request.

(c) The directory shall have a county section that includes:

1. The location of each program having an assessment center in a county;
2. The services provided at each program location;
3. The maximum fee for a service; and
4. Specific terms and conditions related to DUI services that are required by a program.

(d) A program administrator shall report changes for the directory to the division, on a report of change form, at least thirty (30) calendar days prior to the publication dates in paragraph (a) of this subsection. If the division does not receive a report of change form by the deadline date the division may hold a change until the next scheduled publication of the directory. [Program certification requirements:

(a) A licensed individual or entity, desiring to provide DUI assessment or education services shall be certified by the division.

(b) A properly licensed treatment facility may provide DUI treatment services without receiving program certification from the division.

(c) A certified program may operate statewide if it is properly licensed and certified in all service locations.

(d) All service locations shall be subject to the same qualifications as the central office location.

(e) A program may be certified to provide assessment, or education services or assessment and education services.

(f) A program shall have at least one (1) individual on staff who has been certified by the division, to be a certified program.

(g) Program administrator:

1. The program administrator shall be knowledgeable of the requirements for operating a DUI program and is responsible for the services delivered by the program.

2. The program administrator shall be responsible for insuring that all staff having primary responsibility for the delivery of DUI services, are knowledgeable of the DUI law and administrative regulation.

(2) Application for program certification; program survey form; and clinical services supervisor qualifications:

(a) Individuals or entities seeking program certification shall:

1. Submit a written application to the division;
2. Sign a statement of ethical practice contained on the application for DUI program certification;
3. Agree to abide by the provisions of this administrative regulation; and
4. Submit a program survey form for each location where the applicant desires to provide DUI assessment or education service;

(b) A program survey form shall be completed at the time of the initial application for program certification and whenever a program opens a new clinic location. The program survey form shall contain the:

1. Types of services provided;
  2. Fees charged for those services;
  3. Names and titles for all certified staff which provide assessment or education services at that location; and
  4. Name of the clinical services supervisor which shall be at that location;
- (c) There shall be a clinical services supervisor for each program location who holds:



1. A masters degree or greater in psychiatry, psychology, social work;

2. A nursing degree with a specialty in psychiatric or mental health nursing or other mental health program; or

3. A certified chemical dependency counselor (CGDC);

4. In addition to the education requirement in subparagraphs 1 through 3 of this paragraph, the clinical services supervisor shall have eighty (80) clock hours of training in chemical dependency treatment within a maximum of four (4) years prior to employment with the program; and shall maintain twenty (20) clock hours of continuing education in chemical dependency treatment annually.

(d) The division shall issue a three (3) digit code when a program is certified.

(e) The name and location of each certified program shall be included on any published list of certified programs.

(3) Program certification directory.

(a) The division shall publish an annual certification directory on July 1 of each year, listing:

1. Programs certified to provide assessment services;
2. Fees charged; and
3. Program service location addresses.

(b) The division shall provide the directory to:

1. District court judges;
2. Circuit court clerks;
3. Certified programs; and
4. The public upon request.

(c) The division may issue additions, revisions and corrections to the directory on October 1, January 1, and April 1 each year.

1. Programs shall report additions, revisions and corrections on a division "Report of Change Form".

2. "Report of Change Forms" shall be submitted at least thirty (30) days prior to the publication dates in this paragraph.

(4) The application for DUI program certification, the program survey form, and the report of change form are hereby incorporated by reference. Copies of the application for DUI program certification, the program survey form, and the report of change form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(5) Expiration and renewal of program certification. The program certification shall remain in effect for a period of two (2) years and is renewable for a like period, unless earlier suspended or revoked. The program shall request recertification, in writing, thirty (30) days prior to the expiration of certification. If certification has lapsed for more than sixty (60) days, programs shall submit a new application and shall be considered as a new applicant. The division shall notify the program, in writing, when certification is issued, renewed, suspended or revoked.

(6) Program certification not to be transferred. The program certification shall apply only to the program so certified and is not transferable. The program shall be responsible for notifying the division, in writing, when there is a change in ownership or control, a change in location, a change in the types of services provided, or a change in fees charged for such services. If there is a change of ownership, a new application for certification shall be made to the division in the same manner as if the owner were applying for a new program.

(7) Program certification referrals. A program shall accept referrals from other programs or from the courts.

(a) A program may refuse a client referral because of:

1. Inadequate staff;
2. Lack of an appropriate service; or
3. Because of a client waiting list.

(b) With a client's written authorization for release of information copies of the DUI assessment and other client records pertinent to the client's treatment shall be released by the referring agency.

(c) The assessment results and any interview notes or other information pertaining to the assessment shall be confidential and shall remain in the client's file.

(d) A program making or receiving client referrals shall execute a written memorandum of understanding (MOU) with all other programs involved in the referrals.

1. The MOU shall fully outline the duties, responsibilities and terms of agreement to all referring programs;

2. The terms of agreement in the MOU shall remain in effect until one (1) of the programs terminates the agreement.

(8) Inspections by the division. The division shall conduct at least one (1) inspection of the program's facility annually to determine whether the program is in compliance with the applicable certification standards.

(a) The division may conduct more than one (1) inspection annually.

(b) Inspections may be made at any of the program's locations and may be unannounced.

(c) The division shall notify the program, in writing, within sixty (60) days of the result of the inspection.

(d) The division shall provide a copy of the results of its inspection to the program within sixty (60) days.

(e) The division may inspect the offices, files, client records and other materials of any certified program to ensure compliance with this administrative regulation:

1. The program shall:
  - a. Cooperate with representatives of the division; and
  - b. Provide all records and materials requested.
2. The program shall allow division representative to attend and observe any assessment or education session conducted by the program during the course of its inspection.

(9) Client and program records. Client records shall contain all information pertinent to the provision of program services:

(a) Program records shall be confidential.

(b) Program records shall not be released, unless:

1. The client consents in writing;
2. The court orders the records released; or
3. The division requests release of the records as a part of the compliance review.

(c) Client and program records shall be maintained for a minimum of five (5) years after which the records may be destroyed.

(d) Records may be destroyed by burning or shredding after the five (5) year record retention period in paragraph (c) of this subsection.

(10) Revocation or suspension of program certification. The division shall suspend or revoke the certification of any program that is not in compliance with the applicable certification standards. The division shall notify the program, in writing, of any pending certification action, and shall provide written reports citing observed deficiencies as they relate to the certification standards. The program shall submit an acceptable plan of correction for cited deficiencies to the division within ten (10) working days from the date the program receives the inspection report. The revocation or suspension of program certification shall be effective on the date stated in the notice sent to the program by the division. Programs shall have the right to appeal any suspension or revocation of their program certification. Hearing procedures involving certification shall be conducted in accordance with this administrative regulation.]

#### Section 4. Assessor and Instructor Certification Requirements [of Individual DUI Assessors, Instructors and Education Service Providers]. (1) General requirements.

(a) An individual desiring to provide assessment or education services shall apply for certification to the division, meet the requirements for certification in this section, complete training required by the division and be certified by the division.

(b) Certification for an assessor and an instructor shall be for a period of five (5) years from the date of an individual's initial certification as an assessor or instructor, may be renewed for a like period, and shall expire on the fifth anniversary date unless previously revoked.

(c) Only an individual holding valid certification from the division shall provide DUI assessment or education services and an individual certified by the division shall not provide DUI assessment or education services except in a program that is certified by the division.

#### (2) Credentials for assessors and instructors.

(a) Assessors. An individual desiring certification as an assessor shall complete twenty (20) hours of training in alcohol and other drug abuse counseling annually and meet one (1) of the following re-



quirements:

1. A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, and an academic degree if required for certification, from an accredited college or university;

2. A certified or licensed professional, that has completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to assuming responsibility as an assessor in a DUI program and is one (1) of the following:

a. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

b. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

c. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology pursuant to KRS 319.050;

d. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology pursuant to KRS 319.056;

e. Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist pursuant to KRS 319.064;

f. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work pursuant to KRS 335.100;

g. Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for independent practice of clinical social work pursuant to KRS 335.080;

h. Registered nurse licensed by the Kentucky Board of Nursing pursuant to KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

i. Registered nurse licensed by the Kentucky Board of Nursing pursuant to KRS Chapter 314, working under the supervision of an independent practitioner, and with one (1) of the following combinations of education and work experience:

(i) Bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;

(ii) Diploma graduate in nursing from a three (3) year program and two (2) years clinical work experience in the substance abuse or mental health field; or

(iii) Associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;

j. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing pursuant to KRS 314.042;

k. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists pursuant to KRS Chapter 335;

l. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors pursuant to KRS Chapter 335; or

m. Certified art therapist licensed by the Kentucky Board of Licensure of Art Therapists pursuant to KRS 309.130; or

3. An individual with a bachelors degree from an accredited college or university working under the supervision of a clinical services supervisor meeting the requirements in Section 3(2)(c)1 of this administrative regulation who is supervised in accordance with the requirements in Section 3(3)(b) of this administrative regulation.

(b) Instructors. An individual desiring certification as an instructor shall meet one (1) of the following requirements:

1. Bachelors degree from an accredited college or university;

2. Associate degree in human services from an accredited college or university, with two (2) years full-time supervised work experience in direct client services in the substance abuse field;

3. High school diploma or a general education development equivalency certificate from a state board of education, with four (4) years full-time supervised work experience in direct client services in

the substance abuse field;

4. An individual who meets the requirements for a certified assessor in paragraph (a) of this subsection; or

5. An individual who meets the requirements for a clinical services supervisor in Section 3(2)(c)1 of this administrative regulation.

(3) Assessor and instructor certification and recertification training.

(a) General training requirements.

1. Training approved by the division shall suffice as acceptable training for DUI assessor or instructor certification or recertification.

2. An individual desiring certification or recertification as an assessor or instructor shall submit an application to the division no later than a deadline date indicated on a training announcement issued by the division.

3. An application for training shall be accompanied by a copy of the following:

a. Official transcripts;

b. Diplomas;

c. Certificates;

d. Documentation of certification or licensure; and

e. Documentation of work experience.

4. Assessor and instructor certification or recertification shall not be issued by the division until the fee for a training is paid in full.

5. If an individual making application for an assessor or instructor certification or recertification training fails to meet the requirements, the division shall deny the application and notify the applicant, in writing, of the reason for the denial.

6. The division shall notify a program and an individual, in writing, within thirty (30) calendar days after completion of an assessor or instructor training of the following:

a. That an individual has satisfactorily completed a training, has met the requirements for certification or recertification and has been certified or recertified; or

b. Of an observed deficiency, as it relates to assessor or instructor certification, a reason for withholding certification or recertification, and a required corrective plan of action.

(b) Training requirements for assessors. An individual desiring certification as an assessor, that has the necessary education and work experience, shall successfully complete the following requirements:

1. Attend and participate in all sessions of an assessor certification training;

2. Obtain an overall score of eighty (80) percent or better on performance in each of the following areas:

a. A written posttest on general course content;

b. A written posttest on the Kentucky DUI Assessment Instrument; and

c. A demonstration of ability to make an appropriate client referral based on a written case study;

3. Receive the recommendation of a trainer and division representative; and

4. Sign and agree to comply with a statement of ethical practice on the application for assessor certification and agree to comply with the standards in this administrative regulation.

(c) Training requirements for instructors. An individual desiring certification as an instructor, that has the necessary education and work experience, shall successfully complete the following training requirements:

1. Attend and participate in all sessions of a division approved instructor certification training;

2. Complete training in one (1) or more of the curricula approved by the division;

3. Obtain a score of eighty (80) percent or better on a written posttest;

4. Demonstrate ability to make an oral presentation of assigned material;

5. Receive the recommendation of a trainer and division representative; and

6. Sign and agree to comply with a statement of ethical practice on the application for instructor certification and agree to comply with the standards in this administrative regulation.

(4) Assessor and instructor recertification.

(a) An individual desiring recertification as an assessor shall

meet the requirements for a DUI assessor in subsection (2)(a) of this section, submit to the division an application for recertification and other required forms at least sixty (60) calendar days prior to the date of expiration of his assessor certification, and complete a training authorized by the division prior to the expiration date of his currently held assessor certification.

(b) An individual desiring recertification as an instructor shall meet the requirements for a DUI instructor in subsection (2)(b) of this section, submit to the division an application for recertification and all other required forms at least sixty (60) calendar days prior to the date of expiration of his instructor certification, and complete a training authorized by the division prior to the expiration date of his currently held instructor certification.

(c) If an individual's assessor or instructor certification lapses for one (1) year or more the individual's application for assessor or instructor recertification shall be processed as a new application and the individual shall complete all additional training required by the division.

(d) If an individual does not meet the requirements for an assessor or instructor at the time of his application for recertification:

1. The division shall deny his application for recertification and notify the individual and the program, in writing, of the reason for denial; and

2. The individual's currently held certification shall expire pursuant to subsection (1)(b) of this section.

(5) Revocation of assessor and instructor certification.

(a) The division may revoke assessor and instructor certification if an individual:

1. Fails to comply with the standards in this administrative regulation;

2. Violates the standards of ethical practice contained in a statement on the application for assessor and instructor certification;

3. Is convicted while holding certification from the division of a violent crime, hate crime, or sexual crime; or

4. Falsifies information on an application for DUI certification.

(b) The revocation of an individual's assessor or instructor certification shall be for a period of three (3) years and shall be effective on the date stated in a notice sent to an individual assessor or instructor by the division. [Individual certification: All individuals desiring to provide assessment or education services shall meet the requirements for certification and receive certification from the division.

(a) A program shall employ individuals who hold valid certification from the division to provide DUI assessment and DUI education services:

(b) It shall be the duty and responsibility of the program to insure that any individual in their employ providing DUI assessment services or DUI education services complete all training required by the division. Only training approved by the division shall suffice as proper training for DUI assessment and DUI education services:

(c) Application for DUI assessor or instructor:

1. An individual shall make application for DUI assessor or DUI instructor certification by submitting an application for DUI assessor or DUI instructor training:

2. The application shall be accompanied by a copy of all required:

- a. Transcripts;
- b. Diploma;
- c. Certificate;
- d. Certifications; or
- e. Proof of work experience.

(d) An individual certified by the division shall not provide DUI assessment services or DUI education services except in a program that is certified by the division:

(e) An individual providing DUI assessment or DUI education services for a program shall be considered an agent of the program and the program shall share the responsibility for all acts performed by the individual within the scope of employment:

(f) If a certified DUI assessor or DUI instructor terminates association with a program, the program shall notify the division in writing:

(2) Notification concerning completion of training:

(a) The division shall notify the program and the individual, in writing, within thirty (30) days after completion of a DUI assessor or DUI instructor training session that the individual has satisfactorily completed the training, has met all of the requirements for certification,

and has been certified:

(b) The division shall notify the program and the individual, in writing, of any observed deficiencies, as they relate to DUI assessor and DUI instructor certification, within thirty (30) days after completion of a training session:

(c) The division shall state the reasons for withholding DUI assessor or DUI instructor certification and shall notify the program and the individual of any required corrective plan of action:

(3) Minimum competency requirements for DUI assessor: An individual desiring certification as a DUI assessor shall demonstrate minimum competency in order to successfully complete the requirements for DUI assessor certification:

(a) An individual desiring certification as a DUI assessor shall have the following education or work experience:

1. Bachelor-level degree in Human Services with certified chemical dependency counselor (CGDC) trainee status; working under clinical supervision where in weekly personal contact meetings, DUI assessments and treatment plans are reviewed and cosigned by a clinical services supervisor, as defined in subsection (2) of this section. Individuals holding CGDC trainee status have until their date of application for DUI assessor recertification to become a CGDC; or

2. Qualified mental health professional defined as:

- a. Psychiatrist – board certified or board eligible;
- b. Psychologist – licensed clinical psychologist, certified psychologist, or a psychological associate;
- c. Psychiatric nurse – or registered nurse with one (1) of the following combinations of education and experience:

(i) Master of science in nursing (MSN) with specialty in psychiatric or mental health nursing;

(ii) Bachelor of science in nursing (BSN) and a minimum of one (1) year of work experience in a mental health setting;

(iii) Three (3) year educational program diploma with two (2) years of work experience in a mental health setting;

(iv) Associate degree in nursing (ADN) with three (3) years of work experience in a mental health setting; or

d. Psychiatric social worker – MSW or MSSW; or

e. Professional equivalent as defined by the Division of Substance Abuse; or

3. Certified chemical dependency counselor (CGDC):

(b) An individual desiring certification as a DUI assessor shall successfully complete the following training requirements:

- 1. Attend and participate in all sessions of the assessor training;
- 2. Obtain an eighty (80) percent or above overall score on performance in the following areas:

- a. A written pretest and posttest on general course content;
- b. A written pretest and posttest on the computerized assessment instrument;
- c. A demonstration of ability to conduct an assessment interview; and

d. A demonstration of ability to make a client referral based on a case study:

3. Receive the recommendation of the trainer(s) and the division's representative:

4. Sign a statement of ethical practice contained in the DUI assessor certification application packet and agree to abide by the standards stated in this administrative regulation:

(4) Minimum competency requirements for DUI instructor: An individual desiring certification as a DUI instructor shall demonstrate minimum competency in order to successfully complete the requirements for DUI instructor certification:

(a) An individual desiring certification as a DUI instructor shall have the following education or work experience:

1. Bachelors degree in a related field – social work, psychology, sociology, counseling, or education; or

2. Associate degree and two (2) years of work experience in the substance abuse field; or

3. High school diploma or a general education development (GED) equivalency certificate and four (4) years of work experience in the substance abuse field; or

4. Professional equivalent as defined by the Division of Substance Abuse:

(b) An individual desiring certification as a DUI instructor shall successfully complete DUI instructor training in one (1) of the curricula

approved by the division. The individual shall attend and participate in all sessions of the training; take a pretest and obtain a score of eighty (80) out of a possible 100 points on a written posttest; demonstrate ability to make an oral presentation of assigned material; demonstrate group facilitation skills; receive the recommendation of the trainer(s) and the division's representative; and sign a statement of ethical practice contained in the DUI instructor certification application packet and agree to abide by the standards stated in this administrative regulation.

(5) Incorporation by reference of DUI assessor and instructor application packet. The application packet for DUI assessor and DUI instructor certification is hereby incorporated by reference. Copies of the application packet may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., eastern time, Monday through Friday.

(6) Certification renewal and duration for DUI assessor and instructor:

(a) Certification for DUI assessors and DUI instructors shall be for a period of five (5) years from the effective date of this administrative regulation or from the date of the individual's initial certification as a DUI assessor or DUI instructor, whichever is longer, is renewable for a like period, and shall expire on the anniversary date of certification, unless earlier suspended or revoked.

(b) It shall be the duty and responsibility of the individual, to submit to the division, a completed recertification application and all other required forms, at least sixty (60) days prior to the date of expiration of the DUI assessor or DUI instructor certification.

(c) 1. An individual shall have achieved the standards for clinical services supervisor as defined in Section 3(2)(c) of this administrative regulation at the time of application for recertification as a DUI assessor.

2. If an individual has not met the requirements of Section 3(2)(c) of this administrative regulation the individual's application for DUI assessor recertification shall be denied and any previous DUI assessor certification shall expire. An individual desiring recertification as a DUI instructor shall attend, participate and demonstrate competency at a training seminar authorized by the division prior to application for DUI instructor recertification.

(d) If certification has lapsed for more than one (1) year, an individual's recertification application shall be processed as a new application, and the individual shall attend all additional training required by the division.

(e) An individual shall have the right to appeal any suspension or revocation of their DUI assessor or DUI instructor certification. Hearing procedures involving certification shall be conducted in accordance with this administrative regulation.]

#### Section 5. Certified Program, Assessor and Instructor Complaints and Program Monitoring. (1) Complaints.

(a) An individual may submit a complaint related [All complaints relating] to a certified program, a certified [DUI] assessor, or a certified [DUI] instructor, that is [are] not resolved by a [the] program through its [their agency] grievance procedure [procedures, shall be sent] to the division.

(b) A program shall be responsive and make an effort to resolve a client's complaint through its grievance procedure.

(c) A complaint shall be submitted to the division, in writing, on a complaint form or in a letter [and signed by the complainant].

(d) The division shall investigate a [the] complaint, notify the complainant and the program, in writing, of the results of an investigation and take any necessary action.

(e) The division shall notify a professional licensing or certification board, in writing, at the conclusion of an investigation of the results of the investigation if a complaint is related to a violation of a standard established by a professional board.

#### (2) Program reviews.

(a) The division shall conduct periodic program reviews to determine if a program is in compliance with the standards in this administrative regulation, KRS 189A.040 and 189A.045.

(b) A program review may consist of one (1) or more of the following:

1. An interview with either a program administrator or a clinical services supervisor;
  2. Completion of a program review form;
  3. A review of administrative records;
  4. A review of client records;
  5. Off site monitoring by division staff of completion records submitted by a program;
  6. Observation of an assessment, education, or treatment service;
  7. Client interviews;
  8. The review of other materials necessary to determine compliance with this administrative regulation, KRS 189A.040 and 189A.045; and
  9. Physical inspection of a program's facility.
- (c) A program review may be made at any of a program's locations and may be unannounced.
- (d) A program shall:
1. Allow a division representative access to a facility;
  2. Provide a copy of records and materials requested; and
  3. Allow a division representative to attend and observe an assessment, education class, or treatment session conducted by the program.
- (e) The division shall issue a written report of findings and provide a copy of the results of its program review to a program within ninety (90) calendar days after completion of a program review.
- (3) Plan of correction.
- (a) The division shall require a program that is not in compliance with the standards in this administrative regulation, KRS 189A.040 or 189A.045 to submit an acceptable plan of correction to the division within ten (10) working days from the date a program receives a report of findings from the division.
- (b) If a plan of correction is acceptable, the division may conduct a follow-up program review to ensure the plan of correction has been implemented, and the program is in compliance with this administrative regulation, KRS 189A.040 and 189A.045.
- (c) If a plan of correction is not acceptable the division shall take action to revoke program certification.
- (4) Voluntary closure.
- (a) A program desiring to close voluntarily shall notify the division, in writing, voluntarily surrender its program certification and:
1. Stop accepting client referrals;
  2. Notify active clients in writing;
  3. Refer a client and transfer case coordination responsibility of a client's case to a program if his choice; and
  4. Submit to the division a list of active clients and a copy of the following information for each client:
    - a. Name, address and telephone number;
    - b. Social Security number, date of birth and drivers license number;
    - c. DUI conviction number;
    - d. Date of assessment and referral information including level of care and agency to which a client is referred;
    - e. Number of sessions completed;
    - f. Date of last attendance; and
    - g. Reason for noncompliance if a client is noncompliant.
- (b) A program that voluntarily withdraws its certification that complies with the requirements in paragraph (a) of this subsection may reapply for program certification at any time.
- (c) The division may revoke the program certification of a program that voluntarily withdraws its certification if the program fails to comply with the requirements in paragraph (a) of this subsection and the revocation shall be in accordance with subsection (5)(c) of this section.
- (d) If a program voluntarily withdraws its certification following an action by the division to revoke the program's certification revocation shall be in accordance with subsection (5)(c) of this section.
- (5) Revocation of program certification.
- (a) The division may revoke the certification of a program that is not in compliance with the standards in this administrative regulation, KRS 189A.040 or 189A.045.
- (b) The division shall immediately revoke a program's certification if it determines there is an immediate danger to clients.
- (c) The revocation of program certification shall be for a period

of three (3) years and shall be effective on the date stated in a notice sent to a program by the division.

(d) If the division revokes program certification a program shall:

1. Stop providing DUI services;
2. Stop accepting client referrals
3. Notify active clients in writing;
4. Refer a client and transfer case coordination responsibility of a client's case to a program of his choice; and
5. Submit to the division a list of active clients and a copy of the following information for each client:
  - a. Name, address and telephone number;
  - b. Social Security number, date of birth and drivers license number;
  - c. DUI conviction number;
  - d. Date of assessment and referral information including level of care and the name of the program to which a client is referred;
  - e. Number of sessions completed;
  - f. Date of last attendance; and
  - g. Reason for noncompliance if a client is noncompliant.

Section 6. Assessment Requirements. (1) Assessment process.

(a) A program providing assessment services shall administer the Kentucky DUI Assessment Instrument to a client receiving a DUI assessment. A program may use supplemental assessments in addition to the Kentucky DUI Assessment Instrument.

(b) The Kentucky DUI Assessment Instrument printout generated at a client's assessment, shall be signed and dated by an assessor and a client, contain comments by an assessor explaining the referral decision, and be placed in a client's file within three (3) calendar days after a client's assessment.

(c) An assessment shall be conducted at a program's certified location, except if a court orders an assessment of an individual that is incarcerated, the assessment may be conducted in a jail or a prison.

(d) A DUI assessment shall include:

1. Administration of the Kentucky DUI Assessment Instrument;
2. A private face-to-face clinical interview, using either the assessor's own clinical interview or the structured interview provided in the Kentucky DUI Assessment Instrument, with the findings of either recorded on the check list provided in the Kentucky DUI Assessment Instrument;
3. Consideration of referral options and a client's resources that are documented in the Kentucky DUI Assessment Instrument;
4. A determination of the severity of a client's problem;
5. Referral to a program of the client's choice that offers a service at the level of care appropriate to the severity of the client's problem; and
6. The cosigning by a client and an assessor of the following forms:

- a. Fee agreement;
- b. Client rights statement;
- c. Confidentiality statement;
- d. Freedom of choice statement;
- e. Confirmation and acceptance of an assessment statement;
- f. Authorization for release of information;
- g. Certificate of enrollment;
- h. Kentucky DUI Assessment Instrument printout; and
- i. A referral agreement.

(e) A DUI assessment shall be conducted by an assessor holding valid certification from the division, except the screening instrument portion of the Kentucky DUI Assessment Instrument, may either be self-administered or administered by a noncertified individual.

(f) The screening instrument portion of the Kentucky DUI Assessment Instrument may be administered individually or in a group.

(g) A program shall maintain a roster of clients assessed that includes:

1. Client name, date of birth and Social Security or drivers license number;
2. Assessment date; and
3. Type of referral and referral program.

(2) Client referrals. A DUI program shall accept a client referral from another program or a court.

(a) Court referral of DUI offenders.

1. An individual convicted of DUI in Kentucky shall obtain an assessment at a certified program of his choice listed in a directory published by the division.

2. A program shall not accept a client for an assessment without first obtaining a copy of an AOC 494 form or a court order from the court.

3. A program shall not conduct an assessment for a client if the client has received an assessment for his conviction at another DUI program without first obtaining a court order from the court.

(b) Program referral of DUI offenders.

1. A program desiring to make or receive a client referral shall execute a written memorandum of understanding with in-state and out-of-state programs, with which it will make or receive referrals.

2. A memorandum of understanding shall include:

- a. Name of both programs;
  - b. Date it is executed;
  - c. Duties and responsibilities of each program to include the requirements for case coordination contacts between the programs;
  - d. Purpose of the agreement;
  - e. Terms for termination of the agreement; and
  - f. Signatures of each program's program administrator.
3. A program may refuse a client referral because of:
- a. Inadequate staff;
  - b. Lack of an appropriate service; or
  - c. A client waiting list.

4. A program shall not accept a client referral from another program without first obtaining a copy of the client's assessment and other available records pertinent to the client's assessment, education, or treatment.

5. A program shall inform a client at the time of his assessment that if he fails to disclose outstanding DUI convictions, the services he receives may not meet the requirements for reinstatement of his drivers license.

6. A program shall refer a client to a program of the client's choice, at an appropriate level of care based on the client's assessment, and a program shall have a client sign a referral agreement stating he has been given freedom of choice in the selection of a program.

7. A program shall allow a client freedom of choice in the selection of a program where he will receive education or treatment services, but shall not allow him to select the level of care or type of service, that shall be based on the results of his assessment and the availability of services.

8. A program shall transfer a client's assessment results and the referral form generated by the Kentucky DUI Assessment Instrument to a program of the client's choice offering service at a level of care needed by the client.

(3) Case coordination requirements.

(a) General requirements.

1. A program that conducts a client's assessment shall be responsible for case coordination whether the client receives education or treatment services at the program that conducted his assessment or at another program.

2. Case coordination shall include:

- a. Having regular contact with the program receiving a client referral to determine a client's compliance with the recommended education or treatment;
- b. Documentation in an assessment record of actions and contacts related to follow up on a client;
- c. Sending a certificate of enrollment to the court after a client is assessed pursuant to KRS 189A.045;
- d. Providing information on a client's progress to the court upon request;
- e. Notifying the circuit clerk of the court within three (3) working days after receiving notice that a client is noncompliant that a show-cause hearing must be scheduled;
- f. Sending a completion report to the Transportation Cabinet and the court within three (3) working days from receipt of a notice that a client has satisfactorily completed the required services;
- g. Providing a certificate of completion to a client if he satisfactorily completes the required services; and
- h. Downloading on a computer diskette completed client records

and sending the diskette on a monthly basis to the division or its designee.

3. A program administrator shall notify the court within three (3) working days of the date specified in the client's fee agreement, if a client fails to pay for an assessment within the time stated in his fee agreement.

(b) Out-of-state clients and programs.

1. A program administrator shall notify the division and the state of conviction, in writing, on an interstate transfer form, if a certified DUI program receives a referral from out of state for a client that is satisfying a DUI conviction from another state.

2. A client that is not a Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a)-(d) may receive assessment, education, and treatment services in an out-of-state program that is licensed to provide services at the level of care necessary to satisfy his DUI in Kentucky, and the division shall provide case coordination services for the client if he did not receive an assessment in Kentucky.

3. A Kentucky licensed driver convicted of DUI pursuant to KRS 189A.010(a)-(d), may receive assessment, education and treatment services in an out-of-state program that is licensed to provide services at the level of care necessary to satisfy his DUI in Kentucky only if he:

a. Establishes residency out of state;

b. Is working and living out of state;

c. Attends school out of state as a boarding student;

d. Is required by his insurance to receive services in a program out of state;

e. Is living out of state due to a family emergency; or

f. Is admitted to an out-of-state residential or inpatient treatment program.

(c) Clients with special needs.

1. If a client is identified as having a special need at the time of his assessment a program shall provide services either directly or through referral according to the following:

a. Questions and instructions shall be read orally to a client that is unable to read and responses shall be recorded for a client that is unable to write;

b. A qualified interpreter shall be provided for a client that because of deafness, hard of hearing or an inability to communicate in English uses sign language, assistive technology or an interpreter as his primary mode of communication;

c. Reasonable accommodations shall be made for a client that is developmentally disabled pursuant to the Americans with Disabilities Act, 42 USC 12101 et seq.; and

d. A pregnant client shall receive alcohol and other drug abuse services within forty-eight (48) hours of an assessment and an assessor shall document in the client's file that the client is receiving or is referred for prenatal care.

2. A program shall document in a client's record special needs services the client receives.

3. Responsibility for payment of a special-need service shall be according to the following:

a. A program shall be responsible for payment of interpreter services pursuant to KRS 30A.415; and

b. A client shall be responsible for payment of other services required because of a special need pursuant to KRS 189A.040.

4. A program shall comply with the rules of confidentiality pursuant to 908 KAR 1:320 if providing interpreter services to a client in a federally-assisted program and pursuant to KRS 222.271(1) in a nonfederally-assisted program.

(d) A client that receives treatment before an assessment. If a client receives treatment after being charged with DUI, without first receiving an assessment, a program shall:

1. Obtain a copy of a court order from the court and a copy of the client's uniform citation;

2. Give a client credit for documented treatment received by the client since his DUI arrest; and

3. Conduct an assessment and case coordination in accordance with subsections (1) and (3) of this section.

(e) A client with multiple DUI convictions. If a client presents for an assessment with multiple unresolved DUI convictions a program shall:

1. Obtain a copy of the client's uniform citation and an AOC 494 form or court order for each conviction;

2. Conduct one (1) assessment and case coordination in accordance with subsections (1) and (3) of this section;

3. Refer the client to treatment at a level of care appropriate to satisfy the client's convictions; and

4. Complete a separate completion report for each of the client's convictions.

(f) A client convicted of DUI while enrolled in a program. If a client receives a subsequent conviction for DUI while enrolled in an education or treatment program a program shall:

1. Obtain a copy of the client's uniform citation and an AOC 494 form or court order for the subsequent conviction;

2. Conduct another assessment and case coordination in accordance with subsections (1) and (3) of this section;

3. Refer the client to a level of care appropriate to satisfy the client's convictions;

4. Document the client's file to show that the client's admission to treatment began at the time he was reassessed; and

5. Complete a separate completion report for each of the client's convictions.

(g) Reenrollment of a client. If a client requests reenrollment after he stops attending education or treatment a program shall:

1. Reenroll the client and allow him to resume the education or treatment service at the point where he last attended if he has not been reported noncompliant to the court; or

2. Refer the client back to the court for a new court order before conducting a new assessment and starting the education or treatment service over if he has been reported as noncompliant to the court.

(h) Early release of a first or second offender.

1. If the program responsible for a client's case coordination determines that a first or second offender has satisfactorily completed education or treatment the program administrator shall send a written report to the court recommending that a client be released early, within three (3) working days of the date it is determined:

a. A first offender has completed the education or treatment, that was recommended based on the client's assessment, prior to expiration of the ninety (90) day period; and

b. A second offender, that has completed at least six (6) months of the treatment that was recommended based on the client's assessment, has completed a program prior to expiration of the one (1) year period.

2. A program administrator shall obtain an order from the court before releasing a client early and ensure that a copy of the court order is included in a client's record.

(i) A client under twenty-one (21) years of age. If a client is under twenty-one (21) years of age a program shall deliver services:

1. In accordance with the standards in this administrative regulation if the client is convicted of DUI pursuant to KRS 189A.010(1)(a)-(d); or

2. In accordance with a court order, not subject to the standards in this administrative regulation, if the client is convicted of zero tolerance pursuant to KRS 189A.010(1)(e).

(Section 6. Assessment Requirements. (1) Court Referral of DUI Offenders. The courts shall refer all convicted first and multiple DUI offenders for an assessment to a certified program, listed in a directory, provided to the courts by the division.

(a) The court clerk, shall on the day of conviction, send a copy of the uniform citation issued to the client at the time of arrest for DUI, attached to the Administrative Office of the Courts (AOC) Form 494, to the program which will conduct the client's assessment.

(b) AOC Form 494 is hereby incorporated by reference. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday.

(2) Computerized screening shall be used.

(a) A program providing DUI assessment services shall use only the computerized screening instrument approved by the division. The DUI assessment shall be conducted by an assessor holding valid



certification from the division.

(b) The computerized screening instrument portion of the assessment may be administered individually or in groups.

(c) A program shall arrange for the oral reading of the assessment questions and instructions for clients who are unable to read the written instructions.

(d) The long form of the computerized screening instrument shall be administered in all cases except when administered to a group of more than ten (10), when administered to a reading-disabled individual, or when administered to an individual being reassessed within thirty (30) days of their initial assessment. In such cases a program may administer the short form of the computerized screening instrument.

(e) A program shall maintain a roster of all clients assessed, in a format approved by the division; a copy of such roster shall be maintained in the program's central administrative files and made available to the division upon request.

(3) Assessment requirements.

(a) An assessment shall include:

1. The administration of the approved computerized screening instrument;

2. A private clinical interview between the certified DUI assessor and the client;

3. A discussion of referral options and client resources;

4. A determination of the severity of a client's problem; and

5. Referral to a program of the client's choice offering services at the level of care needed by the client.

(b) A program shall not conduct an assessment for a client, if the client has received an assessment for that conviction at another DUI program. A program shall refer a client back to the court, if a client previously received an assessment for that conviction, at another DUI program. A client shall pay all required fees for the assessment to the program.

(4) Assessment referrals.

(a) An assessor shall refer any client assessed as needing education or treatment services to any program eligible to provide substance abuse or chemical dependency education or treatment services.

(b) The assessor shall refer a client to receive the type of service appropriate to the client's needs at their own program or to any other eligible program of the client's choice.

(c) The client shall choose the program where the client desires to receive education or treatment services but the client shall not choose the level of care or type of service that the client is to receive.

(5) Clients with special needs.

(a) A program shall identify any client with special needs at the time of assessment in order to make an appropriate referral. Specifically, the computerized screening instrument shall contain a set of questions designed to identify whether or not a client is pregnant, and if so, the stage of pregnancy, at the time of assessment. This information shall be used to determine the type and level of treatment or education services needed by the client.

(b) The assessor shall consider the special needs of the client when making the referral.

(6) Requirements for client's case file.

(a) A program shall maintain a case file on each client assessed.

(b) The assessment results and any interview notes or other information pertaining to the assessment shall be maintained in the client's file.

(c) There shall be written documentation in each client's case file of all actions related to any referral to education or treatment services.

(d) Each client file shall contain the Cabinet for Human Resources (CHR) Pamphlet Mental Health Mental Retardation 052 form (PAM MHMR 052). This form shall be used as a referral notice to transfer a client's records to another program, as a completion notice to notify the court, the client, the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing, and the division when a client has satisfactorily completed any required services and as a notice of noncompliance to notify the court, the client, and the division when a client fails to satisfactorily complete any required services.

(e) 1. CHR Form PAM MHMR 052 is hereby incorporated by reference.

2. Copies of the form may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Sub-

stance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m. Eastern time, Monday through Friday.

(7) Case management requirements.

(a) A program providing assessment services, shall maintain case management responsibilities, for every client the program assesses, whether the client receives DUI education or treatment services at the program conducting the assessment, or at another eligible program.

(b) The case management process shall include:

1. The coordination of services provided to each client;

2. The responsibility of communicating with the court such information as the court requests on each client;

3. The responsibility of notifying the court, the client and the division when a client is noncompliant; and

4. The responsibility of notifying the Transportation Cabinet, Department of Vehicle Regulation, Division of Drivers Licensing, the court, the client and the division when a client has satisfactorily completed the required services.

(c) The program shall issue to each client, who has successfully completed the required services, a copy of their completion notice contained in CHR Form PAM MHMR 052, as referred to in Section 3(7) of this administrative regulation.

(8) Discontinuing operations of a program. A Program discontinuing operations while still maintaining case management responsibility for a client, shall:

(a) Notify the client in writing;

(b) Refer the client and transfer case management responsibility of the client's case to the program of the client's choice; and

(c) Submit to the division in writing, a list of all clients for whom the program maintains case management responsibility, and a copy of each client's CHR PAM MHMR 052 referral form with the name of the program receiving the client referral listed on the form.]

Section 7. Education Requirements. (1) Approved curricula. [Program curriculum requirements.]

(a) A DUI program desiring to provide [DUI] education services shall ensure:

1. The following two (2) twenty (20) hour curricula [Use a curriculum approved by the division are delivered:

a. "Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour"; and

b. "Prime for Life Risk Reduction Program (PRI) Twenty (20) Hour"; and

2. Instruction is [shall be] provided by an instructor holding valid DUI instructor certification from the division; and

3. A certified instructor delivers a curriculum in accordance with the curriculum delivery standards taught at a DUI instructor certification training conducted by the division or Prevention Research Institute, Inc.

(b) [Two (2) levels of DUI education services shall be provided:

1. A nine (9) hour basic education course; and

2. A twenty (20) hour early intervention education course shall be provided:

(c) Two (2) nine (9) hour curricula and two (2) twenty (20) hour curricula have been approved by the division.

(d) A DUI program may provide either [any] or both [all levels] of the twenty (20) hour curricula at a certified location [DUI education courses, and may use any or all of the approved curricula].

(2) Delivery standards.

(a) The twenty (20) hour curriculum shall:

1. Be for a first offender assessed as needing only education and may only be a supplement to treatment if delivered to a first or multiple offender assessed as needing treatment;

2. Consist of twenty (20) hours of instruction and group interaction that increases a client's awareness and knowledge about the risks of alcohol and other drug use and helps develop skills to change a client's attitude and behavior in relation to alcohol and other drug abuse; and

3. Not exceed two (2) hours daily and twice weekly, with at least three (3) calendar days between sessions, in accordance with the curriculum delivery standards, taught at a training conducted by the division or Prevention Research Institute, Inc.

(b) A program may enroll first offenders and multiple offenders in



the same session.

(c) A program administrator shall ensure:

1. There are no more than twenty-five (25) and no less than two (2) clients in a session;

2. A curriculum is delivered according to the delivery standards in this subsection;

3. Required manuals for a curriculum are distributed to and used by a client;

4. A client is given the manual for his personal use after completion of a curriculum;

5. Videos required in a curriculum are shown to a client; and

6. Supplemental videos and speakers that are not approved as part of a curriculum are not used in a DUI program.

(e) The maximum number of clients in a class shall be no more than twenty-five (25):

(f) An instruction session shall not exceed three (3) hours per day:

(g) The nine (9) hour DUI basic education course shall be for first offenders only and shall consist of a minimum of nine (9) hours of instruction and group interaction. Those first offenders assessed as low risk, not having an alcohol or substance abuse problem requiring treatment, shall be enrolled in a nine (9) hour education course:

(h) The twenty (20) hour DUI early intervention education course shall be for first offenders or multiple offenders and shall consist of a minimum of twenty (20) hours of instruction and group interaction. A program may enroll first offenders and multiple offenders in the same session:

(2) The approved curricula are hereby incorporated by reference. Copies of the curricula may be inspected or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, Fair Oaks Lane, Leestown Square, 4th Floor, Frankfort, Kentucky 40601 between the hours of 8 a.m. through 4:30 p.m., Eastern time, Monday through Friday;

(3) Documentation and [Program] completion requirements for education sessions. [required:]

(a) A program shall maintain a sign-in sheet for an education session that includes:

1. Name of the curriculum;

2. Title and number of the session;

3. Date, time, location, and name of the instructor; and

4. Client name and signature.

(b) A program [client] shall require a client to:

1. Attend and participate in each session of a curriculum;

2. Attend sessions [complete all sessions of class instruction;] in [the required] sequence beginning with chapter 1;

3. [; and shall] Comply with a program's rules of conduct; and

4. Pay required fees.

(c) [all standards of behavior required by the program to satisfactorily complete a DUI education service:

(b) If a client cannot attend a session [of class instruction], due to an emergency, a program may allow the client [may be permitted] to attend a [that] session out of sequence the next time the chapter is presented by a program and documentation of the emergency shall be maintained in a client's file.

(d) [of class instruction when the missed class session is repeated:

(e) If a client is receiving education at a program other than the program where he received his assessment, a [demonstrates a need for services at a different level of care, the] program administrator shall [refer the client to any eligible program for the required services, and] notify the individual responsible for a client's case coordination if a client:

1. Demonstrates a need for service at a different level of care;

2. Satisfactorily completes education; or

3. Is noncompliant.

(e) If a client is receiving education at the program where he received his assessment [program, which conducted the assessment of the action:

(d) the program administrator shall:

1. Determine if [make the determination as to whether] a client has satisfactorily completed the DUI education service; and

2. Report compliance and noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation. [shall be responsible for notifying the program, which conducted the client's assessment,

when a client has satisfactorily completed the required DUI education services, or when a client is noncompliant.]

(f) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements in this subsection. [(4) Fees. All required fees for an education service shall be paid to the program by the client and such fees shall cover the cost of all course materials:

(5) Nonresident clients and programs. A client not residing in the state may receive DUI education services in an out-of-state program that is licensed and eligible as determined by the division, based on the standards in this administrative regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs:]

Section 8. Treatment Requirements. (1) General requirements.

(a) A DUI program desiring to provide treatment services shall:

1. Comply with the licensing requirements in Section 2 of this administrative regulation; [Be licensed by the cabinet to provide the services offered;

2. Conform to the state licensure standards for treatment facilities;] and

2. [3.] Employ qualified staff that [members, who] have training and experience in dealing with the physical and psychological complications of alcohol and other drug abuse [dependence].

(b) A program shall ensure that the treatment a client receives is based on his assessment and a client may be referred to [provide] outpatient, intensive outpatient, inpatient, residential, residential transitional, halfway house or detoxification [chemical dependency or substance abuse] treatment services in a licensed treatment program in state or out of state pursuant to the requirements in this administrative regulation.

(c) A program shall deliver treatment services according to the following:

1. A client may receive individual or group treatment;

2. A treatment group may include first and multiple offenders in the same session;

3. The maximum number of clients in a treatment group shall not exceed twelve (12);

4. A client may be referred to a self-help group to supplement but not to replace treatment services;

5. A client referred to outpatient treatment shall receive at least one (1) hour of individual or one and one-half (1 1/2) hours of group treatment each week;

6. A client referred to intensive outpatient treatment shall receive at least six (6) hours of individual or group treatment over a period of two (2) or more days weekly that includes education regarding the dynamics of chemical dependency and codependency, individual counseling, group counseling, family education and structured recreational activities; and

7. If a client receives treatment less often than the requirements in subparagraphs 5 and 6 of this paragraph, to meet his individual clinical needs, a clinical rationale shall be documented in the client's record; and

8. Inpatient and residential treatment shall include regular group and individual counseling and accessible supportive services including education, vocational rehabilitation, self-help groups, medical, laboratory or legal services.

[(c) The service a DUI client is assigned depends on the severity of symptoms, available support resources, and individual dynamics to be determined by the assessment. A client may be referred to outpatient, intensive outpatient, inpatient, residential, or detoxification services:

1. A program may provide outpatient or intensive outpatient treatment services to a client individually or in a group. A group may include first and multiple offenders in the same session. The maximum number of clients in a group shall be no more than fifteen (15):

a. A client shall receive a minimum of one (1) hour of individual outpatient treatment each week or a minimum of one and one-half (1 1/2) hours of group outpatient treatment each week. If a client receives outpatient treatment services less than one (1) time each week, to meet the individual clinical needs of the client, the program administrator shall maintain proper documentation in the client's case file to show cause.

b. A client may receive intensive outpatient treatment services, more often, and in longer sessions, each week to meet the individual clinical needs of the client.

2. A client may be referred to a self-help group to supplement but not to replace the outpatient or intensive outpatient treatment services.

(d) A client needing more restrictive services than paragraph (a)1a or b of this subsection shall be referred to detoxification, inpatient, residential or transitional living services.]

(2) [The] Treatment plan.

(a) A clinician or [program providing DUI] treatment planning team [services] shall be responsible for developing a treatment plan for a [each] client accepted for treatment services by the client's fourth session, or by the end of the client's second week, whichever is sooner.

(b) A [The] treatment plan shall:

1. Be developed with a client's participation and be individualized for the needs of a [each] client;

2. Include a written statement of a client's problem with alcohol and other drugs and any other problem that contributes to or is related to the client's use of alcohol and other drugs;

3. Include a written statement of mutually agreed upon [treatment] goals and measurable objectives [together] with a [realistic] time schedule for achieving the goals [them];

4. [3.] Be signed by the client and the clinician; and

5. [4.] Be reviewed by the clinician and the client at least once every 180 calendar days or if there is a change documented in the client's treatment plan. [-and

5. All changes recorded in the client's case file.]

(c) A client's progress toward meeting the goals stated in his treatment plan shall be documented in the client's record by a clinician at least weekly.

(d) If the twenty (20) hour education curriculum is delivered as a supplement to treatment to a first or multiple offender assessed as needing treatment it shall be included in a client's treatment plan.

(3) Completion requirements. [Attendance and other requirements.]

(a) To complete a treatment service a client shall:

1. Comply with all attendance requirements;

2. Achieve the goals stated in his treatment plan;

3. Comply with a program's rules of conduct; and

4. Pay required fees. [of the treatment plan to satisfactorily complete a required treatment service.]

(b) If a client is receiving treatment at a program other than the program where he received his assessment the program administrator shall notify the individual responsible for the client's case coordination if a client:

1. Demonstrates a need for service at a different level of care;

2. Satisfactorily completes treatment; or

3. Is noncompliant, [the program administrator shall refer the client to any eligible program for the required services, and notify the program which conducted the client's assessment of such action.]

(c) If a client is receiving treatment at the program where he received his assessment, a [The] program administrator shall be responsible for:

1. Determining [Make the determination as to whether] a client has satisfactorily completed a [the] treatment service; and

2. Reporting compliance and noncompliance in accordance with Section 6(3)(a)2 of this administrative regulation. [Be responsible for notifying the program, which conducted the client's assessment, when a client has satisfactorily completed the required treatment services, or when a client is noncompliant.]

(d) A program administrator shall ensure that a client's record contains documentation showing compliance with the requirements in this subsection.

[(4) Fees. All required fees for treatment services shall be paid to the program by the client.

(5) Out-of-state treatment. Any client may receive treatment services at an out-of-state program that is licensed, and eligible, as determined by the division, based on the standards in this administrative regulation, to provide comparable services at the level of care determined necessary to meet the client's individual needs.]

Section 9. Administrative Hearing Requirements. (1) If the division takes action to deny, or revoke, a DUI program's certification or an

individual's assessor or instructor certification, the division shall notify the program or individual assessor or instructor, in writing, stating a reason for the adverse action and notifying the program or individual assessor or instructor of the right to appeal the action pursuant to KRS Chapter 13B.

(2) A [Any] program or individual assessor or instructor may appeal a negative certification action taken by the division by notifying the division [to revoke, modify, suspend or deny certification or recertification of a DUI program, assessor, or instructor], in writing, within twenty (20) calendar days from [of] the date [issuance] of notice of [negative certification] action from the division. [Upon receipt of notice of appeal, the director of the division shall designate a hearing officer to conduct a hearing and make a recommendation to the division.

(2) Notice of hearing shall be mailed to the program or individual not less than ten (10) days prior to the commencement of the hearing. The notice of hearing shall contain the reasons for negative certification action. The notice of hearing shall be mailed by certified mail, return receipt requested to the parties.]

(3) Upon receipt of an appeal, the secretary or his designee, shall give notice of the hearing to a program or an individual assessor or instructor, in writing, not less than twenty (20) calendar days in advance of the date set for the hearing and the notice shall be sent in accordance with KRS Chapter 13B. [The program, individual and the division may be represented by counsel and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. No depositions shall be permitted for the purpose of discovery, however, the hearing officer may authorize depositions or witnesses, who for good cause shown, cannot be present at the hearing. A hearing officer shall reside at the hearing, shall keep order, administer oaths, may issue subpoenas and may admit relevant and probative evidence and shall conduct the hearing in accordance with reasonable administrative practice.]

(4) The secretary, or his designee, shall appoint a hearing officer to conduct a hearing and the hearing shall be conducted pursuant to KRS Chapter 13B. [All testimony at the hearing shall be recorded but need not be transcribed unless requested. The person or organization requesting a transcript shall bear the cost of such transcript.

(5) The hearing officer may place reasonable time limits upon the presentation of testimony, evidence and argument and may terminate or exclude irrelevant or redundant evidence, testimony or argument.

(6) The hearing officer shall send a written determination to the division including findings of fact and conclusion of law. With the determination, the hearing officer shall forward to the division the record consisting of all documents, exhibits, and recorded testimony introduced in the hearing.

(7) The division shall issue the hearing officer's final determination of certification status within ten (10) days of receipt of the determination from the hearing officer.

(8) No hearing officer shall participate in any hearing involving a program or individual with which the hearing officer has had in the past twelve (12) months preceding the hearing, any ownership, in whole or in part, employment, staff, fiduciary, contractual, creditor or consultative relationship.]

(5) [(9)] The division shall retain all records related to a hearing for a period of at least five (5) years.

Section 10. Incorporation by Reference. (1) The following materials are incorporated by reference:

(a) AOC 494 form (Rev. 5-96) Notice to Attend Alcohol Driver Education Program;

(b) Application for Program Certification DUI Form 01 (revised 10/01/98);

(c) Application for Program Recertification DUI Form 06 (10/01/98);

(d) Complaint Form DUI Form 05 (10/01/98);

(e) DUI Assessor Certification Application DUI Form 10 (revised 10/01/98);

(f) DUI Assessor Recertification Application DUI Form 11 (10/01/98);

(g) DUI Instructor Certification Application DUI Form 12 (revised 10/01/98);

(h) DUI Instructor Recertification Application DUI Form 13 (10/01/98);

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(i) Interstate Transfer Form DUI Form 08 (10/01/98);  
(j) "Kentucky Alcohol and Other Drugs Education Program (KAODEP) Twenty (20) Hour" (1998);  
(k) Kentucky DUI Assessment Instrument;  
(l) Memorandum of Understanding DUI Form 07 (10/01/98);  
(m) "Prime For Life Risk Reduction Program (PRI) Twenty (20) Hour" (1998);  
(n) Program Certification Certificate DUI Form 15 (10/01/98);  
(o) Program Review Form DUI Form 04 (10/01/98);  
(p) Program Survey Form DUI Form 02 (revised 10/01/98);  
(q) Report of Change Form DUI Form 03 (revised 10/01/98);  
(r) Roster of Assessments DUI Form 09 (10/01/98);  
(s) Site Visit Follow-up Compliance Review Form DUI Form 14 (10/01/98); and

(2) This material may be inspected, copied, or obtained at the Department for Mental Health and Mental Retardation Services, Division of Substance Abuse, 100 Fair Oaks Lane, Leestown Square, 4<sup>th</sup> Floor, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner  
JOHN H. MORSE, Secretary  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 23, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Monday, February 22, 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 Monday, February 15, 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 that 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 Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (FAX).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: Currently there are 83 certified DUI programs and approximately 450 individuals certified as assessors and instructors that are affected. These programs and individuals deliver services to approximately 30,000 clients at 235 sites in 106 Kentucky counties per year. All certified programs and individuals will be affected by the revised certification requirements.

(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 hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There may be increased costs related to the stricter credentialing requirements for certified and clinical staff and for technological costs if a program's computer system needs to be upgraded to administer the new computerized assessment instrument. There will be increased costs for certified

programs that did not previously carry liability insurance and for the for profit programs to pay \$10 for a criminal background check on prospective employees. However, there will be decreased costs for every program conducting assessments since the new computerized assessment instrument developed in state by the University of Kentucky will be available to a program at no cost. A program will no longer be required to purchase the computerized assessment instrument at a cost of \$4.50 per assessment from an out-of-state vendor.

2. Second and subsequent years: There are none anticipated.

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There are none anticipated.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(4) Assessment of anticipated effect on state and local revenues: Minimal

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and 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 regulations will be implemented: No hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 189A mandates provisions.

(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 certification standards should improve the quality of alcohol and other drug services delivered to clients convicted of DUI pursuant to KRS Chapter 189A.010. The stricter and more prescriptive standards will help the Division of Substance Abuse ensure that quality services are delivered by competent staff in a certified DUI program. This should help to effect behavior changes in the individuals that drink and drive, reduce recidivism, improve the safety of the citizens of Kentucky and stop the violent crime of drinking and driving.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health may result if the standards in this administrative regulation are not implemented.

(c) If detrimental effect would result explain detrimental effect: Drinking and driving continues to be one of the most frequently committed crimes of violence in our nation. While one cannot measure in dollars the pain and anguish caused by the loss or injury of a loved one, the annual economic impact in Kentucky can be measured. The cost to Kentucky taxpayers, businesses, and families is estimated annually in the range of \$98 to \$234 million dollars. The delivery of quality alcohol and other drug services by competent professionals is a needed intervention to change the behavior of individuals that drink and drive. These certification standards will help the Division of Substance Abuse ensure that services delivered to a client convicted of DUI are provided in a safe environment and in a professional and competent manner.

(9) Identify any statute, administrative regulation or governmental policy that may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy in conflict. However, this administrative regulation overlaps with Kentucky statutes KRS 189A.040, 189A.045, 222.271, 216B, and administrative regulations 908 KAR 1:320 and 908 KAR 1:370.

(a) Necessity of proposed regulation if in conflict. None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The standards apply equally to all programs and individuals participating in Kentucky's statewide DUI program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.  
None
2. State of compliance standards. None
3. Minimum of uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? None
5. Justification for the imposition of stricter standard, or additional or different responsibilities of requirements. None

NEW ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JANUARY 15, 1999

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(New Administrative Regulation)**

**301 KAR 2:132. Elk depredation permits.**

RELATES TO: KRS 150.010, 150.180, 150.390, 150.395, 150.990, 1998 Ky. Acts ch. 24, sec. 3

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 24, sec. 3

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 24, sec. 3 authorizes the department to promulgate administrative regulations stipulating the conditions under which depredation permits for elk may be issued. This administrative regulation details procedures to be used to obtain a depredation permit to control elk causing property damage.

Section 1. Definitions. (1) "Restoration area" means the Kentucky counties east of and including Bell, Knox, Clay, Perry, Breathitt, Magoffin, Johnson and Martin.

(2) "Wild elk" means:

- (a) An elk translocated and released by the department; or
- (b) The progeny of an elk translocated and released by the department.

Section 2. A person shall:

- (1) Not kill or molest a wild elk that is causing property damage, except as specified in Section 3(3) of this administrative regulation.
- (2) Contact the department if he wants depredating wild elk removed from his property.

Section 3. Upon receipt of a damage complaint, the department shall:

- (1) Verify that wild elk are causing the damage; and
- (2) In the restoration area, remove the elk; or
- (3) Outside the restoration area, as circumstances dictate:
  - (a) Remove the elk; or
  - (b) Authorize the property owner or his designee to destroy the elk.

Section 4. A person authorized to destroy an elk under the provisions of Section 3 of this administrative regulation shall not:

- (1) Move the elk until he has attached a tag provided by the department to the carcass; and
- (2) Remove the tag until the carcass is processed.

C. THOMAS BENNETT, Commissioner  
 MIKE BOATWRIGHT, Chairman  
 ANN R. LATTA, Secretary  
 DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: January 14, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 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 February 19, 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) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: It is not known at this time how many, if any, complaints of elk depredation the department will receive, since the program to restore elk is currently in its initial stages. However, the elk restoration area was chosen because the small amount of farmland would lessen the chances for crop damage.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will require that citizens report damage caused by elk to the department if they wish the department to take action. This need not be a written report.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will obligate the agency to investigate elk damage complaints and take appropriate action. The actual costs are unknown at this time.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no impact 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: No public comments received. This administrative regulation should have no economic impact in the elk restoration zone.

(b) Kentucky: No anticipated economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of allowing landowners in the restoration zone to destroy depredating elk was rejected because such action could have an adverse impact on the restoration effort. The alternative of extending this prohibition outside the restoration zone was rejected because of the desire to confine elk population to the 14-county restoration area.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is applied to the extent that elk depredation inside the elk restoration zone is handled differently than outside the zone. Requirements are less stringent outside the zone.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(New Administrative Regulation)**

**301 KAR 6:051. Repeal of 301 KAR 6:050.**

RELATES TO: KRS 235.280, 1998 Ky. Act ch. 22, sec. 2

STATUTORY AUTHORITY: KRS 235.280, 1998 Ky. Act ch. 22, sec. 2

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations pertaining to boating. 1998 Ky. Acts ch. 22, sec. 2 establishes safety requirements for personal watercraft that are substantially the same as those contained in 301 KAR 6:050, necessitating the repeal of the administrative regulation.

Section 1. 301 KAR 6:050, Requirements for personal watercraft, is hereby repealed.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: January 14, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 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 February 19, 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) 564-4406, FAX (502) 564-6508.

**REGULATORY IMPACT ANALYSIS**

Contact Person: John Wilson

(1) Type and number of entities affected: There are approximately 140,000 motorboats registered in Kentucky. It is not known how many of these are personal watercraft.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on the costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation imposes no paperwork or reporting 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: This administrative regulation will have no impact on agency costs or savings.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no impact 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: No public comments received. This administrative regulation will be implemented statewide.

(b) Kentucky: No anticipated economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Under the provisions of KRS Chapter 13A, there are no alternatives to repealing this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied because this administrative regulation applies equally to all entities it regulates.

**CABINET FOR ECONOMIC DEVELOPMENT**  
**Kentucky Economic Development Finance Authority**  
**(New Administrative Regulation)**

**307 KAR 6:010. Kentucky Investment Fund Act.**

RELATES TO: KRS 154.20-250 through 154.20-284

STATUTORY AUTHORITY: KRS 154.20-259, 11A.201(5)(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 154.20-259(7) the Kentucky Economic Development Finance Authority is authorized to promulgate administrative regulations to establish additional procedures and standards for the certification of an investment fund manager and investment fund. This administrative regulation is necessary to set out the application process for an investment fund manager and the criteria for approval of a fund manager and the criteria for approval of a fund manager and investment fund for the Kentucky Investment Fund Act established pursuant to KRS 154.20-250 through 154.20-284.

Section 1. Definitions. (1) "Amended application" means the "Amendment to Application for Kentucky Investment Fund Act Tax Credit Program".

(2) "Applicant" is defined in KRS 154.20-253.

(3) "Application" means the "Application for Kentucky Investment Fund Act Tax Credit Program".

(4) "Authority" is defined in KRS 154.20-253.

(5) "Cabinet" is defined in KRS 154.20-253.

(6) "Cash contribution" is defined in KRS 154.20-253.

(7) "Credit" is defined in KRS 154.20-253.

(8) "Investment fund" is defined in KRS 154.20-253.

(9) "Investment fund manager" is defined in KRS 154.20-253.



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(10) "Small business" is defined in KRS 154.20-253.

(11) "Year" means a fiscal year beginning July 1 through June 30.

Section 2. Initial Application Period. (1) An application for an investment fund manager for the Kentucky Investment Fund Act Tax Credit Program shall be filed with the cabinet on or after March 1, 1999.

(2) An application received by the cabinet on or before April 30, 1999 shall be eligible for consideration by the authority at its regularly scheduled meeting in June 1999, for certification.

(3) An investment fund manager and an investment fund selected by the authority shall not be certified prior to July 1, 1999.

(4)(a) The cabinet shall accept applications throughout each year.

(b) Except as provided by paragraph (c) of this subsection, an application shall be considered annually by the authority at its regularly scheduled June meeting for certification on July 1 of each year.

(c) If the authority has not granted the maximum tax credits allowed for a year at its regularly scheduled June meeting, the authority shall consider an application at a subsequent regularly scheduled meeting in the same year.

(5)(a) An applicant shall submit:

1. An original and two (2) copies of an application;

2. A "Certification of Compliance with State and Federal Securities Laws and Regulations Relating to the Kentucky Investment Fund Act Tax Credit Program"; and

3. The "Cabinet for Economic Development Incentive Disclosure Statement".

(b) The documents specified by paragraph (a) of this subsection shall be submitted to the Cabinet for Economic Development, Department of Financial Incentives, 500 Mero Street, 2400 Capital Plaza Tower, Frankfort, Kentucky 40601.

Section 3. Amended Application. (1) Prior to making an additional cash contribution to an investment fund previously approved by the amended application with the cabinet.

(2) An amended application shall be given priority over a new application.

(3) The original and two (2) copies of an amended application shall be submitted by an applicant to the address specified in Section 2(5)(b) of this administrative regulation.

Section 4. Approval Standards. (1) Prior to submission of an application or amended application to the authority, the cabinet shall review the information provided by the applicant to determine whether each criteria required by the provisions of KRS 154.20-259 and this administrative regulation has been met.

(2) An applicant shall:

(a) Make an oral presentation in person or by teleconference with the cabinet regarding the specifics of the investment fund and the investment fund manager; and

(b) Answer questions relevant to the investment fund and investment fund manager.

(3) After the cabinet has completed a review of the applicant and the application or amended application, the cabinet shall present the application or amended application to the authority.

(4) The cabinet shall provide the authority with:

(a) The application or amended application;

(b) A brief description of the oral presentation by the applicant to the cabinet; and

(c) If obtainable, the type and location of the small business or businesses to be targeted by each investment fund for investment.

Section 5. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) "Application for Kentucky Investment Fund Act Tax Credit Program (1/99)";

(b) "Amended Application for Kentucky Investment Fund Act Tax Credit Program (1/99)";

(c) "Certification of Compliance with State and Federal Securities Laws and Regulations Relating to the Kentucky Investment Fund Act Tax Credit Program (1/99)";

(d) "Cabinet for Economic Development Economic Incentive Disclosure Statement (9/96)"; and

(e) "Kentucky Investment Fund Act Certificate For Kentucky Tax Credits (1/99)".

(2) A copy of these documents may be inspected, copied, or obtained from the Cabinet for Economic Development, Department of Financial Incentives, 500 Mero Street, 2400 Capital Plaza Tower, Frankfort, Kentucky 40601, (502) 564-4320, from 8 a.m. to 4:30 p.m., Monday through Friday.

JERRY FRANTZ, Commissioner

ROBIN FIELDS KINNEY, Legal Counsel

APPROVED BY AGENCY: January 15, 1999

FILED WITH LRC: January 15, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on February 22, 1999, at 10 a.m. in Room G1, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 1999, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of 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. A transcript of the public hearing will not be made unless a written request for a transcript is made by a person in his notification of intent to attend the hearing. Individuals may submit written comments on the proposed administrative regulation. Written notification of intent to be heard at the public hearing and written comments on the proposed administrative regulation should be sent to the agency contact person: Robin Fields Kinney, General Counsel, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-7670, FAX: (502) 564-1535.

### REGULATORY IMPACT ANALYSIS

Contact person: Robin Fields Kinney or David Bratcher

(1) Type and number of entities affected: Eligible applicants for investment fund managers and eligible investors.

(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, 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: None, 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: Monetary costs cannot yet be quantified, no monetary savings.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: Number of investment funds, investment fund managers and investors certified.

(b) Reporting and paperwork requirement: Applicants for investment fund manager and fund certification will be required to complete and submit an "Application for Kentucky Investment Fund Act Tax Credit Program (1/99)"; an "Amended Application for Kentucky Investment Fund Act Tax Credit Program (1/99)" (where applicable); a "Certification of Compliance with State and Federal Securities Laws and Regulations Relating to the Kentucky Investment Fund Act Tax Credit Program (1/99)"; and a "Cabinet for Economic Development Incentive Disclosure Statement (9/96)". The Cabinet for Economic Development shall prepare and provide the "Kentucky Investment Fund Act Certificate for Kentucky Tax Credits (1/99)".

Each of the referenced documents is incorporated by reference by this regulation.

(4) Assessment of anticipated effect on state and local revenues: There will be an impact on state revenues in that each qualified investor shall be entitled to claim a 40% tax credit on corporate or individual income taxes based upon the amount of their cash contribution to the investment fund so long as the funds are invested in accordance with the act. The amount of the tax credit may not exceed 25% of the total tax credit annually.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund of the Cabinet for Economic Development.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None, no public comments received.

(b) Kentucky: None, no public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on 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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, tiering is not applicable to this administrative regulations. All investment funds, investment fund managers and investors are required to apply for participation in the Kentucky Investment Fund Act by filing the same documentation as set forth in (3)(b) hereinabove.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)**

**401 KAR 57:002. 40 CFR Part 61 national emission standards for hazardous air pollutants.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 61.01 to 61.139, 61.160 to 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.

(1) "Part 61 NESHAP" means National Emission Standards for Hazardous Air Pollutants codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF).

(2) "Administrator" as used in 40 CFR 61.01 to 61.139 and

61.160 to 61.358 (Subparts A to L and N to FF) means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 61.01 to 61.19 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 61, Appendices A through E, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 61 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 61.01 to 61.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(b) 40 CFR 61.20 to 61.26 (Subpart B), "National Emission Standards for Radon Emissions from Underground Uranium Mines", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(c) 40 CFR 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(d) 40 CFR 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(e) 40 CFR 61.50 to 61.56 (Subpart E), "National Emission Standard for Mercury", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(f) 40 CFR 61.60 to 61.71 (Subpart F), "National Emission Standard for Vinyl Chloride", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(g) 40 CFR 61.90 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(h) 40 CFR 61.100 to 61.108 (Subpart I), "National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(i) 40 CFR 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(j) 40 CFR 61.120 to 61.127 (Subpart K), "National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(k) 40 CFR 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(l) 40 CFR 61.160 to 61.165 (Subpart N), "National Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(m) 40 CFR 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(n) 40 CFR 61.180 to 61.186 (Subpart P), "National Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities", as published in the Code of

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(o) 40 CFR 61.190 to 61.193 (Subpart Q), "National Emission Standards for Radon Emissions from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(p) 40 CFR 61.200 to 61.210 (Subpart R), "National Emission Standards for Radon Emissions from Phosphogypsum Stacks", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(q) 40 CFR 61.220 to 61.226 (Subpart T), "National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(r) 40 CFR 61.240 to 61.247 (Subpart V), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources)", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(s) 40 CFR 61.250 to 61.256 (Subpart W), "National Emission Standards for Radon Emissions from Operating Mill Tailings", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(t) 40 CFR 61.270 to 61.277 (Subpart Y), "National Emission Standard for Benzene Emissions from Benzene Storage Vessels", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(u) 40 CFR 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(v) 40 CFR 61.340 to 61.358 (Subpart FF), "National Emission Standard for Benzene Waste Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(w) "Appendix A to Part 61, National Emission Standards for Hazardous Air Pollutants, Compliance Status Information", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(x) "Appendix B to Part 61, Test Methods", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(y) "Appendix C to Part 61, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997;

(z) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997; and

(aa) "Appendix E to Part 61, Compliance Procedures Methods for Determining Compliance with Subpart I", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997.

(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: December 18, 1998

FILED WITH LRC: December 18, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on February 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 workdays 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, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, telephone (502) 573-3382 ext. 338, 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 National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 1997. The benefits expected from this administrative regulation are twofold. First, sources that are subject to the Part 61 NESHAP program will be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements. Second, the emission standards in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF) will be incorporated by reference in 1 administrative regulation instead of incorporating each in a separate administrative regulation. This will reduce the number of existing air administrative regulations by 13, and will allow the Division to easily revise and update the Part 61 NESHAP once a year when the Code of Federal Regulations is published.

(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 rulemakings.

(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 rulemakings.

(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 Part 61 NESHAP.

2. Second and subsequent years: There are no requirements beyond those required in Part 61 NESHAP.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating 1 administrative regulation for Part 61 NESHAP in lieu of 22.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to the federal Part 61 NESHAP every year. These can now be handled by amending 1 administrative regulation.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no re-

porting or paperwork requirements beyond those in Part 61 NESHAP.

(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 impacts beyond those described in the federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impacts in any geographical location in Kentucky beyond those described in the federal rulemakings.

(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 Part 61 NESHAP.

(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 rulemakings.

(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 Part 61 NESHAP program, 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 Part 61 NESHAP program.

(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 is promulgating this administrative regulation to incorporate by reference 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1997, so that Kentucky will continue to have the delegated authority to implement and enforce the federal Part 61 NESHAP program.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1997, without change. There is no tiering of requirements beyond that contained in the federal Part 61 NESHAP.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1997. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 61 NESHAP program pursuant to 42 USC 7412(l).

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. 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 1997, contain National Emission Standards for Hazardous Air Pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

4. Will this administrative regulation impose stricter require-

ments, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 57:019. Repeal of 401 KAR 57:015, 401 KAR 57:021, 401 KAR 57:025, 401 KAR 57:030, 401 KAR 57:035, 401 KAR 57:040, 401 KAR 57:045, 401 KAR 57:050, 401 KAR 57:055, 401 KAR 57:130, 401 KAR 57:270, 401 KAR 57:300, 401 KAR 59:310, 401 KAR 59:450, 401 KAR 59:455, 401 KAR 59:460, 401 KAR 59:465, 401 KAR 59:485, 401 KAR 59:490, 401 KAR 59:495, 401 KAR 59:500, 401 KAR 59:505, 401 KAR 59:535, 401 KAR 59:540, 401 KAR 59:545, 401 KAR 59:550, 401 KAR 59:555, 401 KAR 59:570, 401 KAR 59:575, 401 KAR 59:580, 401 KAR 59:585, 401 KAR 59:590, 401 KAR 59:595, 401 KAR 59:635, 401 KAR 59:705, 401 KAR 59:725, 401 KAR 59:740, 401 KAR 59:745, 401 KAR 59:750, 401 KAR 59:755, 401 KAR 60:042, 401 KAR 60:043, 401 KAR 60:100, 401 KAR 60:110, 401 KAR 60:111, 401 KAR 60:150, 401 KAR 60:160, 401 KAR 60:170, 401 KAR 60:180, 401 KAR 60:190, 401 KAR 60:250, 401 KAR 60:260, 401 KAR 60:330, 401 KAR 60:340, 401 KAR 60:370, 401 KAR 60:380, 401 KAR 60:390, 401 KAR 60:400, 401 KAR 60:420, 401 KAR 60:440, 401 KAR 60:450, 401 KAR 60:460, 401 KAR 60:470, 401 KAR 60:480, 401 KAR 60:490, 401 KAR 60:500, 401 KAR 60:540, 401 KAR 60:560, 401 KAR 60:580, 401 KAR 60:590, 401 KAR 60:600, 401 KAR 60:620, 401 KAR 60:630, 401 KAR 60:640, 401 KAR 60:680, 401 KAR 60:700, 401 KAR 60:730, 401 KAR 63:070, 401 KAR 63:101, 401 KAR 63:110, 401 KAR 63:160, 401 KAR 63:190, 401 KAR 63:300, 401 KAR 63:320, 401 KAR 63:340, 401 KAR 63:360, 401 KAR 63:400, 401 KAR 63:420, 401 KAR 63:460, 401 KAR 63:520, and 401 KAR 63:701.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation will repeal the existing administrative regulations which adopt the

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

federal New Source Performance Standards codified in 40 CFR Part 60 and the federal National Emission Standards for Hazardous Air Pollutants codified in 40 CFR Parts 61 and 63 so that these standards may be incorporated by reference in 401 KAR 57:002, 60:005, and 63:002.

Section 1. The following administrative regulations are hereby repealed:

- (1) 401 KAR 57:015, National emission standard for beryllium;
- (2) 401 KAR 57:021, National emission standard for mercury;
- (3) 401 KAR 57:025, National emission standard for beryllium rocket motor firing;
- (4) 401 KAR 57:030, National emission standard for vinyl chloride;
- (5) 401 KAR 57:035, National emission standard for equipment leaks (fugitive emission sources);
- (6) 401 KAR 57:040, Equipment leaks of benzene;
- (7) 401 KAR 57:045, National emission standard for inorganic arsenic emissions from glass manufacturing plants;
- (8) 401 KAR 57:050, National emission standard for inorganic arsenic emissions from primary copper smelters;
- (9) 401 KAR 57:055, National emission standard for inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities;
- (10) 401 KAR 57:130, National emission standard for benzene emissions from coke by-product recovery plants;
- (11) 401 KAR 57:270, National emission standard for benzene emissions from benzene storage vessels;
- (12) 401 KAR 57:300, National emission standard for benzene emissions from benzene transfer operations;
- (13) 401 KAR 59:310, New nonmetallic mineral processing plants;
- (14) 401 KAR 59:450, Standards of performance for portland cement plants;
- (15) 401 KAR 59:455, Standards of performance for nitric acid plants;
- (16) 401 KAR 59:460, Standards of performance for sulfuric acid plants;
- (17) 401 KAR 59:465, Standards of performance for hot mix asphalt facilities;
- (18) 401 KAR 59:485, Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;
- (19) 401 KAR 59:490, Standards of performance for secondary lead smelters;
- (20) 401 KAR 59:495, Standards of performance for secondary brass and bronze production plants;
- (21) 401 KAR 59:500, Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;
- (22) 401 KAR 59:505, Standards of performance for secondary emissions from basic oxygen process steel-making facilities for which construction is commenced after January 20, 1983;
- (23) 401 KAR 59:535, Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants;
- (24) 401 KAR 59:540, Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants;
- (25) 401 KAR 59:545, Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants;
- (26) 401 KAR 59:550, Standards of performance for the phosphate fertilizer industry: triple superphosphate plants;
- (27) 401 KAR 59:555, Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities;
- (28) 401 KAR 59:570, Standards of performance for steel plants: electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983;
- (29) 401 KAR 59:575, Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;
- (30) 401 KAR 59:580, Standards of performance for kraft pulp mills;

- (31) 401 KAR 59:585, Standards of performance for glass manufacturing plants;
- (32) 401 KAR 59:590, Standards of performance for grain elevators;
- (33) 401 KAR 59:595, Standards of performance for surface coating of metal furniture;
- (34) 401 KAR 59:635, Standards of performance for the graphic arts industry: publication rotogravure printing;
- (35) 401 KAR 59:705, Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;
- (36) 401 KAR 59:725, Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) distillation operations;
- (37) 401 KAR 59:740, Standards of performance for VOC emissions from petroleum refinery wastewater systems;
- (38) 401 KAR 59:745, Standards of performance for new magnetic tape coating facilities;
- (39) 401 KAR 59:750, Standards of performance for industrial surface coating: surface coating of plastic parts for business machines;
- (40) 401 KAR 59:755, Standards of performance for polymeric coating of supporting substrates facilities;
- (41) 401 KAR 60:042, Standards of performance for industrial-commercial-institutional steam generating units;
- (42) 401 KAR 60:043, Standards of performance for small industrial-commercial-institutional steam generating units;
- (43) 401 KAR 60:100, Standards of performance for petroleum refineries;
- (44) 401 KAR 60:110, Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978;
- (45) 401 KAR 60:111, Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984;
- (46) 401 KAR 60:150, Standards of performance for sewage treatment plants;
- (47) 401 KAR 60:160, Standards of performance for primary copper smelters;
- (48) 401 KAR 60:170, Standards of performance for primary zinc smelters;
- (49) 401 KAR 60:180, Standards of performance for primary lead smelters;
- (50) 401 KAR 60:190, Standards of performance for primary aluminum reduction plants;
- (51) 401 KAR 60:250, Standards of performance for coal preparation plants;
- (52) 401 KAR 60:260, Standards of performance for ferroalloy production facilities;
- (53) 401 KAR 60:330, Standards of performance for stationary gas turbines;
- (54) 401 KAR 60:340, Standards of performance for lime manufacturing plants;
- (55) 401 KAR 60:370, Standards of performance for lead-acid battery manufacturing plants;
- (56) 401 KAR 60:380, Standards of performance for metallic mineral processing plants;
- (57) 401 KAR 60:390, Standards of performance for automobile and light-duty truck surface coating operations;
- (58) 401 KAR 60:400, Standards of performance for phosphate rock plants;
- (59) 401 KAR 60:420, Standards of performance for ammonium sulfate manufacture;
- (60) 401 KAR 60:440, Standards of performance for pressure sensitive tape and label surface coating operations;
- (61) 401 KAR 60:450, Standards of performance for industrial surface coating: large appliances;
- (62) 401 KAR 60:460, Standards of performance for metal coil surface coating;
- (63) 401 KAR 60:470, Standards of performance for asphalt

processing and asphalt roofing manufacture;

(64) 401 KAR 60:480, Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;

(65) 401 KAR 60:490, Standards of performance for the beverage can surface coating industry;

(66) 401 KAR 60:500, Standards of performance for bulk gasoline terminals;

(67) 401 KAR 60:540, Standards of performance for the rubber tire manufacturing industry;

(68) 401 KAR 60:560, Standards of performance for volatile organic compound (VOC) emissions from the polymer manufacturing industry;

(69) 401 KAR 60:580, Standards of performance for flexible vinyl and urethane coating and printing;

(70) 401 KAR 60:590, Standards of performance for equipment leaks of VOC in petroleum refineries;

(71) 401 KAR 60:600, Standards of performance for synthetic fiber production facilities;

(72) 401 KAR 60:620, Standards of performance for petroleum dry cleaners;

(73) 401 KAR 60:630, Standards of performance for equipment leaks of VOC from onshore natural gas processing plants;

(74) 401 KAR 60:640, Standards of performance for onshore natural gas processing: SO<sub>2</sub> emissions;

(75) 401 KAR 60:680, Standards of performance for wool fiberglass insulation manufacturing plants;

(76) 401 KAR 60:700, Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;

(77) 401 KAR 60:730, Standards of performance for calciners and dryers in mineral industries;

(78) 401 KAR 63:070, Compliance extensions for early reductions of hazardous air pollutants;

(79) 401 KAR 63:101, National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry;

(80) 401 KAR 63:110, National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater;

(81) 401 KAR 63:160, National emission standards for organic hazardous air pollutants for equipment leaks;

(82) 401 KAR 63:190, National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks;

(83) 401 KAR 63:300, National emission standards for coke oven batteries;

(84) 401 KAR 63:320, National perchloroethylene air emission standards for dry cleaning facilities;

(85) 401 KAR 63:340, National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks;

(86) 401 KAR 63:360, Ethylene oxide emissions standards for sterilization facilities;

(87) 401 KAR 63:400, National emission standards for organic hazardous air pollutants for industrial process cooling towers;

(88) 401 KAR 63:420, National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations);

(89) 401 KAR 63:460, National emission standards for halogenated solvent cleaning;

(90) 401 KAR 63:520, National emission standards for organic hazardous air pollutants for epoxy resins production and nonnylon polyamides production; and

(91) 401 KAR 63:701, National emission standards for magnetic tape manufacturing operations.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 18, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the new administrative

regulation will be held on February 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 workdays 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, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382 ext. 338, 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: In conjunction with the promulgation of the new administrative regulations, 401 KAR 57:002, 60:005, and 63:002, this administrative regulation will reduce the review requirements for promulgating the federal standards codified in 40 CFR Parts 60, 61, and 63, while maintaining the opportunity for review and comment. The administrative regulations that are being repealed are being repromulgated in the new administrative regulations, 401 KAR 57:002, 60:005, and 63:002. As a result of this action, the cabinet will be able to easily revise and update all the federal standards of 40 CFR Parts 60, 61, and 63 once a year when the Code of Federal Regulations is published. The most current federal standards will thus be more readily available to the regulated community and the general public.

(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 related to the cost of living and employment in the geographical area in which this administrative regulation will be implemented.

(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.

(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 in this administrative regulation.

2. Second and subsequent years: There are no reporting or paperwork requirements in this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating three administrative regulations in lieu of the 91 administrative regulations which are being repealed.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to the federal standards every year. These will be able to be handled by amending three administrative regulations.

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 in this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funds will be required 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 in the geographical area in which it will be implemented.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation repeals the existing administrative regulations that incorporate by reference the federal standards which are in turn being incorporated by reference in 401 KAR 57:002, 60:005, and 63:002.

(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 because this administrative regulation repeals the existing administrative regulations that incorporate by reference the federal standards which are in turn being incorporated by reference in 401 KAR 57:002, 60:005, and 63:002.

(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 standards.

(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 standards.

(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. Tiering is not applicable to this administrative regulation because it repeals the existing administrative regulations which incorporate by reference the federal standards codified in 40 CFR Parts 60, 61, and 63. These standards are being incorporated by reference in the new administrative regulations, 401 KAR 57:002, 60:005, and 63:002.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this administrative regulation.

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. There is no federal mandate for this 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. There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, 60.680 to 60.759, 42 USC 7411

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the Standards of Performance for New Stationary Sources (NSPS) codified in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.

(1) "Part 60 NSPS" means Standards of Performance for New Stationary Sources codified in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW).

(2) "Administrator", as used in 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of a Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 60.1 to 60.19 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 60, Appendices A through F, which are incorporated by reference in Section 3 of this administrative regulation; and

(3) The applicable Part 60 NSPS incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 60.1 to 60.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(b) 40 CFR 60.40b to 60.49b (Subpart Db), "Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(c) 40 CFR 60.40c to 60.48c (Subpart Dc), "Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(d) 40 CFR 60.50 to 60.54, (Subpart E), "Standards of Performance for Incinerators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(e) 40 CFR 60.60 to 60.66 (Subpart F), "Standards of Performance for Portland Cement Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(f) 40 CFR 60.70 to 60.74 (Subpart G), "Standards of Performance for Nitric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(g) 40 CFR 60.80 to 60.85 (Subpart H), "Standards of Performance for Sulfuric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(h) 40 CFR 60.90 to 60.93 (Subpart I), "Standards of Performance for Hot Mix Asphalt Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(i) 40 CFR 60.100 to 60.109 (Subpart J), "Standards of Performance for Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(j) 40 CFR 60.110 to 60.113 (Subpart K), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(k) 40 CFR 60.110a to 60.115a (Subpart Ka), "Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(l) 40 CFR 60.110b to 60.117b (Subpart Kb), "Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(m) 40 CFR 60.120 to 60.123 (Subpart L), "Standards of Performance for Secondary Lead Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(n) 40 CFR 60.130 to 60.133 (Subpart M), "Standards of Performance for Secondary Brass and Bronze Production Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(o) 40 CFR 60.140 to 60.144 (Subpart N), "Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(p) 40 CFR 60.140a to 60.145a (Subpart Na), "Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced after January 20, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(q) 40 CFR 60.150 to 60.156 (Subpart O), "Standards of Performance for Sewage Treatment Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(r) 40 CFR 60.160 to 60.166 (Subpart P), "Standards of Performance for Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(s) 40 CFR 60.170 to 60.176 (Subpart Q), "Standards of Performance for Primary Zinc Smelters", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(t) 40 CFR 60.180 to 60.186 (Subpart R), "Standards of Performance for Primary Lead Smelters", as published in the Code of

Federal Regulations, 40 CFR Part 60, July 1, 1997;

(u) 40 CFR 60.190 to 60.195 (Subpart S), "Standards of Performance for Primary Aluminum Reduction Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(v) 40 CFR 60.200 to 60.204 (Subpart T), "Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(w) 40 CFR 60.210 to 60.214 (Subpart U), "Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(x) 40 CFR 60.220 to 60.224 (Subpart V), "Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(y) 40 CFR 60.230 to 60.234 (Subpart W), "Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(z) 40 CFR 60.240 to 60.244 (Subpart X), "Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(aa) 40 CFR 60.250 to 60.254 (Subpart Y), "Standards of Performance for Coal Preparation Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(bb) 40 CFR 60.260 to 60.266 (Subpart Z), "Standards of Performance for Ferroalloy Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(cc) 40 CFR 60.270 to 60.276 (Subpart AA), "Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(dd) 40 CFR 60.270a to 60.276a (Subpart AAa), "Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(ee) 40 CFR 60.280 to 60.285 (Subpart BB), "Standards of Performance for Kraft Pulp Mills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(ff) 40 CFR 60.290 to 60.296 (Subpart CC), "Standards of Performance for Glass Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(gg) 40 CFR 60.300 to 60.304 (Subpart DD), "Standards of Performance for Grain Elevators", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(hh) 40 CFR 60.310 to 60.316 (Subpart EE), "Standards of Performance for Surface Coating of Metal Furniture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(ii) 40 CFR 60.330 to 60.335 (Subpart GG), "Standards of Performance for Stationary Gas Turbines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(jj) 40 CFR 60.340 to 60.344 (Subpart HH), "Standards of Performance for Lime Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(kk) 40 CFR 60.370 to 60.374 (Subpart KK), "Standards of Performance for Lead-Acid Battery Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(ll) 40 CFR 60.380 to 60.386 (Subpart LL), "Standards of Performance for Metallic Mineral Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(mm) 40 CFR 60.390 to 60.398 (Subpart MM), "Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(nn) 40 CFR 60.400 to 60.404 (Subpart NN), "Standards of Performance for Phosphate Rock Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

(oo) 40 CFR 60.420 to 60.424 (Subpart PP), "Standards of Performance for Ammonium Sulfate Manufacture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

- (pp) 40 CFR 60.430 to 60.435 (Subpart QQ), "Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (qq) 40 CFR 60.440 to 60.447 (Subpart RR), "Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (rr) 40 CFR 60.450 to 60.456 (Subpart SS), "Standards of Performance for Industrial Surface Coating: Large Appliances", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ss) 40 CFR 60.460 to 60.466 (Subpart TT), "Standards of Performance for Metal Coil Surface Coating", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (tt) 40 CFR 60.470 to 60.474 (Subpart UU), "Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (uu) 40 CFR 60.480 to 60.489 (Subpart VV), "Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (vv) 40 CFR 60.490 to 60.496 (Subpart WW), "Standards of Performance for the Beverage Can Surface Coating Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ww) 40 CFR 60.500 to 60.506 (Subpart XX), "Standards of Performance for Bulk Gasoline Terminals", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (xx) 40 CFR 60.540 to 60.548 (Subpart BBB), "Standards of Performance for the Rubber Tire Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (yy) 40 CFR 60.560 to 60.566 (Subpart DDD), "Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (zz) 40 CFR 60.580 to 60.585 (Subpart FFF), "Standards of Performance for Flexible Vinyl and Urethane Coating and Printing", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (aaa) 40 CFR 60.590 to 60.593 (Subpart GGG), "Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (bbb) 40 CFR 60.600 to 60.604 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ccc) 40 CFR 60.610 to 60.618 (Subpart III), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ddd) 40 CFR 60.620 to 60.625 (Subpart JJJ), "Standards of Performance for Petroleum Dry Cleaners", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (eee) 40 CFR 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (fff) 40 CFR 60.640 to 60.648 (Subpart LLL), "Standards of Performance for Onshore Natural Gas Processing: SO<sub>2</sub> Emissions", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ggg) 40 CFR 60.660 to 60.668 (Subpart NNN), "Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (hhh) 40 CFR 60.680 to 60.685 (Subpart PPP), "Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (iii) 40 CFR 60.690 to 60.699 (Subpart QQQ), "Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (jjj) 40 CFR 60.700 to 60.708 (Subpart RRR), "Standards of Performance for Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (kkk) 40 CFR 60.710 to 60.718 (Subpart SSS), "Standards of Performance for Magnetic Tape Coating Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (lll) 40 CFR 60.720 to 60.726 (Subpart TTT), "Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (mmm) 40 CFR 60.730 to 60.737 (Subpart UUU), "Standards of Performance for Calciners and Dryers in Mineral Industries", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (nnn) 40 CFR 60.740 to 60.748 (Subpart VVV), "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ooo) 40 CFR 60.750 to 60.759 (Subpart WWW), "Standards of Performance for Municipal Solid Waste Landfills", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ppp) "Appendix A, Test Methods", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (qqq) "Appendix B, Performance Specifications", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (rrr) "Appendix C, Determination Of Emission Rate Change", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (sss) "Appendix D, Required Emission Inventory Information", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997;
- (ttt) "Appendix F, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997.
- (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: December 18, 1998

FILED WITH LRC: December 18, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on the new administrative regulation will be held on February 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 workdays 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, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, telephone (502) 573-3382 ext. 338, 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 New Source Performance Standards, 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 1997. The benefits expected from this administrative regulation are twofold. First, sources that are subject to the Part 60 NSPS will be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements. Second, the Part 60 NSPS will be incorporated by reference in 1 administrative regulation instead of incorporating each in a separate administrative regulation. This will reduce the number of existing air administrative regulations by 65, and will allow the Division to easily revise and update the Part 60 NSPS once a year when the Code of Federal Regulations is published.

(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 rulemakings.

(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 rulemakings.

(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 Part 60 NSPS.

2. Second and subsequent years: There are no requirements beyond those required in Part 60 NSPS.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating 1 administrative regulation for Part 60 NSPS in lieu of 66.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to Part 60 NSPS every year. These can now be handled by amending 1 administrative regulation.

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 Part 60 NSPS.

(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 impacts beyond those described in the federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impacts in any geographical location in Kentucky beyond those described in the federal rulemakings.

(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 Part 60 NSPS.

(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 rulemakings.

(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 Part 60 NSPS program, 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 Part 60 NSPS program.

(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 is promulgating this administrative regulation to incorporate by reference 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1997, so that Kentucky will continue to have the delegated authority to implement and enforce the federal Part 60 NSPS program.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1997, without change. There is no tiering of requirements beyond that contained in the federal Part 60 NSPS.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1997. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 60 NSPS program pursuant to 42 USC 7411(c)(1).

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. 40 CFR 60.1 to 60.19, 60.40b to 60.54, 60.60 to 60.506, 60.540 to 60.668, and 60.680 to 60.759 (Subparts A, Db to E, F to XX, BBB to NNN, and PPP to WWW), July 1, 1997, contain New Source Performance Standards that the U.S. EPA is required to promulgate pursuant to 42 USC 7411.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal

mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:002. 40 CFR Part 63 national emission standards for hazardous air pollutants.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, 63.1310 to 63.1335, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, 63.1310 to 63.1335, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. Terms used in this administrative regulation shall have the meaning given in this section unless the context clearly indicates otherwise.

(1) "Part 63 NESHAP" means National Emission Standard for Hazardous Air Pollutants codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ).

(2) "Administrator", as used in 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ) means the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 63.1 to 63.15, 63.70 to 63.81,

63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 63.1 to 63.15 (Subpart A), General Provisions, which is incorporated by reference in Section 3 of this administrative regulation;

(2) For sources that applied for early reduction credit and wish to extend the deadline for compliance demonstration, the applicable provisions in 40 CFR 63.70 to 63.81 (Subpart D), Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants, which is incorporated by reference in Section 3 of this administrative regulation;

(3) The applicable test methods, procedures, and other provisions contained in 40 CFR Part 63, Appendices A through D, which are incorporated by reference in Section 3 of this administrative regulation; and

(4) The applicable Part 63 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 40 CFR 63.1 to 63.15 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(b) 40 CFR 63.70 TO 63.81 (Subpart D), "Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(c) 40 CFR 63.100 to 63.106 (Subpart F), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(d) 40 CFR 63.110 to 63.152 (Subpart G), "National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(e) 40 CFR 63.160 to 63.182 (Subpart H), "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(f) 40 CFR 63.190 to 63.193 (Subpart I), "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulations for Equipment Leaks", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(g) 40 CFR 63.300 to 63.313 (Subpart L), "National Emission Standards for Coke Oven Batteries", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(h) 40 CFR 63.320 to 63.325 (Subpart M), "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(i) 40 CFR 63.340 to 63.347 (Subpart N), "National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(j) 40 CFR 63.360 to 367 (Subpart O), "Ethylene Oxide Emissions Standards for Sterilization Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(k) 40 CFR 63.400 to 63.406 (Subpart Q), "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(l) 40 CFR 63.420 to 62.429 (Subpart R), "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(m) 40 CFR 63.460 to 63.469 (Subpart T), "National Emission Standards for Halogenated Solvent Cleaning", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(n) 40 CFR 63.480 to 63.506 (Subpart U), "National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(o) 40 CFR 63.520 to 63.528 (Subpart W), "National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and NonNylon Polyamides Production", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(p) 40 CFR 63.701 to 63.708 (Subpart EE), "National Emission Standards for Magnetic Tape Manufacturing Operations", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(q) 40 CFR 63.1310 to 63.1335 (Subpart JJJ), "National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(r) "Appendix A to Part 63, Test Methods", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(s) "Appendix B to Part 63, Sources Defined for Early Reduction Provisions", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997;

(t) "Appendix C to Part 63, Determination of the Fraction Biodegraded (Fbio) in a Biological Treatment Unit", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997; and

(u) "Appendix D to Part 63, Alternative Validation Procedure for EPA Waste and Wastewater Methods", as published in the Code of Federal Regulations, 40 CFR Parts 63 to 71, July 1, 1997.

(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.

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JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 18, 1998 at 2 p.m.

**PUBLIC HEARING:** A public hearing on the new administrative regulation will be held on February 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 workdays 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, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, telephone (502) 573-3382 ext. 338, 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 National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ), as published in the Code of Federal Regulations, Parts 63 to 71, July 1, 1997. The benefits expected from this administrative regulation are twofold. First, sources that are subject to the Part 63 NESHAP program will be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements. Second, the emission standards in 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ) will be incorporated by reference in 1 administrative regulation instead of incorporating each in a separate administrative regulation. This will reduce the number of air regulations by 14, and will allow the Division to easily revise and update the Part 63 NESHAP once a year when the Code of Federal Regulations is published. An additional 13 Part 63 NESHAP are not being incorporated by reference in this administrative regulation because these standards were in the process of being promulgated as individual administrative regulations when the notice of intent for this administrative regulation was published in the June 1, 1998, Administrative Register of Kentucky. These Part 63 NESHAP will be added to this administrative regulation during the annual update.

(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 rulemakings.

(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 rulemakings.

(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 Part 63 NESHAP.

2. Second and subsequent years: There are no requirements beyond those required in Part 63 NESHAP.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: A substantial savings in time and efficiency will be realized by promulgating 1 administrative regulation for Part 63 NESHAP in lieu of 15, at this time, and an additional 13 at the annual update.

2. Continuing costs or savings: The savings in time and efficiency should continue indefinitely, since there are additions and revisions made to the Part 63 NESHAP every year. These can now be handled by amending one (1) administrative regulation.

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 Part 63 NESHAP.

(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 impacts beyond those described in the federal rulemakings.

(b) Kentucky: This administrative regulation will have no economic impacts in any geographical location in Kentucky beyond those described in the federal rulemakings.

(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 Part 63 NESHAP.

(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 rulemakings.

(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 Part 63 NESHAP program, 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 Part 63 NESHAP program.

(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 is promulgating this administrative regulation to incorporate by reference 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ), July 1, 1997, so that Kentucky will continue to have the delegated authority to implement and enforce the federal Part 63 NESHAP program.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ), July 1, 1997, without change. There is no tiering by the state beyond that contained in the federal Part 63 NESHAP.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ), July 1, 1997. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 63 NESHAP program pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.528, 63.701 to 63.708, and 63.1310 to 63.1335 (Subparts A, D, F to I, F to W, EE, and JJJ), July 1, 1997, contain National Emission Standards for Hazardous Air Pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards

and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Surface Mining Reclamation and Enforcement (New Administrative Regulation)

**405 KAR 7:097. Reclamation in lieu of cash payment of civil penalties.**

RELATES TO: KRS 350.010, 350.020, 350.028, 350.130, 350.150, 350.151, 350.465, 350.550-597, 350.990, 30 CFR Parts 730-733, 735, 845, 846, 917, 30 USC 1253, 1255, 1268

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.151, 350.465, 350.990, 30 CFR Parts 730-733, 735, 845, 846, 917, 30 USC 1253, 1255, 1268

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. KRS 350.990(11) authorizes the cabinet to allow a permittee, person, or operator to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution, instead of making cash payment of a civil penalty assessed under KRS 350.990. KRS 350.990(11) authorizes the cabinet to promulgate administrative regulations as necessary to implement and administer its provisions. This administrative regulation establishes criteria and procedures to implement KRS 350.990(11). This administrative regulation differs from federal regulations as follows: There are no corresponding federal regulations that establish specific requirements applicable to state regulatory programs that provide for reclamation in lieu of cash payment of civil penalties. As a condition of federal approval of KRS 350.990(11), the federal regulations at 30 CFR 917.16(c)(3) require the cabinet to obtain federal approval of administrative regulations prior to implementation of KRS 350.990(11).

Section 1. Applicability and General Provisions. (1) This administrative regulation shall apply to a permittee, person, or operator who has been assessed a civil penalty under KRS 350.990 by a final order of the secretary of the cabinet.

(2) The cabinet may, in accordance with KRS 350.990(11) and this administrative regulation, allow a permittee, person, or operator to perform activities in lieu of cash payment of one (1) or more civil penalties, if the aggregate amount of the civil penalties is \$2,500 or more.

(3) Activities under this administrative regulation shall be authorized under a binding agreement between the cabinet and the person owing the civil penalty. The agreement shall be termed a "Civil Penalty Reclamation Agreement."

(4) A permittee, person, or operator conducting activities authorized under this administrative regulation shall not be deemed

an agent, contractor, or employee of the cabinet.

(5) A permittee, person, or operator conducting activities authorized under this administrative regulation shall obtain and maintain the legal right to enter upon the site and conduct the authorized activities.

(6)(a) A permittee, person, or operator conducting activities authorized under this administrative regulation shall obtain and maintain liability insurance coverage in accordance with this subsection.

(b) The permittee, person, or operator shall submit a certificate issued by an insurance company authorized to do business in Kentucky certifying that the permittee, person, or operator has a public liability insurance policy in force for the authorized activities. The policy shall provide for personal injury and property damage protection in an amount adequate to compensate for all personal injury and property damage resulting from the authorized activities, including damage caused by the use of explosives and damage to water wells. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

(c) The policy shall be maintained in force during the term of the Civil Penalty Reclamation Agreement, until the cabinet has determined in writing that the terms of the Civil Penalty Reclamation Agreement have been satisfied.

(d) The policy shall include a clause requiring that the insurer notify the cabinet whenever substantive changes are made in the policy, including any termination or failure to renew.

(e) In the event the insurer becomes unable to fulfill its obligations under the policy, notice shall be given immediately to the permittee, person, or operator and the cabinet.

(f) Upon the incapacity of an insurer by reason of bankruptcy, insolvency, or suspension or revocation of its license or certificate of authority, the permittee, person, or operator shall be deemed to be without insurance coverage and shall promptly notify the cabinet. However, nothing herein shall relieve the insurer of liability on its policy. The cabinet shall notify the permittee, person, or operator in writing, specifying a reasonable period to replace such coverage, not to exceed ninety (90) days. If adequate insurance coverage is not obtained by the end of the period allowed, the permittee, person, or operator shall cease the authorized activities and the cabinet may terminate the Civil Penalty Reclamation Agreement and require the permittee, person, or operator to pay the assessed civil penalty.

(7) If the activities authorized under this administrative regulation are for reclamation of a mine site, the permittee, person, or operator shall provide a performance bond. For activities other than reclamation of a mine site, the cabinet may require the permittee, person, or operator to provide a performance bond if the cabinet determines that the authorized activities could create a substantial risk of significant environmental harm. This bond shall be in addition to any bond required by any other federal, state, or local law. The cabinet shall determine the amount of the bond based upon site specific conditions. This subsection may be satisfied by a performance bond that meets the requirements of 405 KAR Chapter 10. The cabinet shall release the performance bond promptly after the cabinet has determined that the terms of the Civil Penalty Reclamation Agreement have been fulfilled, and the bond release procedures of 405 KAR 10:040 shall not apply.

(8) A permittee, person, or operator conducting activities authorized under this administrative regulation shall comply with applicable federal, state, and local laws and regulations.

(9) A permittee, person, or operator conducting activities authorized under this administrative regulation shall not engage in coal removal in connection with the authorized activities.

(10) Activities authorized under this administrative regulation shall be on-ground activities that directly result in reclamation, environmental rehabilitation, or correction of environmental pollution. Educational, promotional, training, and other activities that may indirectly affect the environment, shall not be authorized.

(11) Activities authorized under this administrative regulation shall not constitute government financed construction for the purposes of 405 KAR 7:030, Sections 2 and 3.

(12) The cabinet shall determine the location, scope, and time schedule for activities authorized under this administrative regulation.

tion.

(13) The Division of Abandoned Mine Lands shall determine the estimate of the cost of activities authorized or completed under this administrative regulation.

(14) Activities shall not be authorized under this administrative regulation unless their estimated cost exceeds the assessed amount of the civil penalty.

(15) The cost of activities in excess of the civil penalty amount covered in the Civil Penalty Reclamation Agreement shall not be credited or carried forward to satisfy a civil penalty not covered in the Civil Penalty Reclamation Agreement or any future civil penalty.

(16) The cabinet shall maintain appropriate records of activities conducted under this administrative regulation. The Department for Surface Mining Reclamation and Enforcement shall maintain custody of the records. The cabinet shall request an audit of these records and activities authorized under this administrative regulation, at intervals of not more than five (5) years.

Section 2. Ineligible Permittees, Persons, or Operators. The cabinet shall not authorize a permittee, person, or operator to perform activities under this administrative regulation if:

(1) The cabinet has determined under KRS 350.130(3) that the permittee, person, or operator has demonstrated a pattern of willful violations of KRS Chapter 350 of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of KRS Chapter 350;

(2) The permittee, person, or operator has had a permit revoked or a bond forfeited under KRS Chapter 350;

(3) The permittee, person, or operator has an outstanding violation under KRS Chapter 350 and has not completed the on-ground work necessary to correct the violation;

(4) The permittee, person, or operator owns or controls a surface coal mining operation for which the permit has been revoked or the bond forfeited; or which is currently in violation of KRS Chapter 350, and the on-ground work necessary to correct the violation has not been completed; or

(5) The permittee, person, or operator is currently in violation of other federal, state, or local environmental laws.

Section 3. Ineligible Civil Penalties. The cabinet shall not authorize activities in lieu of cash payment of a civil penalty if:

(1) A violation that led to the civil penalty remains unabated; or

(2) The permittee, person, or operator owing the civil penalty has entered into an agreed order with the cabinet to pay the civil penalty and has failed to comply with the terms of the agreed order.

Section 4. Ineligible Sites. The cabinet shall not authorize activities at the following sites:

(1) A site that is under a valid permit under KRS Chapter 350 for which the bond has not been forfeited;

(2) A site that is under another valid federal, state, or local permit, under which the permit holder has responsibility for environmental conditions at the site; or

(3) A site for which there is an ongoing enforcement action for violation of federal, state, or local environmental laws, unless the agency pursuing the enforcement action consents.

Section 5. Selection of Sites. (1) For informational and planning purposes only, the cabinet may develop and maintain a list of sites that may be suitable for activities under this administrative regulation, and may assign priorities to sites on the list. If the cabinet develops a list of sites, it shall be made available to the public. Authorization of a site for activities under this administrative regulation shall be made on a case-by-case basis and shall not be limited to sites on a list.

(2) The cabinet may consider sites and activities proposed by the permittee, person, or operator owing a civil penalty, but the cabinet shall have no obligation to authorize, or give preference to, the sites or activities.

(3) The cabinet shall consult with the county fiscal court before authorizing activities on a site in the county. The county fiscal court may recommend sites or activities, but the cabinet shall have no obligation to authorize, or give preference to, the sites or activities.

(4) The cabinet may consult with other federal, state, and local government agencies and officials, and with private organizations and individuals, as the cabinet deems appropriate, regarding selection of sites and activities to be authorized.

(5) The cabinet may seek public input regarding selection of sites and activities to be authorized, through newspaper notice or by other means.

(6) The cabinet may give preference to sites or activities that address environmental impacts resulting from coal mining.

Section 6. Criteria Applicable to Activities and Costs. (1) The following activities shall not be authorized under this administrative regulation:

(a) Activities which the permittee, person, or operator owing the civil penalty has a duty to perform under KRS Chapter 350 or other federal, state, or local law;

(b) Activities which the permittee, person, or operator owing the civil penalty, or other person, has a legal obligation to perform under a valid contract; and

(c) Activities on land or waters in which the permittee, person, or operator owing the penalty has, directly or indirectly, an ownership interest or other financial interest.

(2) The following activities and costs shall not be credited toward the civil penalty:

(a) Activities begun or costs incurred prior to the Civil Penalty Reclamation Agreement;

(b) The cost of labor, equipment, time, materials, or services, donated by persons other than the permittee, person, or operator owing the civil penalty;

(c) Payments or gifts by the permittee, person, or operator owing the civil penalty to government agencies or private organizations in exchange for their participation in planning or carrying out activities;

(d) Purchase or lease of land, easements, rights of way, or other access to property;

(e) Construction, modification or repair of a building or other structure, unless the function of the building or other structure is prevention, control, or abatement of environmental pollution;

(f) Repair of a road, unless the purpose of the repair is abatement and control of environmental pollution;

(g) Transportation costs; and

(h) Administrative costs and overhead.

(3) Activities may be authorized in conjunction with an abandoned mine land reclamation project of the cabinet under KRS 350.550 - .597.

(4) Activities may be authorized in conjunction with reclamation of a bond forfeiture site by the cabinet under KRS 350.150, if the permittee, person, or operator owing the civil penalty did not own or control the site under KRS Chapter 350, was not an operator or agent on the site under KRS Chapter 350, and has no direct or indirect ownership or other interest in the land.

Section 7. Request. (1) A permittee, person, or operator desiring to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution in lieu of cash payment of a civil penalty shall make a written request to the Commissioner of the Department for Surface Mining Reclamation and Enforcement. The request shall not be made contingent upon any particular proposed site or activities.

(2) The request shall identify:

(a) The permittee and permit number associated with the civil penalty;

(b) The identifying number of the noncompliance or cessation order that resulted in the civil penalty;

(c) The assessed civil penalty amount and the amount that remains unpaid;

(d) The name, mailing address, and telephone number of the permittee, operator or person making the request; and

(e) The date of the request.

(3) If the civil penalty is owed by an individual, the request shall bear the signature of the individual.

(4) If the civil penalty is owed by a business entity, the request shall bear the signature and title of an authorized officer or agent of the business entity.

(5) The request shall be filed after the date of the final order of the secretary assessing the civil penalty. The filing of the request shall not stay the collection of the civil penalty.

(6) Within fifteen (15) days after receiving a request under this section, the cabinet shall notify the permittee, person, or operator, in writing, of whether the cabinet intends to pursue a Civil Penalty Reclamation Agreement with the permittee, person, or operator. The cabinet may require additional information relevant to the request.

(7) The permittee, person, or operator may withdraw the request at any time prior to entering into a Civil Penalty Reclamation Agreement, by providing written notice to the Commissioner of the Department for Surface Mining Reclamation and Enforcement.

Section 8. Civil Penalty Reclamation Agreement. (1) The Civil Penalty Reclamation Agreement shall specify:

(a) The effective date of the Civil Penalty Reclamation Agreement;

(b) The names of the parties to the Civil Penalty Reclamation Agreement;

(c) The civil penalty amount;

(d) The identifying number of the noncompliance or cessation order that resulted in the civil penalty;

(e) The permit number and name of the permittee associated with the violation that led to the civil penalty;

(f) The activities authorized;

(g) The time span within which the authorized activities shall be completed;

(h) The site of the authorized activities;

(i) The requirements for legal right of entry, liability insurance, and performance bonding;

(j) The conditions under which the Civil Penalty Reclamation Agreement may be modified or terminated;

(k) The consequences of failure to satisfy the terms of the Civil Penalty Reclamation Agreement; and

(l) The effect of successful satisfaction of the terms of the Civil Penalty Reclamation Agreement.

(2) A Civil Penalty Reclamation Agreement may cover multiple civil penalties and sites:

(a) Multiple civil penalties may be covered at a single site; and

(b) A single civil penalty may be covered at multiple sites.

(3) The cabinet and the permittee, person, or operator owing the civil penalty shall be parties to the Civil Penalty Reclamation Agreement. Other parties may be included if the cabinet determines they are necessary parties to the Civil Penalty Reclamation Agreement.

(4) The Civil Penalty Reclamation Agreement may be modified or terminated at any time if approved in writing by all parties.

(5) The cabinet may terminate the Civil Penalty Reclamation Agreement at any time if the permittee, person, or operator owing the civil penalty fails to satisfactorily fulfill the terms of the Civil Penalty Reclamation Agreement.

(6) The cabinet shall conduct field inspections as necessary to monitor progress under the Civil Penalty Reclamation Agreement.

(7) The civil penalty shall remain due and payable until the cabinet has determined in writing that the permittee, person, or operator owing the civil penalty has satisfactorily fulfilled the terms of the Civil Penalty Reclamation Agreement.

(8) The full assessed civil penalty shall be due and payable if the Civil Penalty Reclamation Agreement is breached.

JAMES E. BICKFORD, Secretary

BARBARA A. FOSTER, General Counsel

APPROVED BY AGENCY: December 22, 1998

FILED WITH LRC: December 22, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation has been scheduled for 10 a.m. (eastern time) on Thursday, February 25, 1999, in the Training Room (D-16) of the Department for Surface Mining Reclamation and Enforcement at 2 Hudson Hollow, Frankfort, Kentucky. Persons who wish to testify at the hearing shall notify the contact person listed below, in writing, by February 18, 1999. The scheduled hearing will be canceled if the contact person has not received any written notice of intent to testify by February 18, 1999, five workdays before the scheduled hearing date. If the hearing is held, it will be open to the public. Any person

in attendance who wishes to testify on the administrative regulation 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 for it, in which case the person requesting the recording or transcript shall pay for it. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation, to the contact person listed below. Written comments must be received before adjournment of the scheduled public hearing, or by 4:30 p.m. (eastern time) on February 25, 1999, if the public hearing is not held.

CONTACT PERSON: Jim Villines, Manager, Program Development and Coordination Branch, Kentucky Department for Surface Mining, 2 Hudson Hollow, Frankfort, Kentucky 40601-4321, Tel. (502) 564-6940, FAX (502) 564-5698.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Jim Villines

(1) Type and number of entities affected: Each permittee, person, or operator that is assessed a civil penalty under KRS Chapter 350 is potentially affected. Only those permittees, persons, or operators that voluntarily request to perform in-kind reclamation, environmental rehabilitation, or similar actions to correct environmental pollution in lieu of cash payment of the civil penalty, will actually be affected. In FY 98, 406 enforcement cases resulted in civil penalties.

(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 effect is 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 effect is 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: The cabinet expects that relatively few entities will seek to perform in-kind work in lieu of cash payment of civil penalties, since KRS 350.990(11) requires that the estimated cost of the in-kind work must exceed the amount of the assessed civil penalty. Those that seek to perform in-kind work must file a written request. Those that are authorized to perform in-kind work must enter into a binding Civil Penalty Reclamation Agreement with the cabinet to perform work selected by the cabinet. No fees are required for the written request or the Civil Penalty Reclamation Agreement. Those entities that enter into a Civil Penalty Reclamation Agreement must obtain legal right of entry to the work site, must maintain liability insurance coverage, will in some cases be required to obtain a performance bond, and must perform the work activities set out in the Civil Penalty Reclamation Agreement. If the in-kind work is not completed in accordance with the Civil Penalty Reclamation Agreement, the full amount of the assessed civil penalty must be paid.

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 cabinet will experience some administrative costs in processing written requests and Civil Penalty Reclamation Agreements. Additional costs will result from the necessity for the Division of Abandoned Mine Lands to determine the cost estimates of work to be authorized, and for the cabinet to perform field inspections as necessary for the preparation of, and to monitor work progress under, Civil Penalty Reclamation Agreements.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: The cabinet must

process paperwork concerning requests and Civil Penalty Reclamation Agreements. No special reporting requirements are necessary.

(4) Assessment of anticipated effect on state and local revenues: Penalties that are worked off will not accrue to state revenues. This will not affect the General Fund, which receives the first \$800,000 of civil penalties collected per year, but may reduce deposits to the Bond Pool Fund and the Supplemental Bond Fund which receive the excess over \$800,000. Local revenues will not be affected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This administrative regulation will be implemented through existing personnel of the cabinet. Some additional state funds may be needed to carry out the responsibilities of the Division of Abandoned Mine Lands. The Division's administrative functions on AML-eligible lands are covered by 100% federal funds by a grant under Title 4 of PL 95-87. The Division's administrative functions on non-AML eligible lands such as bond forfeiture sites are covered 50% by state funds and 50% by federal funds under the cabinet's regulatory program grant under Title 5 of PL 95-87. The making of cost estimates and inspections under this administrative regulation on lands that are not AML-eligible will be covered 50% by state funds, so these new responsibilities will likely result in some additional expenditures of state funds. The need for funds will be determined by actual experience in the first year under this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will be implemented statewide, but most activity will occur in the coal fields. Economic impacts, if any, will be positive, but will tend to be small and localized.

(b) Kentucky: No significant impacts are anticipated statewide.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives to the promulgation of an administrative regulation were considered, since the federal mandate at 30 CFR 917.16(c)(3) expressly requires that administrative regulations to implement KRS 350.990(11) (H. B. 839) be developed and submitted to the U.S. Office of Surface Mining for approval.

(8) Assessment of expected benefits of the administrative regulation: The expected benefits of this administrative regulation are implementation of KRS 350.990(11) in compliance with the federal mandate, and achievement of some environmental remediation that may otherwise be unlikely to occur. Further, a permittee, person, or operator that elects to come under this administrative regulation presumably will do so because he finds it beneficial to perform in-kind work instead of paying a civil penalty in cash.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: Each project undertaken under this administrative regulation will necessarily have a positive impact on the environment or public health in the local area. The only activities authorized by the statute and this administrative regulation are those that result in "reclamation, environmental rehabilitation, or similar action to correct environmental pollution".

(b) State whether a detrimental effect on the environment and public health would result if not implemented: No direct detrimental effect would result if this administrative regulation is not implemented. The status quo would be maintained. However, opportunities for environmental and public health improvements would be foregone.

(c) If detrimental effect would result, explain detrimental effect: No direct effect.

(10) Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation implements KRS 350.990(11), which is the only statutory or regulatory provision that addresses in-kind work in lieu of cash payment of civil penalties under KRS Chapter 350.

(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: No additional information or comments.

(12) TIERING: Is tiering applied? No. Tiering is not used in this new administrative regulation 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. 30 CFR 917.16(c)(3). The federal requirement that Kentucky amend its approved program by obtaining federal approval of administrative regulations to implement 1986 Kentucky House Bill 839 (KRS 350.990(11)) was codified at 30 CFR 917.16(c) as follows:

"(c) Pursuant to 30 CFR 732.17, Kentucky is required, prior to implementation of the following statutory amendments, to submit to the Director proposed regulations to implement the amendments, and to receive the Director's approval of the regulations:

(1)...

(2)...

(3) Statutory amendments contained in House Bill 839, submitted to OSMRE on April 29, 1986."

2. State compliance standards. This administrative regulation establishes procedures and criteria under which a permittee, person, or operator assessed a civil penalty under KRS 350.990 may request, and the cabinet may authorize, performance of in-kind reclamation, environmental rehabilitation, or similar actions to correct environmental pollution, in lieu of making cash payment of the civil penalty. It establishes: procedures and criteria for a written request by the permittee, person, or operator that wishes to perform in-kind activities, and processing of the request by the cabinet; criteria under which certain permittees, persons, or operators, certain civil penalties, and certain sites, are ineligible for in-kind activities; criteria under which certain specific kinds of activities and costs shall not be authorized; criteria for selection of sites for in-kind activities; criteria applicable to authorized activities, including legal right of entry, liability insurance, and performance bonding in some cases; and requirements for Civil Penalty Reclamation Agreements which authorize the in-kind activities.

3. Minimum or uniform standards contained in the federal mandate. The federal surface mining law and regulations do not establish criteria applicable to state programs regarding reclamation in lieu of cash payment of civil penalties. OSM approved HB 839 conditioned upon federal approval of state regulations to implement the statute. The federal decision (51 FR 26006, July 18, 1986) stated as follows:

"...Although SMCRA and the federal regulations do not provide for in-kind reclamation in lieu of payment of assessed penalty amounts, Kentucky's statutory amendment does not conflict with the federal requirements for payment of civil penalties. Since the statutory amendment makes clear that operator violations would not be included as possible sites for in-kind reclamation, the operator would be required to correct any violations besides performing the in-kind reclamation work.

Therefore, the director finds the amendment to be consistent with the requirements for payment of penalties in SMCRA section 518. However, prior to the implementation of this statutory amendment, Kentucky is required to submit to the director proposed regulations to implement the statutory amendment and receive the director's approval of the regulations. This required amendment is being codified in 30 CFR 917.16."

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 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.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. The fiscal courts of some counties, primarily the coal producing counties.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate directly to existing services provided by the county fiscal courts. KRS 350.990(11) and this administrative regulation require the cabinet to consult with the county fiscal court regarding the cabinet's allowing a person assessed a civil penalty for a violation under KRS Chapter 350 to perform in-kind reclamation, environmental rehabilitation, or similar actions to control environmental pollution, in lieu of paying the civil penalty in cash.

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 impacts of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: This administrative regulation is not expected to have a direct effect upon the routine expenditures or revenues of the county government. The impact on the county fiscal court relates primarily to consultation with the cabinet regarding potential in-kind environmental work in the county. It is possible that county expenditures could be reduced in some cases, if the in-kind work accomplishes corrective environmental actions that the county would have otherwise undertaken.

#### PUBLIC PROTECTION AND REGULATION CABINET

Office of the Petroleum Storage Tank

Environmental Assurance Fund

(New Administrative Regulation)

#### 415 KAR 1:140. Laboratory certification.

RELATES TO: KRS 224.60-110, 224.60-130, 224.60-140

STATUTORY AUTHORITY: KRS 224.60-130(2)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(2)(a) requires the office to establish criteria to certify laboratories that contract with the owners or operators of underground storage tanks to perform analytical testing related to Kentucky's underground storage tank program. After October 1, 1999, all owners and operators shall be required to have all required analytical testing performed at a certified laboratory to be eligible for fund participation. This administrative regulation is necessary to detail the requirements for certification and the parameters and methods on which certification will be granted. This administrative regulation will assure that laboratories performing analytical testing relating to the underground storage tank program have the technical proficiency, competency, staffing and management to properly perform analytical testing.

Section 1. Applicability. (1) A laboratory certified pursuant to this administrative regulation shall be used for all analytical samples required pursuant to 401 KAR Chapter 42. This administrative regulation shall apply to all analytical testing performed on or after October 1, 1999. Failure to use a laboratory certified under this administrative regulation for analytical testing required pursuant to 401 KAR Chapter 42 on or after October 1, 1999 shall render the applicant ineligible for fund participation;

(2) For those sites having an approved Application for Assistance from the Office, pursuant to 415 KAR 1:080, prior to October 1, 1999, this administrative regulation shall not apply unless further analytical sample testing is required by the cabinet after that date;

(3) For applications received prior to, but not approved by, October 1, 1999, this administrative regulation shall not prohibit fund participation due to analytical samples tested by uncertified laboratory.

ries prior to October 1, 1999.

Section 2. Certification Requirements. (1) To be certified by the office to perform analytical testing relating to the underground storage tank program, laboratories must show current accreditation by the American Association for Laboratory Accreditation, 5301 Buckeystown Pike, Suite 350, Fredrick, Maryland 21704-8307, for the "Kentucky Underground Storage Tank Laboratory Accreditation Program" (January 1999).

(2) Application to the office shall be made on the Office of the Petroleum Storage Tank Environmental Assurance Fund "Laboratory Certification Application" (January, 1999). The application shall also include proof of the accreditation for the "Kentucky Underground Storage Tank Laboratory Accreditation Program".

(3) The fund shall only reimburse for analysis conducted for the parameters or methods for which the laboratory providing the analysis is certified.

Section 4. Renewal of Certification. Certifications issued by the office shall be valid for two (2) years from the date of issuance by the office. Certification may be renewed by submitting a new application and updated accreditation from American Association for Laboratory Accreditation.

Section 5. Loss of Certification. (1) A certification may be revoked or suspended by the office if:

(a) The applicant negligently, incompetently, recklessly, or intentionally violates any provision of this administrative regulation, or any state, federal, or local statute, regulation, code or standard concerning the performance of analytical testing;

(b) The applicant obtained the certification through fraud or misrepresentation; or

(c) The applicant knowingly or intentionally submits false information to owners, operators, contractors, or the fund.

(2) The certified laboratory must maintain accreditation by the American Association for Laboratory Accreditation during the time of certification.

(3) The executive director shall have the authority to suspend or revoke a certification. The executive director shall then cause a letter to be issued notifying the certified laboratory of the action.

(4) Appeal of any such revocation or suspension shall be pursuant to 415 KAR 1:120.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The Office of the Petroleum Storage Tank Environmental Assurance Fund "Laboratory Certification Application" (January, 1999), Public Protection and Regulation Cabinet;

(b) The American Association for Laboratory Accreditation, "Kentucky Underground Storage Tank Laboratory Accreditation Program" (January 1999).

(2) This form may be inspected and obtained at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981. The business hours of the office are 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary  
ROBERT E. NICKEL, Executive Director  
DAVID B. WICKER, ESQ., Staff Counsel

APPROVED BY AGENCY: January 7, 1999

FILED WITH LRC: January 8, 1999 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1999 at 1 p.m. at the Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing of their intent to attend by February 19, 1999, five working days prior to the hearing. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed amendment of this regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be

heard at the public hearing, you may submit written comments on the proposed amendment to this regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed amendment of this regulation to the contact person.

CONTACT PERSON: David B. Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-5981, fax (502) 564-0094.

## REGULATORY IMPACT ANALYSIS

Agency Contact: David Wicker

(1) Type and number of entities affected: The amended regulation will affect approximately 30-50 laboratories in the commonwealth of Kentucky and other states who perform analytical testing for the Kentucky underground petroleum storage tank program.

(a) Direct and indirect costs or savings to those affected:

1. Effect on cost of living and employment: There will be a cost to the laboratory by requiring an accreditation application and audit every three years. Cost is expected to have a minimal effect.

2. Effect on cost of doing business: There will be a cost to the laboratory by requiring an accreditation application and audit every three years. Cost is expected to have a minimal effect on a laboratory's total cost of doing business.

3. First year: The cost will be greater in the first year as most laboratories will need a complete audit and application to be performed.

4. Continuing costs or savings: There will be a continuing cost due to the need to apply triannually for renewal of the certification.

5. Additional factors increasing or decreasing costs: (note any effects upon competition): Laboratories with this certification will be able to continue providing analytical data to owners and operators of underground storage tanks. This will be a competitive advantage over laboratories that are not certified.

(b) Reporting and paper requirements: Laboratories will be required to complete and file the application for certification and the application for renewal.

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The fund will experience minimal direct cost other than the cost of producing and distributing applications and information.

2. Continuing costs or savings: The fund anticipates continuing costs due to the need to upgrade the application on a periodic basis. The cost are expected to be minimal.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs. The fund believes that it has adequate staff at this time to implement and administer this program.

(b) Reporting and paperwork requirements: The fund will be required to collect, review, maintain, and process applications for certification and applications for renewal. The fund will provide applicants with information with which they must be familiar to obtain certification.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Source of revenue: The monies expended by the fund will come from the petroleum storage tank environmental assurance fee, pursuant to KRS 224.60-145.

(5) Assessment of alternative methods: reasons why alternatives were rejected: Rather than create a certification program, the agency, due to a lack of expertise in the area, sought help from a recognized industry accreditation organization. This was suggested by nearly all commentors during the notice of intent public hearing.

Alternative:

1. Less stringent: The fund cannot be less stringent than the statute allows. Less stringent certification standards would not protect the public from fraud. The program is limited to the UST program. To require less would not be in compliance with the statute.

2. More stringent: The fund cannot be more stringent than the statute allows. The proposed regulation is limited to the UST program.

3. Present proposal: The proposed regulation complies with the statutory mandate.



(6) Economic impact: Limited impact on the cost of business for laboratories.

(7) Benefits of the regulation: The regulation conforms to the statute and protects owners and operators of UST's from laboratories that do not have the capabilities to produce reliable analytical data.

(8) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was report made to harmonize the proposed regulation with conflicting provisions: There is no conflict.

(9) Geographical and environmental impact:

(a) Geographical: The effect of this regulation will be equal through all geographic regions of the state, as all areas have laboratories. More populated areas will likely contain more laboratories.

(b) Environmental: The effect of this regulation will improve the quality of analytical testing in the commonwealth. The expected benefit is that data produced for the underground storage tank program in Kentucky will improve. A positive effect on the environment is expected.

(9) Any additional information or comments: There is no additional information.

(10) Tiering statement: Was tiering applied: No. This regulation applies to all laboratories that contract to perform analytical sampling for the underground storage tank program.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. KRS 224.60-130.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will require a local government or a division of local government to use a certified laboratory in the analysis of data for the underground storage tank program if reimbursement will be sought from the fund.

3. State the aspect or service of local government to which this administrative regulation relates. Provision of fuel for owned vehicles.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will require a local government or a division of local government to use a certified laboratory in the analysis of data for the underground storage tank program if reimbursement will be sought from the fund.

#### JUSTICE CABINET (New Administrative Regulation)

**501 KAR 6:190. 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

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 Section 2(10) of this administrative regulation 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 section 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 certification 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

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(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

AMY V. BARKER, Staff Attorney

APPROVED BY AGENCY: January 6, 1999

FILED WITH LRC: January 14, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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: Amy Barker, Staff Attorney, Kentucky

Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## 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.

**JUSTICE CABINET**  
**(New Administrative Regulation)**

**501 KAR 6:200. Sex offender risk assessment procedure.**

RELATES TO: KRS 17.510 to 17.991

STATUTORY AUTHORITY: KRS 17.554, 17.564

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 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.

(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

AMY V. BARKER, Staff Attorney

APPROVED BY AGENCY: January 6, 1999

FILED WITH LRC: January 14, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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: Amy Barker, Staff Attorney, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

**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.

# JUSTICE CABINET (New Administrative Regulation)

## 501 KAR 6:210. Sex offender community notification.

RELATES TO: KRS 17.564

STATUTORY AUTHORITY: KRS 17.564

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 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

AMY BARKER, Staff Attorney

APPROVED BY AGENCY: January 6, 1999

FILED WITH LRC: January 14, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 9 a.m., in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 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: Amy Barker, Staff Attorney, Kentucky Department of Corrections, Office of General Counsel, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

## 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 the 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 statewide 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.

**JUSTICE CABINET  
Kentucky Law Enforcement Council  
(New Administrative Regulation)**

**503 KAR 1:140. Peace officer professional standards.**

RELATES TO: KRS 15.330(1)(g)

STATUTORY AUTHORITY: KRS 15.330(1)(g), 15A.160

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. 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.

(c) 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.

(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.

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 re-



quests 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 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 recom-

mendation 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)1. The applicant shall successfully complete each of the following events as instructed and evaluated by KLEC personnel who shall administer the test in conformity with the 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:

- 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 passes all events when participating in the physical agility test in its entirety, he shall have met the physical agility minimum requirements.

(c) If an applicant passes at least one (1) event when participating in the physical agility test in its entirety:

1. He may retest in the failed events no sooner than forty-eight (48) hours and no later than sixty (60) days from the date of the initial test.

2. All failed events shall be retested on the same date.

3. If the applicant passes all previously failed events on the date of the retest, he shall have met the physical agility minimum requirements.

4. If the applicant does not pass all previously failed events on the date of the retest, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests. The applicant may repeat the physical agility test no sooner than forty-eight (48) hours from the date of the retest.

(d) If an applicant fails all events when participating in the physical agility test in its entirety, he shall repeat the physical agility test in its entirety and shall receive no credit for events which were passed during previous tests or retests.

(e) An applicant may participate in the physical agility test in its entirety, four (4) times in a one (1) year period, which shall be calculated from the first date of testing.

(f) An applicant may participate in one (1) physical agility retest for each physical agility test taken in its entirety.

(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 Workplace 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 completed copy of KLEC POPS Form H-1 at time of 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 DOJT.

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 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, General Counsel

APPROVED BY AGENCY: January 15, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 10 a.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-2740.

#### 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 may 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.

#### JUSTICE CABINET

#### Kentucky Department of Criminal Justice Training (New Administrative Regulation)

**503 KAR 3:040. Telecommunications academy trainee requirements; misconduct; penalties; discipline procedures.**

RELATES TO: KRS 15.550, 15A.070

STATUTORY AUTHORITY: KRS Chapter 13A, 15.590, 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, and any other justice or nonlaw-enforcement-related personnel as prescribed by the secretary, which includes law enforcement telecommunications pursuant to KRS 15.560. This administrative regulation prescribes conduct requirements of trainees attending the telecommunications academy conducted by the Department of Criminal Justice Training, prescribes procedures for disciplinary action, and sets penalties.

Section 1. Uniforms Required. A trainee shall provide the uniforms required by the department to participate in the telecommunications academy.

communications academy.

Section 2. Removing a Trainee from the Academy. (1) Unqualified trainee. The director, branch manager or section supervisor shall remove from the telecommunications academy a trainee who is not qualified to participate in the academy. The trainee shall receive no credit for the part of the academy he has completed.

(2) Agency's request. A trainee shall be removed from the telecommunications academy upon the department's receipt of a written request from the trainee's agency. The trainee shall receive no credit for the part of the academy he has completed.

Section 3. Gifts. Gifts from trainees 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 trainee's failure to meet conduct or honor code requirements of the department. The penalties are listed in order of decreasing severity.

(a) Expulsion. The trainee is dismissed from the academy, and all privileges are terminated.

(b) Suspension. The trainee is suspended from the academy for a specified period of time; all privileges are rescinded during the suspension period.

(c) Loss of privileges. The trainee's privileges as specified in the imposed penalty are rescinded for a stated period of time. The trainee's participation in academy activities is not affected.

(d) Written reprimand. The trainee is reprimanded in writing for violating a conduct or honor code requirement.

(e) Verbal warning. The trainee is warned verbally that he has violated a conduct or honor code requirement.

(2) Second and subsequent violations.

(a) If a trainee 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 trainee 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 trainee and trainee's agency. The department shall give written notice to a trainee of any penalty imposed upon him. The trainee's agency shall be given written notice of any penalty imposed upon the trainee except a verbal warning, and shall be given verbal notice when a trainee 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 trainee.

(b) A copy of any penalty imposed on a trainee shall be placed in his training file.

(c) Only the department, the trainee, and the trainee's agency head shall have access to the penalty records in a trainee's training file unless broader access is required by law.

Section 5. Termination of Dangerous or Disruptive Situation. If the conduct or condition of a trainee 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 trainee attending the telecommunications academy 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 trainee's complaint regarding a supervisor. Penalty: verbal warning or written reprimand.

(2) General conduct - insubordination. A trainee shall:

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

(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, trainee or other department trainee or guest. Penalty: verbal warning, written reprimand or suspension.

(3) General conduct - grooming. The trainee shall be clean shaven with sideburns no longer than the bottom of the ear lobe. A mustache is permitted if the trainee has the mustache upon arrival and keeps it neatly trimmed. A beard shall not be permitted unless the trainee receives permission from the department based upon a written request from the trainee's agency and good cause shown. A trainee's hair shall not be unkempt and shall not be over the collar. Penalty: verbal warning or written reprimand.

(4) General conduct - alcoholic beverages and other intoxicants.

(a) A trainee 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 telecommunications academy. Penalty: written reprimand, loss of privileges, suspension or expulsion.

(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 academy 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 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 trainee 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 academy 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 trainee 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 trainee shall not have successfully completed the telecommunications academy, 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 trainee. A trainee shall not:

(a) Engage in criminal activity, including acts which would constitute a felony, misdemeanor or violation, while enrolled in the telecommunications academy. Depending on the nature of the conduct, the trainee shall be penalized by a verbal warning, written reprimand, loss of privileges, suspension or expulsion.

(b) Engage in conduct which creates a danger or risk of danger to the trainee or another, possess obscene material 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. Penalty: verbal warning, written reprimand, loss of privileges, or expulsion.

(8) Academy activities - uniforms.

(a) A trainee 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 black belt, clean black footwear, black or navy-blue socks, and when outdoors, a department cap. Penalty: verbal warning or written reprimand.

(c) The only collar pins a trainee 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) Additional clothing may be worn during a academy activity if authorized by the instructor.

(9) Academy activities - absences.

(a) A trainee is absent if he is not physically present in a class or other required department activity for more than ten (10) minutes. A trainee is tardy if he is not physically present at a class or other required department activity for fewer than ten (10) minutes. A trainee 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 the telecommunications academy 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 academy area.

(10) Academy activities - breaks. Trainees 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) Academy activities - general conduct.

(a) A trainee shall be attentive during academy activities. Penalty: verbal warning or written reprimand.

(b) A trainee shall not use tobacco products during, or bring food or drink into a academy activity unless so permitted by the training director or commissioner. Penalty: verbal warning or written reprimand.

(c) A trainee shall not engage in conduct which creates or may create a risk of injury to others during a training session.

(12) Academy activities - dishonesty. A trainee 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 telecommunications academy, when attending in Madison County, a trainee shall reside in the residence hall designated by the department.

(b) A trainee 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 trainee 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 trainee shall be responsible for cleaning his area. Each morning, prior to leaving for class training, a trainee shall ensure his room is clean and free of trash, with beds made and the room ready for inspection. Penalty: verbal warning, written reprimand, loss of privileges.

(e) Doors shall be locked whenever a room is unoccupied. Penalty: verbal warning or written reprimand.

(f) The use of cooking appliances or space heaters is prohibited. Penalty: verbal warning, written reprimand, loss of privileges.

(g) All residence hall rooms, closets, and containers therein may be inspected by department staff for purposes of safety, sanitation and rule violations.

(h) A trainee 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 trainee 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 trainees of the Department of Criminal Justice Training, Telecommunications Academy, we will not lie, steal or cheat nor tolerate any among us who do.

We will keep our private lives honorable as an example to all. We will be exemplary in obeying the laws of the Commonwealth and the administrative regulations of the Department of Criminal Justice Training. Whatever we see or hear of a confidential nature of 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 the academy.

(3) All trainees 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 Trainee's Agency. In order to keep the agency advised of the trainee's progress and performance in the telecommunications academy so that the agency may adequately assess the trainee's ability to perform required duties, the department shall provide the following to the police chief, sheriff or chief administrator of the trainee's agency:

(1) Trainee performance report which shall be completed at four (4) week intervals and shall include trainee 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 parked 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.

Section 9. Summary Discipline. Except for summary discipline, no penalty shall be imposed upon a trainee 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 15 of this administrative regulation. To have the authority to impose summary discipline, the staff member must have reasonable grounds to believe the trainee 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 trainee 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 trainee with the opportunity to give an explanation.

Section 10. Removal From the Academy Pending an Initial Appearance Before the Commissioner. (1) When a request for charges is filed against a trainee, the commissioner or director may remove the trainee from some or all training until the trainee'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 trainee would be dangerous or disruptive if not removed; or

(b) The trainee may be charged with misconduct serious enough to authorize expulsion.

(2) A trainee who has been removed from the academy 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 trainee 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 trainee. The request for charges shall describe the alleged misconduct and designate the specific conduct requirements violated. All pertinent evidence and documents including the



## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

complaint, and statements of the trainee and witnesses shall be forwarded to the legal officer.

Section 13. Review by Legal Officer; Placing Charges. (1) The legal officer shall review the request for charges and the supporting evidence and documents.

(2) The legal officer may make or cause further inquiry into the matter for additional information.

(3) The legal officer shall either:

(a) File such charges against the trainee 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 trainee of the nature of the allegation;

(c) State the time, date and place the trainee 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 trainee 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 trainee. If the trainee, after receiving proper notice, fails to appear, the commissioner may proceed in his absence and the trainee 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 trainee;

2. Explain to the trainee:

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.

(b) The legal officer shall explain to the trainee 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 trainee of the penalty which shall be imposed if the trainee admits the charges or waives a hearing.

(d) The trainee shall be requested to answer the charges.

(e) If the trainee 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 trainee 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 trainee within forty-eight (48) hours of the initial appearance before the commissioner.

(g) If the trainee remains silent or refuses to answer the charges, the commissioner may suspend the trainee from the academy until the trainee answers the charges or the legal officer drops the charges.

(3) The commissioner may remove the trainee from some or all training until the hearing if:

(a) He has reasonable grounds to believe the trainee would be dangerous or disruptive if not removed; or

(b) The trainee is charged with misconduct serious enough to authorize expulsion as a possible penalty.

Section 15. Hearing. The hearing shall be conducted in accordance with KRS Chapter 13B.

Section 16. Appeal. (1) A trainee may appeal an order entered by the commissioner which imposes a penalty adverse to the trainee

by filing a written notice of appeal to the Secretary of the Justice Cabinet.

(a) The notice of appeal shall state the points on which the appeal is based and shall be on a form provided by the department. The form is made a part of 503 KAR 3:010 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.

JOHN W. BIZZACK, Ph.D., Commissioner

STEPHANIE C. BINGHAM, General Counsel

APPROVED BY AGENCY: January 15, 1999

FILED WITH LRC: January 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999, at 1:30 p.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137. Individuals interested in being heard at this hearing shall notify this agency in writing by February 15, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; Telephone Number (606) 622-5897, Facsimile Number (606) 622-2740.

### REGULATORY IMPACT ANALYSIS

Contact Person: Stephanie C. Bingham

(1) Type and number of entities affected: All law enforcement telecommunications or other officers participating in the telecommunications academy and their agencies.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 1999 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

- (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
  - (c) If detrimental effect would result, explain detrimental effect: N/A
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
  - (a) Necessity of proposed regulation if in conflict: N/A
  - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
  - (10) Any additional information or comments: None
  - (11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Professional Services**  
**(New Administrative Regulation)**

**600 KAR 6:065. Pooling of professional engineering or related services.**

RELATES TO: KRS 45A.800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC  
 STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 45A.838, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC  
 NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when pooling firms as it relates to professional engineering or related services.

Section 1. Project Types Utilizing Pooling of Engineering or Related Services. (1) Roadway design;  
 (2) Transportation planning;  
 (3) Structure design;  
 (4) Aeronautics;  
 (5) Traffic engineering;  
 (6) Environmental services;  
 (7) Geotechnical services;  
 (8) Bridge maintenance services;  
 (9) Construction engineering services;  
 (10) Multimodal; and  
 (11) Other highway related services as determined by the Transportation Cabinet.

Section 2. Procedures and Criteria for Qualifying and Selecting Pooled Firms. (1) The cabinet shall notify the prequalified firms of the establishment of individual pools by posting a procurement bulletin on the cabinet's web page.  
 (2) Firms shall submit a completed TC Form 40-15 "Response to Announcement for Engineering and Related Services" to be considered for selection in the pool. This form must be received by the date listed on the advertised procurement bulletin.

Section 3. Engineering and Related Services Selection Process. (1) All selected firms shall be placed in the pool. Firm names shall be randomly drawn and listed in consecutive order. This order shall determine the order in which projects shall be offered to firms on a rotating basis. No firm shall be offered an additional project until the remaining firms on the list have been offered a project.

(2) If a firm declines to accept a project, that firm shall not be eligible to accept another project until the remaining firms on the list have been offered a project.

(3) If a firm declines a project or does not respond to an invitation to perform services for a project within seven (7) working days of the dated notification letter, documentation shall be placed in the project files and the next firm on the list shall be offered the project.

Section 4. Pooled Project Assignment. (1) Firms shall be assigned projects based on geographical areas listed below:

- (a) Highway district(s);
- (b) County(ies); or
- (c) State region(s).
- (2) The geographical areas shall be defined by the user division and included in the advertisement for services.
- (3) The selection committee shall assign the selected firm(s) to the geographical area(s).

Section 5. Material Incorporated by Reference. The following material is incorporated by reference: "Response to Announcement for Engineering and Related Services as Prime Consultant", Form TC 40-15, June 1993.

J.M. YOWELL, P.E., State Highway Engineer  
 JAMES C. CODELL, III, Secretary  
 GERI GRIGSBY, General Counsel

APPROVED BY AGENCY: December 21, 1998

FILED WITH LRC: December 23, 1998 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on February 26, 1999 at 1:30 p.m. local prevailing time at 501 High Street, 4th Floor Hearing Room of the State Office Building, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by February 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 February 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 February 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

(1) Type and number of entities affected: There are 160 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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. We will utilize the same advertising, soliciting, negotiating, and contract preparation processes.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: Effects on the promulgating administrative body: This regulation will reduce the time required to procure engineering or related services. It allows the cabinet the flexibility necessary to meet six year plan objectives. It will also provide the best value engineering services.

(a) Direct and indirect costs or savings:

1. First year: This proposal will result in reduced incremental project costs.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting and paperwork requirements: Review and evaluation of all proposals submitted on projects.

(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 Fund as authorized in the Transportation Cabinet 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 why alternatives were rejected: Pooling of firms was authorized in HB 391. This administrative regulation sets standards to be used by the Transportation Cabinet.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not applied to the pooling of firms. All firms in the pool shall be subject to the same criteria.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(New Administrative Regulation)**

**900 KAR 1:041. Repeal of 900 KAR 1:040.**

RELATES TO: KRS 13A.310, 210.290

STATUTORY AUTHORITY: KRS 13A.310, 194B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194B.050 authorizes the Cabinet for Families and Children to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation acts specifically to repeal 900 KAR 1:040, Guardianship responsibilities, which is no longer applicable.

Section 1. 900 KAR 1:040, Guardianship responsibilities, is hereby repealed.

VIOLA P. MILLER, Secretary  
 DIETRA PARIS, Commissioner  
 CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 4, 1999

FILED WITH LRC: January 8, 1999 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 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: None

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: 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: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no fiscal impact associated with the filing of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation:

(a) Geographical area in which administrative regulation will be implemented: 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 public 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 public hearing on this ordinary regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

- (9) Identify any statute, administrative regulation or 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 was not appropriate in this administrative regulation because the administrative regulation applies equally to all of those individuals or entities regulated by it.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Adult and Child Health**  
**(New Administrative Regulation)**

**902 KAR 13:025 Emergency medical services educational institutions and emergency medical services testing agencies.**

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.220, 211.964

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for an organization to be approved by the cabinet as an emergency medical services (EMS) educational institution or an EMS testing agency.

Section 1. EMS Educational Institution Requirements. (1) Only by a public agency or private corporation that has been approved by the cabinet to establish an EMS educational institution shall conduct a training program for initial EMT certification.

(2) An applicant for approval shall:

(a) File, with the cabinet, a letter of request for approval to establish an EMS educational institution;

(b) Be located within Kentucky or a contiguous state;

(c) Submit to the cabinet:

1. The estimated number of EMT courses planned for each academic year from July 1 until June 30 of the following year;

2. The tentative starting and ending dates of each course; and

3. A copy of the EMT syllabus for courses to be taught. The syllabus shall be resubmitted to the cabinet if it is revised;

(d) Assign, in the following manner, a seven (7) digit number to each EMT course conducted:

1. The first three (3) digits shall correspond to the EMS educational institution approval number assigned by the cabinet;

2. The fourth and fifth digits shall correspond to the academic year. For example, if a course is taught between July 1, 1998 through June 30, 1999, the academic year number assigned shall be ninety-nine (99); and

3. The sixth and seventh digits shall correspond to the sequential number of courses begun between July 1 and June 30 of each year.

(e) Employ or have available the following key administrative personnel and faculty:

1. A chief administrative officer who shall be responsible for the overall management of an EMS educational institution or the organization of which the EMS educational institution is affiliated;

2. A program coordinator who shall:

a. Be responsible for the planning, administration and oversight of the EMS educational programs;

b. Randomly monitor the activities of the faculty and students during the didactic, skills and internship phases of the educational program;

c. Obtain and maintain records required by the educational institution or the cabinet related to the conduct of prehospital caregiver courses; and

d. Serve as a member of the course faculty, if appropriately credentialed. If a program coordinator meets the requirements of subsection (4) of this subsection, he may also function as the lead instructor;

3. A medical director who shall:

a. Review and approve the content of the educational program curriculum; and

b. Be available to the program coordinator and faculty for consultation on issues pertaining to the training program;

sultation on issues pertaining to the training program;

4. A lead instructor who shall:

a. If teaching an EMT-B course, be a Kentucky certified EMT-B instructor; or

b. If teaching an EMT first responder course, be a Kentucky certified EMT-B instructor or EMT first responder instructor; and

5. An assistant instructor who shall be:

a. Minimally certified at the level for which the course is being conducted;

b. A certified EMT-B instructor for an EMT-B course;

c. A certified EMT-B instructor or an EMT first responder instructor for an EMT first responder course; or

d. An adjunct faculty member who shall provide documentation to an EMS educational institution that he has actively lectured on or performed, within the most recent five (5) years, the skills or topic being taught; and

(f) Meet the requirements of the EMS educational institution memorandum of agreement (EMS Branch 7/98).

(3) The lead instructor or an alternate instructor who meets the requirements of subsection (2)(e)4 of this section shall be present at each lecture and practical skills classroom session.

(4) A person who is certified at or above the level of the course being taught may serve as an assistant instructor during a practical skills lesson.

(5) There shall be present during a scheduled practical skills lesson:

(a) At least one (1) lead instructor for the first one (1) to ten (10) students; and

(b) An assistant instructor for each additional one (1) to ten (10) students.

(6) An EMS educational institution shall assure that physical resources as required by the curriculum, such as classrooms, skill practice areas, textbooks, instructional aids, equipment, and supplies are:

(a) In good working condition; and

(b) Adequate in number for the number of students enrolled in the program to have sufficient opportunity for skills practice.

(7) An EMS educational institution shall have established, for field internship rotations, a written clinical affiliation agreement with at least one (1) Class I ambulance provider. If the ambulance provider has been cited for a licensure deficiency by the cabinet that has not been corrected, he shall not be utilized for a field internship.

(8) The affiliation agreement shall identify:

(a) The responsibilities of the:

1. Ambulance provider;
2. EMS educational institution;
3. Students; and
4. Faculty;

(b) Specific activities in which a student or faculty member may participate; and

(c) The terms of the agreement.

(9) An EMS educational institution shall develop and make available to a prospective student a clearly defined admission policy and procedure which shall include specific requirements for admission such as:

(a) Academic requirements;

(b) Health-related requirements; and

(c) Admission prerequisites.

(10) An EMS educational institution shall disclose to an applicant for admission:

(a) Accurate information regarding program requirements;

(b) Tuition and fees including remediation fees or other costs associated with the training program;

(c) A descriptive synopsis of the curriculum for each type of course taught;

(d) Course educational objectives;

(e) Classroom lecture and skill practice schedules;

(f) Field internship locations and tentative schedules;

(g) Cabinet certification requirements for the level of training being offered; and

(h) The disciplinary actions described in 902 KAR 13:090 that may be grounds for denial, revocation, suspension, probation, or restriction of EMT certification.

(11) An EMS educational institution shall establish and maintain written policies to ensure that:

(a) Announcements and advertising shall accurately reflect the courses offered;

(b) A procedure shall be in place that shall allow complaints and grievances to be processed that are filed by:

1. An applicant;
2. A student; or
3. A faculty member;

(c) There shall be a process for a student to withdraw from a course, and, if allowed, obtain a refund of tuition or fees paid;

(d) The health and safety of a patient, a student or a faculty member shall be protected while participating in educational activities;

(e) A student or a faculty member shall maintain proper personal and professional conduct during classroom and field internship activities;

(f) Continuing education requirements for faculty members shall be established and maintained;

(g) Passing requirements for each course offered shall be established and maintained; and

(h) Examination policies are established and maintained.

(12) A student, while participating in a field internship shall be clearly identified by name and student status by the use of:

- (a) A nameplate;
- (b) A uniform; or
- (c) Other apparent means.

(13) An EMS educational institution shall maintain, for at least five (5) years beyond the course completion date of each EMT course:

(a) Student attendance for each course taught including:

1. Lectures;
2. Practical skill lessons; and
3. Field internship;

(b) A master copy of written examinations and answer keys administered for each course taught;

(c) A master copy of all practical skill examination forms used during each course taught;

(d) A master copy of the current course syllabus for the courses taught.

(e) Faculty records on each participating faculty member that shall include:

1. A complete resume; and
2. A listing of academic preparation, clinical experience, current certifications and licenses;

(f) Health records that may be required by an EMS educational institution or through a written clinical affiliation agreement;

(g) A record of disciplinary action taken against a student or a faculty member. This shall include all responses and actions taken as a result of a complaint or grievance;

(h) Remediation activity for each student enrolled. This shall include how the specific remediation was accomplished and whether the process was successful; and

(i) A master file of all objectives and competencies achieved by a student. The file shall be reviewed annually by the EMS educational institution and updated as necessary.

(14) An EMS educational institution shall:

(a) Verify the record of testing or retesting of the EMT skills examination for each EMT graduate;

(b) Pay all fees as required by 902 KAR 13:130; and

(c) Submit by October 1 of each year an annual report covering the previous academic year from July 1 through June 30. The annual report shall list EMS training programs conducted by the EMS educational institution during the previous year, if any, and the previous five (5) years since the effective date of this administrative regulation. An annual report shall contain, for each course taught the:

1. Course number;
2. Name of the lead instructor;
3. Course location; and
4. Starting and ending dates;
5. Number of students enrolled;
6. Number of students who successfully passed; and
7. Number of students who successfully completed Kentucky certification requirements.

(15) If courses were not taught during the last reporting period an EMS educational institution shall file an annual report with the cabinet stating that no courses were taught during the last reporting period.

(16) Unless approval is revoked by the cabinet pursuant to Section 3 of this administrative regulation, the approval of an EMS educational institution shall be valid for a period of five (5) years.

(17) At the end of a five (5) year approval period, an EMS educational institution may reapply for approval for an additional five (5) year period.

## Section 2. Probation of an EMS Educational Institution Program.

(1) The cabinet shall place an EMS educational institution program probationary status if:

(a) During a twelve (12) month period, or after at least two (2) consecutive courses have been taught at the same level, more than twenty-five (25) percent of the course graduates who attempt to complete the certification examination process, fail to successfully pass the examination process within twenty-four (24) months of the course completion; or

(b) An inspection or investigation by the cabinet determines that an EMS educational institution has not met the requirements of:

1. Section 1 of this administrative regulation; or
2. The EMS educational institution memorandum of agreement.

(2) If the cabinet intends to place a program on probationary status, it shall notify the chief administrative officer of an EMS educational institution by certified mail.

(3) A program that is placed on probationary status shall not begin a new course within that same level of training during the term of the probationary period.

(4) Upon notification by the cabinet that a program within an EMS educational institution has been placed on probationary status, the chief administrative officer shall conduct an evaluation of the programs offered by the EMS educational institution. The evaluation shall minimally consist of a review of:

(a) The qualifications, responsibilities, and performance of the program coordinator, medical director, lead instructor, and other course faculty;

(b) Student admission practices;

(c) Syllabi and objectives of courses offered;

(d) Graduation requirements for cabinet approved courses offered by the EMS educational institution;

(e) Faculty classroom involvement;

(f) Field internship requirements and activities;

(g) Textbooks, equipment, supplies and ancillary learning aids used by the EMS educational institution during an approved course; and

(h) The ability of the EMS educational institution to meet the stated goals and objectives of the program;

(5) Within sixty (60) days of being placed on probationary status, the chief administrative officer shall provide a written report to the cabinet. The report shall include:

(a) Problems identified during the review process conducted pursuant to subsection(4) of this section; and

(b) A detailed plan for corrective action, including a time frame for the completion of the plan.

(6) After review of the written plan of correction, the cabinet may:

(a) Approve the entire plan;

(b) Approve a portion of the plan and require additional or alternative corrective action; or

(c) Disapprove the plan and restrict or revoke the approval of the EMS educational institution.

(7) Within thirty (30) days of receiving a written plan of correction, the cabinet shall notify the chief administrative officer, by certified mail, of the planned action of the cabinet.

(8) The cabinet shall monitor compliance and may conduct an investigation to determine if a requirement established for corrective action has been met.

Section 3. Denial, Revocation, Suspension, and Restriction of Approval of an EMS Educational Institution. (1) The cabinet may deny, revoke, suspend, or restrict the approval of an EMS educational institution if an EMS educational institution:

(a) Is on probationary status and fails to meet the corrective action required by the cabinet;

(b) Faculty member or staff member reproduces or reconstructs, or attempts to reproduce or reconstruct, a portion of a training or certification examination for the purpose of assisting another to cheat on the examination;

(c) Faculty member or staff member disseminates information for purposes of reproduction or reconstruction of a portion of a training or certification examination in order to assist another to cheat on the examination;

(d) Faculty member or staff member cheats, or assists another to cheat, on an examination for training or certification;

(e) Falsifies a record of training or continuing education;

(f) Fails to pay a fee or issues a check for a fee required by 902 KAR 13:090 on an invalid account or an account that does not have sufficient funds;

(g) Fails to file an annual report as required by Section 1(14)(c) or (15) of this administrative regulation; or

(h) Fails to meet the requirements of the EMS educational institution memorandum of agreement.

(2) If the approval of an EMS educational institution is denied, restricted, suspended or revoked by the cabinet, the EMS educational institution shall be provided an opportunity to appeal the decision in accordance with the provisions of 902 KAR 1:400.

Section 4. EMS Testing Agencies. (1) An EMS educational institution, public agency, or private corporation may be approved to administer the practical skills and written certification examinations if they:

(a) File, with the cabinet, a letter of request for approval to establish an EMS testing agency; and

(b) Meet the requirements of the EMS testing agency memorandum agreement (EMS Branch 6/98).

(2) A person shall not evaluate or proctor a certification examination for an EMT-B student if he:

(a) Served as lead instructor or assistant instructor for the student;

(b) Supervises or is supervised by the student;

(c) Is a family member of the student; or

(d) Has a conflict of interest that could potentially bias the evaluator or proctor toward or against the student.

(3) A Kentucky certified EMT-B instructor, who does not serve as a regular employee or instructor for the EMS testing agency conducting the examination, shall serve as the representative of the NREMT during the administration of the Kentucky EMT practical skills examination.

(4) The EMS testing agency shall:

(a) Be responsible for securing skill examination evaluators who shall:

1. Be certified or licensed to perform the skills at or above the level of training of the candidate being tested; and

2. Have had two (2) years prehospital patient care experience within the last five (5) years; or

3. Have completed a cabinet approved practical skills examiner training program; and

(b) Verify the eligibility of the student to test or initially retest for the Kentucky EMT-B certification skills examination. Eligibility for subsequent testing or retesting shall be verified in conjunction with the EMS Branch.

(5) The approval of an EMS testing agency may be probated, denied, revoked, suspended, or restricted if an agency faculty member or representative is found to have committed any of the offenses described in Section 3(1)(b), (c), (d), (e), (f) or (h) of this administrative regulation.

(6) If the approval of an EMS testing agency is denied, restricted, suspended or revoked by the cabinet, the EMS testing agency shall be provided an opportunity to appeal the decision in accordance with the provisions of 902 KAR 1:400.

Section 5. Public Notice of Negative Action. The cabinet shall publish, in the EMS Newsletter, similar publication of the cabinet, or otherwise disseminate the name of an EMS educational institution or EMS testing agency that:

(1) Is placed on probationary status;

(2) Is placed on restrictive status;

(3) Is suspended; or

(4) Has had approval as an EMS educational institution or EMS testing agency revoked.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) EMS Educational Institution Memorandum of Agreement (EMS Branch 7/98); and

(b) EMS Testing Agency Memorandum of Agreement (EMS Branch 6/98).

(2) This material may be inspected, copied or obtained at the Department for Public Health, Division of Adult and Child 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: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 15,500 emergency medical technicians (EMTs) and EMT first responders who receive EMT training through an EMS educational institution. It is anticipated there may be 65 to 75 entities who apply for approval to become an EMS Educational Institution. The approval fee of \$100 will generate approximately \$6,500 to \$7,000 for a 5 year approval period.

(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 may have an effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation may have an effect on the cost of EMT training or testing agency in that there are new requirements for medical directors for training agencies, new operating requirements, and new reporting requirements.

(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 annual report is required for all training agencies.

2. Second and subsequent years: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.



(4) Assessment of anticipated effect on state and local revenues: State revenues will be increased due to fees ranging from \$30 to \$100 established for approval of EMT training and testing agencies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General and T & A 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: This administrative regulation may have an economic impact in areas where EMT training and testing agencies are established due to additional requirements for medical directors for training agencies and approval fees.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because the National Standard Curricula established for training of EMTs specifically defines medical direction as an essential component of prehospital training to ensure physician involvement and availability for all aspects of EMS training. The additional reporting requirements are established to capture essential data needed to plan for the availability and effectiveness of EMT training and testing in all areas of the state.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health in that there would be medical direction and physician consultation for EMT training conducted throughout the Commonwealth. In addition, the administrative regulation establishes minimum standards and conformity among agencies that conduct EMT training and testing.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes. If this administrative regulation is not implemented, medical direction would not be available to all EMT training agencies and there would be no means to establish minimum standards for training and testing of EMTs.

(c) If detrimental result would result, explain detrimental effect: Kentucky EMT training programs would not meet national standards which include medical directors for EMT training programs. Without medical direction and minimum standards for EMT training or testing, Kentucky's emergency medical services providers would lag behind the standards of other states.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: 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 because this administrative regulation relates to training of all levels of EMTs.

#### 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, if the local government desires to conduct training or testing of EMTs.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only that part of local government that desires to conduct training or testing of EMTs.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to an aspect of local government that desires to conduct training or testing of EMTs.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does affect a local government or any service it provides in that if it chooses to conduct EMT training or testing, it must obtain medical direction, develop uniform policies, and comply with reporting requirements established for all EMT training and testing agencies.

#### CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

#### 902 KAR 13:055. Emergency medical technician-basic course requirements.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)

STATUTORY AUTHORITY: KRS 194A.030, 211.964

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.964 requires the Cabinet for Health Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). The function of this administrative regulation is to establish requirements for the education and training of the emergency medical technician-basic (EMT-B).

Section 1. Training Course Requirements. (1) An EMT-B training course in Kentucky shall be conducted by an emergency medical services (EMS) educational institution that has been approved by the cabinet pursuant to 902 KAR 13:025 to train EMT-Bs.

(2) An EMT-B training course that begins prior to the effective date of this administrative regulation shall be at least 119 hours in duration and shall:

(a) Follow the most current version of the United States Department of Transportation, National Highway Traffic Administration, National Standard Curriculum (NSC) for EMTbasic, incorporated by reference in 902 KAR 13:050; and

(b) Include training in Acquired Immune Deficiency Syndrome (AIDS) as required by KRS 214.610.

(3) Except for an EMT-B training course established in subsection (2) of this section, an EMT-B training course shall be at least 114.5 hours in duration and include:

(a) The requirements of subsection (2) of this section; and

(b) Training in the additional Kentucky practice requirements taught in the Kentucky supplemental curricula for the following procedures:

1. The use of automated blood glucose testing devices;

2. Prehospital and interfacility maintenance during transportation, monitoring and discontinuation of preestablished intravenous fluids for patient administration;

3. Ventilation and care of a patient who has an endotracheal tube in place; and

4. Proper use of noninvasive monitoring equipment.

Section 2. Field Internship and Testing. (1) An EMT-B student who begins an EMT-B training course shall complete a field internship that shall:

(a) Consist of at least forty-eight (48) hours of supervised ambulance ride time; and

(b) Include at least ten (10) patient contacts.

(2) An EMT-B student may begin the field internship required in subsection (1) of this section after he has completed the patient assessment module of the training course.

(3) An EMT-B student shall complete the field internship requirement of subsection (1) of this section before he may be eligible to take the National Registry of Emergency Medical Technicians (NREMT) practical and written Kentucky certification examination as required pursuant to 902 KAR 13:050, Section 2.

(4) If an EMT-B student does not successfully pass the certification examination process and become Kentucky certified within two (2) years after the EMT-B course completion date, he shall repeat the entire EMT-B course requirements of Section 1(3) of this administrative regulation and the field internship requirements of subsection (1) of this section before he may become eligible to apply for EMT-B certification.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The Initial Training Curriculum, EMT Application of Pulse Oximetry, (11/16/98);

(b) The 1993 Emergency Medical Technician (EMT) Training Curriculum for Basic EMT Course or EMT Continuing Education,

Prehospital Maintenance and Discontinuation of a Preestablished IV;

(c) Initial Training Curriculum, EMT-B Advanced Airway Management, (10/1/98);

(d) The Initial Training Curriculum, EMT Maintenance and Application of END Tidal CO2 Monitoring, (11/16/98);

(e) The Initial Training Curriculum, EMT-B Use of Noninvasive Temperature Monitoring, (11/16/98);

(f) The Initial Training Curriculum, EMT Application of EKG electrodes and monitor, (11/16/98).

(2) This material may be inspected, obtained, or copied at the Department for Public Health, Division of Adult and Child Health, EMS Branch, 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: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 1,500 individuals trained as emergency medical technicians-basic (EMT-B) each year.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation may have a minimal effect on the cost of doing business in any geographical area of this state in that the minimum number of classroom hours for EMT-B training is increased from 109 to 114.5 and the field internship is increased from 10 to 48 hours with a minimum of 10 patient contacts.

(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: As above.

(3) Effects on the promulgating administrative body: None

(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: No additional reporting or paperwork will be required.

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

forcement of administrative regulation: General Funds

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: Based on the public comments, it is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation sets minimum training standards for EMT-Bs that meet national standards and the needs of potential employers.

(8) Assessment of expected benefits: This administrative regulation sets minimum training standards for EMT-Bs that meet national standards and the needs of potential employers.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will have a positive effect on public health by preparing new EMT-Bs to better perform their duties in responding to medical emergencies.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental result would result, explain detrimental effect: If this administrative regulation is not implemented, it will have a detrimental effect on public health because EMT-Bs trained in Kentucky will not meet national standards.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: 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 because this administrative regulation establishes new requirements for EMT-B training beginning after the effective date of this administrative regulation while permitting EMT-B courses already in progress to continue under requirements of current administrative regulations.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government or any service it provides.

#### CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

**902 KAR 13:131. Repeal of 902 KAR 13:020 and 902 KAR 13:130.**

**NECESSITY, FUNCTION, AND CONFORMITY:** 902 KAR 13:020 is no longer required because the applicant requirements for emergency medical technician (EMT) training and certification have been included in 902 KAR 13:050 and 902 KAR 13:055. 902 KAR 13:130 is no longer required because the requirements for an EMT basic to maintain and discontinue a preestablished peripheral intravenous (IV) infusion have been included in 902 KAR 13:080.

Section 1. 902 KAR 13:020, Applicant requirements for EMT

training and certification, is hereby repealed.

Section 2. 902 KAR 13:130, Emergency medical technician maintenance and discontinuation of a peripheral intravenous (IV) infusion, is hereby repealed.

RICE C. LEACH, MD, Commissioner  
JOHN MORSE, Secretary  
JOHN WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on February 22, 1999 at 9 a.m. in the Cabinet for Health Services Auditorium, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given 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 to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact person: Robert Calhoun

(1) Type and number of entities affected: Approximately 14,000 emergency medical technicians (EMTs).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from the public comments received. This administrative regulation will have no effect on the cost of living and employment in this state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. This administrative regulation will have no effect on the cost of doing business in any geographical area of this state.

(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: As above.

(3) Effects on the promulgating administrative body: None

(4) 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: No additional reporting or paperwork will be required.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Funds

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: It is not anticipated that this administrative regulation will have an economic impact.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected because this administrative regulation complies with the requirements of KRS Chapter 13A.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental result would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy will conflict, overlap, or duplicate this administrative regulation.

(a) Necessity or proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because this the requirements of these 2 repealed administrative regulations have been included in other administrative regulations.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will not affect a local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to an aspect of local government.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation does not affect a local government or any service it provides.

#### CABINET FOR HEALTH SERVICES Department for Public Health Division of Adult and Child Health (New Administrative Regulation)

#### 902 KAR 22:040. Charitable health care providers.

RELATES TO: KRS 304.40-075

STATUTORY AUTHORITY: KRS 194A.030, 216.941

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 216.941 the Cabinet for Health Services is charged with the responsibility of promulgating administrative regulations to implement registration of Charitable Health Care Providers. The forms incorporated by reference in this administrative regulation shall implement that requirement.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) CHP-1, Registration of Charitable Health Care Providers.

(b) SO/CHP-1, Registration of Sponsoring Organizations of Charitable Health Care Providers.

(2) This material may be inspected, copied, or obtained at the Kentucky Department for Public Health, Division of Adult and Child Health, Community Health Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 14, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation will be held February 22, 1999 at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the

public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Danise Newton

(1) Type and number of entities affected: Kentucky's medically indigent population; those without any health care coverage.

(2) Direct and indirect costs or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: 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 comment 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: Charitable health care providers who have already registered with the Department of Insurance will have to now register with the Cabinet for Health Services to receive reimbursement for medical malpractice insurance.

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:

(b) Reporting and paperwork requirements: Registration forms, \$50 registration fees and pertinent required data is to be maintained by the Cabinet for Health Services.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: \$50 registration fee and the state general fund to reimburse charitable health care providers for medical malpractice insurance up to a total of \$20,000.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Beneficial. This regulation will implement an incentive program to provide free care and remove the barrier of the cost of malpractice insurance providers of free health care. This will increase care to Kentucky's medically indigent population.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Kentucky's indigent population will not have as much access to free health care if the cost of malpractice insurance prevents providers from providing free health care.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: The proposed regulation is somewhat duplicative of 806 KAR 40:020. The new regulation is now necessary to broaden the scope of the charitable health care service provided.

(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: No

(11) TIERING: Is tiering applied? No. Tiering was not used because the mandate in KRS 216.941 requires that Charitable Health

Care Providers provide health care to all people of the Commonwealth of Kentucky who do not have any other means of payment. This mandate requires equal treatment of all people that fit that description therefore tiering would not be appropriate.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(New Administrative Regulation)**

**904 KAR 2:500. Family Alternatives Diversion (FAD).**

RELATES TO: KRS 205.200(2), 205.2003

STATUTORY AUTHORITY: KRS 194B.050, 205.200(2), 42 USC 601 et seq., 1397 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children has the responsibility under the provisions of KRS Chapter 205 to administer the block grant program funded under 42 USC 601 et seq. and 42 USC 1397 et seq. KRS 194B.050 authorizes the Cabinet for Families and Children to adopt administrative regulations necessary to implement programs mandated by federal law or to qualify for receipt of federal funds. This administrative regulation sets forth the requirements for the Family Alternatives Diversion Program and Employment Retention Assistance.

Section 1. Definitions. (1) "Benefit group" means a K-TAP eligible benefit group defined in 904 KAR 2:006, Section 1.

(2) "ERA" means Employment Retention Assistance.

(3) "FAD" means the Family Alternatives Diversion Program.

(4) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children who are deprived of parental support or care pursuant to 904 KAR 2:006.

(5) "Overpayment" means a FAD or ERA benefit received by an individual who:

(a) After an initial determination of eligibility is determined to be ineligible for the program and erroneous benefits were received by the individual; or

(b) Is determined eligible for the program and refuses to apply the benefit to the provider of the service needed to resolve the short-term emergency as indicated by the individual at the time of the application.

Section 2. Eligibility for Family Alternatives Diversion (FAD). (1) To qualify for FAD benefits, the benefit group as defined in Section 1(1) of this administrative regulation shall:

(a) Meet monthly income and resource requirements in the month of application pursuant to 904 KAR 2:016, Sections 2, 3(1), 4(1), and 6;

(b) Except for the thirty (30) day unemployment requirement for unemployed parent cases which shall not be required, meet technical requirements of K-TAP pursuant to 904 KAR 2:006;

(c) Not be currently receiving ongoing K-TAP benefits;

(d) Have a verified short-term need to include:

1. Transportation;

2. Child care;

3. Child support;

4. Housing; or

5. Employment related problem.

(e) Be determined by the cabinet to be self-supporting if the short-term need is met; and

(f) Not have received a FAD payment anytime during the previous twelve (12) months.

(2) The Transitional Assistance Self-assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP and to determine eligibility for FAD along with the FA-2, Family Alternatives Assessment Form.

(3) The cabinet shall determine through the screening process in subsection (2) of this section, if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be

## VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999

utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.

(4)(a) The benefit group's countable gross income shall include the earned and unearned income pursuant to 904 KAR 2:016, Sections 3 and 4.

(b) The benefit group's gross income shall be computed using the best estimate of income for the month of application pursuant to 904 KAR 2:016, Section 9.

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to 904 KAR 2:016, Section 8(2)(b).

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to 904 KAR 2:016, Section 8(2), the family shall not be eligible for a FAD payment.

(e) The total FAD payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed a total of \$1,500 during the three (3) consecutive calendar month eligibility period for FAD pursuant to Section 3(3) of this administrative regulation.

Section 3. Authorization of a FAD Payment. (1) The amount of the eligible FAD payment shall be issued in one (1) or more checks or vouchers to:

(a) A vendor;

(b) A two (2) party check to the eligible FAD benefit group and vendor; or

(c) The eligible FAD benefit group if the vendor refuses to:

1. Accept a payment or voucher; or

2. Provide the cabinet with a tax identification number.

(2) For an eligible family, only one (1) approval shall be necessary to issue one (1) or more checks, as needed, to resolve one (1) or more emergencies during the three (3) month FAD eligibility period, not to exceed a total of \$1,500.

(3) The three (3) month eligibility period shall begin with the month the first payment is made.

Section 4. Coordination with K-TAP and Other Benefit Programs. (1) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

(a) Abuse or neglect of a child, as determined by the cabinet; or

(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(2) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

(a) Food stamps;

(b) Medicaid; and

(c) Child care.

(3) For a FAD eligible benefit group, referrals for other services shall be made as needed to:

(a) Other agencies including:

1. The Division of Child Support;

2. The Cabinet for Health Services; and

3. The Department for Employment Services; or

(b) Charitable organizations.

(4) A referral shall be made for other services, as needed, offered through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

(a) Job search;

(b) Job readiness assessment; and

(c) Life skills.

Section 5. Eligibility for Employment Retention Assistance (ERA). (1) To assist in maintaining self-sufficiency, ERA shall be available to a family if the family:

(a) Contains a parent who has been discontinued from K-TAP due to:

1. Earnings; or

2. At the request of the parent because of earnings;

(b) Contains a parent who is currently employed when services are requested;

(c) Has total gross income under 200 percent of federal poverty level;

(d) Requires a service or item which would stabilize the family and allow continued employment due to a short term need; and

(e) Has not received an ERA payment anytime during the previous twelve (12) months.

(2) The total ERA payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed a total of \$1,500 during the three (3) calendar month period from the effective date of discontinuance from K-TAP.

(3) The eligible ERA payment shall be issued to the eligible family.

(4) Eligibility for ERA shall be limited to a three (3) consecutive calendar month period during a twelve (12) month period.

(5) A benefit group shall not be prohibited from receiving K-TAP following the three (3) calendar month eligibility period for ERA if all K-TAP eligibility requirements are met.

(6) A benefit group shall not be eligible for ERA and K-TAP or FAD concurrently.

Section 6. Overpayments. (1) A FAD or ERA overpayment, as defined in Section 1 of this administrative regulation including assistance paid pending hearing decisions, shall be recovered from:

(a) The claimant;

(b) The overpaid benefit group; or

(c) A benefit group of which a member of the overpaid benefit group has subsequently become a member.

(2) An overpayment shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Civil action in the court of appropriate jurisdiction after:

1. Notice and an opportunity for a fair hearing as specified in 921 KAR 2:055 is given; and

2. The administrative and judicial remedies have been exhausted or abandoned.

Section 7. Hearing Rights. Hearing rights for FAD and ERA shall be the same as hearing rights for a K-TAP recipient pursuant to 921 KAR 2:055.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) FA-1, "Transitional Assistance Self-assessment, edition 5/99";

(b) FA-2, "Family Alternatives Assessment, edition 5/99".

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 14, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frank-

fort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are families who are potentially eligible for Kentucky Transitional Assistance Program (K-TAP) who are not currently receiving ongoing K-TAP benefits who only need assistance to meet a short-term need instead of on-going assistance. For July 1998 there were 569 adults who could potentially be eligible for Employment Retention Assistance (ERA), which is a component of the Family Alternatives Diversion (FAD) 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of living and employment in the geographical 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of doing business in the geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of FAD or ERA will not have any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year are listed below: Cost to the agency for FAD is covered through SSBG. FAD was transferred from 904 KAR 2:016 into this topical administrative regulation due to the subject matter and no additional impact to the agency as a result of transferring this material to 904 KAR 2:500. For ERA there is a fiscal impact to the agency of \$50,000 for the remainder of FY 99. This cost to the agency for ERA is covered through SSBG funding. These figures are based on the number of cases discontinued from K-TAP due to earnings, loss of disregards or at the request of the client due to earnings. For July 1998 this figure was 569 adults who could potentially be eligible for ERA.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: The fiscal impact to the agency for ERA is \$200,000 for FY 2000.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds - Social Services Block Grant.

(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 requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were considered to fund the program under TANF; however, due to the sixty (60) month time limitation for a program funded under 42 USC 601 et seq., this program currently will be funded under the Social Services Block Grant.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to transfer the Family Alternative Diversion (FAD) program from 904 KAR 2:016 due to the subject matter. We are adding another potentially eligible group for FAD called Employment Retention Assistance (ERA). This program will provide temporary assistance to family discontinued from K-TAP to prevent the parent from losing employment and to remain self-sufficient.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: The Family Alternative Diversion assistance is available to a potentially K-TAP eligible family who only requires assistance to meet a short term need to resolve an emergency. This program will allow the adult to remain employed by resolving the emergency, stabilize the family and divert the family from welfare dependency. A detrimental effect would occur if a family did not have a source of assistance that would provide temporary help to purchase an item or service that would stabilize the family and prevent the parent from losing employment. During the three (3) months following discontinuance of K-TAP, the family is vulnerable to losing employment. Employment Retention Assistance will provide assistance to help the post K-TAP family maintain self-sufficiency.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

## CABINET FOR FAMILIES AND CHILDREN Department for Community-Based Services Division of Policy Development (New Administrative Regulation)

### 904 KAR 2:510. Relocation Assistance Program.

RELATES TO: 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194B.050, 205.200(2), 42 USC 601 et seq., EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children has the responsibility under KRS Chapter 205 to administer the block grant program funded under 42 USC 601 et seq. KRS 194B.050 authorizes the Cabinet for Families and Children to adopt administrative regulations necessary to implement programs mandated by federal law or to qualify for receipt of federal funds. This administrative regulation sets forth the requirements for the Relocation Assistance Program.

Section 1. Definitions. (1) "Benefit group" means a K-TAP eligible benefit group defined in 904 KAR 2:006, Section 1.

(2) "Family Alternatives Diversion (FAD) Program" means the program pursuant to 904 KAR 2:500.



(3) "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 pursuant to 904 KAR 2:006.

Section 2. Relocation Assistance Program. (1) The applicant for the Relocation Assistance Program shall:

- (a) Be a current recipient of K-TAP;
- (b) Have a verified offer of employment with wages in an amount equal to thirty (30) hours or more per week at the minimum hourly wage rate; and
- (c) Be required to move in order to:
  - 1. To access the verified offer of employment and have a new residence available;
  - 2. To obtain more affordable housing due to a rent increase as the result of the parent gaining employment; or
  - 3. To escape a domestic violence situation.
- (d) An individual who is moving to escape a domestic violence situation shall not be required to comply with paragraph (b) this subsection.

(2) The eligible payment shall be issued to assist an eligible K-TAP recipient in meeting moving related expenses. Moving related expenses shall include:

- (a) Moving van rental;
- (b) Apartment or house rental for the first month's rent; and
- (c) Security deposit, utility hook-up fees, or other moving related fees approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.

(3) The Relocation Assistance Program payment amount shall be a payment of:

- (a) \$500 without verification of moving-related expenses required; or
- (b) Up to \$900 based on the actual verified moving related expenses as listed in subsection (2) of this section.

(4) An otherwise eligible recipient of the Relocation Assistance Program shall receive no more than two (2) payments in a five (5) year period; however, additional payments may be received with approval of management staff of the Department for Community-Based Services.

(5) The cabinet shall assist the applicant for relocation assistance to determine if income received from employment from the new location is sufficient to cover living expenses at the new residence including the completion of a household budget with the applicant in order to make this determination.

(6) The offer of employment, including hourly wage and number of hours, and the availability of a new residence shall be verified by written statement or phone contact.

(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) Families who are not currently receiving K-TAP and are eligible to receive FAD may receive assistance to relocate pursuant to 904 KAR 2:500.

(9) A K-TAP recipient may refuse without penalty any offer of employment which would require relocation.

Section 3. Hearing Rights. Hearing rights for the Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient pursuant to 921 KAR 2:055.

Section 4. Incorporation by Reference. (1) The RA-1, "Application for Relocation Assistance, edition 11/98" is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner  
 VIOLA P. MILLER, Secretary  
 CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 14, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on February 22, 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 February 15, 1999, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). As of September 1998, approximately 47,410 families in Kentucky (monthly average) receive K-TAP, which includes 33,408 adults.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of living and employment in the geographical 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding cost of doing business in the geographical area.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any additional compliance, reporting or paperwork requirements

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The breakdown of costs and savings to the agency for the first year (the remainder of FY 1999) are listed below: Relocation Assistance Program is transferred from 904 KAR 2:016 into this topical administrative regulation due to the subject matter and there is no additional impact to the agency as a result of transferring this material to 904 KAR 2:510. There is minimal cost to the agency to implement expansion of the program to allow payments for moving related expenses to enable the individual to move to more affordable housing for individuals experiencing a rent increase due to increase in wages and to families trying to escape domestic violence situations.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below: Same as in number 1.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds - TANF block grant 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 requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in the geographical area.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received regarding the economic impact in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement a program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to transfer information regarding the Relocation Assistance Program from 904 KAR 2:016 to this topical administrative regulation due to the subject matter.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: A detrimental effect would occur if a family did not have this source of assistance that would provide help for relocation to another area in order to access an offer of employment, to obtain more affordable housing due to a rent increase as the result of the parent gaining employment, or to escape a domestic violence situation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### CABINET FOR HEALTH SERVICES Office of Inspector General (New Administrative Regulation)

#### 906 KAR 1:130. Administrative subpoenas guidelines.

RELATES TO: KRS 194A.030

STATUTORY AUTHORITY: KRS 194A.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.030 authorizes the Office of Inspector General to issue subpoenas. This administrative regulation incorporates by reference guidelines used in the request for and use of administrative subpoenas.

Section 1. Incorporation by Reference. (1) "Administrative Subpoenas Guidelines" dated December 28, 1998, is incorporated by reference.

(2) This material may be inspected, copied or obtained at the Office of Inspector General, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

TIMOTHY L. VENO, Inspector General  
JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 14, 1999

FILED WITH LRC: January 15, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held February 22, 1999 at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by February 15, 1999. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Hiren B. Desai, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7905, FAX (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Mike Lawrence

(1) Type and number of entities affected: All entities involved in programs of the Cabinet for Health Services and the Cabinet for Families and Children.

(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: Reporting requirements imposed by the issuance of subpoenas.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The costs associated with the issuance of and enforcement of subpoenas.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: Those associated with the issuance of and enforcement of subpoenas.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: Paperwork associated with the issuance of and enforcement of subpoenas.

(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 194A.030 authorizes the issuance of subpoenas by the Office of Inspector General.

(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 guidelines are 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. The guidelines for the issuance of subpoenas apply to all matters related to the cabinet and its programs, as delegated by the Secretary to the Office of Inspector General.

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Financial Management and Analysis  
(New Administrative Regulation)**

**907 KAR 1:780. Converted dual-licensed hospital-based nursing facility beds.**

RELATES TO: KRS 216B.020(4), (5)

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520(3), 216B.075

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has the responsibility for administering the Kentucky Medicaid Program in an efficient, cost-effective manner, consonant with the funds that are available, and consistent with the objectives of the Program. One (1) of these objectives is for recipients to have reasonable access to health care and services under the Medicaid Program, taking into account such factors as geographic location, travel time, choice of providers, and utilization rates. This administrative regulation establishes the process and criteria relating to Medicaid participation for dual-licensed acute care hospital beds that were converted to nursing facility beds pursuant to KRS 216B.020(4), and supplements applicable provisions for provider enrollment in Section 2 of 907 KAR 1:672 and the administrative hearing process in 907 KAR 1:671.

Section 1. Definitions. (1) "Administrative process" is defined in 907 KAR 1:671, Section 1(2).

(2) "Applicant" is defined in 907 KAR 1:672, Section 1(1).

(3) "Applicant's geographic area" means the county in which the applicant's converted dual-licensed hospital-based nursing facility beds are located and contiguous Kentucky counties.

(4) "Application" means a request for Medicaid certification for beds that were converted to hospital-based nursing facility beds pursuant to KRS 216B.020(4).

(5) "Cabinet" means the Cabinet for Health Services.

(6) "Certificate of need" is defined in KRS 126B.015(7).

(7) "Converted" means the process by which a dual-licensed acute care hospital bed was changed to a hospital-based nursing facility bed pursuant to KRS 216B.020(4).

(8) "Days" means calendar days, unless otherwise designated.

(9) "Department" means the Department for Medicaid Services.

(10) "Provider" is defined in KRS 205.8451(7).

(11) "State Health Plan" is defined in KRS 216B.015(18).

Section 2. Enrollment Process for Converted Dual-Licensed Hospital-Based Nursing Facility Beds Participation in Medicaid. (1) An application for converted dual-licensed hospital-based nursing facility bed Medicaid participation shall be submitted to the Commissioner of the Department for Medicaid Services. The application shall be in writing in the form, content and manner required by the department in accordance with this administrative regulation and 907 KAR 1:672. The application shall contain the following, with pertinent information and supporting documentation:

(a) The total number, each room number and bed designation of:

1. Dual-licensed acute care beds that were converted to hospital-based nursing facility beds and licensed pursuant to KRS 216B.020(4);

2. Converted beds already participating in Medicaid;

3. Converted hospital-based nursing facility beds applying for Medicaid certification; and

4. Licensed hospital-based nursing facility beds.

(b) Data that demonstrates a need for additional Medicaid certified beds in the applicant's geographic area in accordance with the factors listed in Section 3 of this administrative regulation;

(c) The requested date for Medicaid certification of the converted beds; and

(d) Information in the application shall be current, presented clearly and precisely.

(2) The department shall:

(a) Review the application for completeness; and

(b) Review the notification from the Division of Licensing and Regulation of the Office of Inspector General recommending Medicaid certification for the converted beds.

(3) Upon receipt of notification from the Division of Licensing and Regulation, along with a complete accurate application, and requested documentation, the department shall determine:

(a) The number of licensed hospital-based nursing facility beds the applicant has available for certification; and

(b) Whether the application establishes a need for additional Medicaid certified beds in the applicant's geographic area in accordance with Section 3 of this administrative regulation.

(4) The department shall make a decision regarding the application within thirty (30) days of the receipt of information specified in subsection (3) of this section. The department shall:

(a) Grant, in whole or in part, the requested Medicaid certification; or

(b) Deny the request.

(5) The department shall notify the applicant, in writing, of the decision, and the basis for denial.

(6) If an applicant wishes to appeal an adverse determination, the appeal shall be in accordance with Sections 4 and 5 of this administrative regulation.

(7) If an application for Medicaid certification of converted beds is fully or partially granted and the applicant is not currently a Medicaid certified nursing facility provider, the applicant shall, except as established in subsection (8) of this section:

(a) Follow the enrollment procedures delineated in 907 KAR 1:672; and

(b) Include a copy of the department's decision granting certification in its enrollment packet.

(8) If the applicant is currently a Medicaid certified nursing facility provider:

(a) All converted beds that may be certified by the department shall be included under the existing provider number; and

(b) The provider shall comply with licensing requirements established in 902 KAR 20:300 and 902 KAR 20:310.

Section 3. Enrollment Criteria for Converted Dual-Licensed Hospital-Based Nursing Facility Beds Participation in Medicaid. (1) Based on data submitted in the application, relevant factors in the applicant's geographic area shall be considered to assess the need for Medicaid certification of converted beds and shall include:

(a) The total number of free-standing and hospital-based nursing facility beds.

(b) The total number of the following:

1. Medicaid certified nursing facility beds; and

2. Medicaid certified hospital-based nursing facility beds;

(c) Survey data reported to the cabinet by providers for the two (2) calendar years preceding the date of receipt of the application, and data collected by the cabinet in accordance with 902 KAR 20:008 for licensed nursing facility beds in the applicant's geographic area relating to:

1. The occupancy percentage for each of the two (2) preceding calendar years; and

2. The number of admissions, discharges or deaths;

(d) A comparison of the Medicaid reimbursement rates of free-standing and hospital-based nursing facilities as of a July 1 date preceding the date of the application;

(e) The current State Health Plan "nursing facility bed need calculations by county and state" maintained by the Cabinet for

Health Services, Office of the Certificate of Need; and

(f) Any other documentation included in the application that demonstrates the need for Medicaid certification of any converted beds.

(2) The department may consider the following when making a determination of need:

(a) The most current Medicaid nursing facility financial data; and  
(b) Other information, including relevant information that the department may have requested from:

1. The applicant; or
2. Other providers in the applicant's geographic area.

Section 4. Resolution of Applicant Disputes Prior to an Administrative Hearing. (1) If an applicant disagrees with the department's determination regarding Medicaid certification, the applicant may:

(a) Request a resolution meeting; or  
(b) Submit additional information for consideration in lieu of such request.

(2) A written request for a resolution meeting shall be received by the Director of the Department's Division of Long-term Care within thirty (30) calendar days of the date of the department's notice of decision. Such request shall:

(a) Identify the disputed issue or issues;  
(b) State the basis of the challenge to the department's decision;  
(c) Provide documentation supporting the applicant's position; and

(d) State the name, address, and telephone number of any individual expected to attend the resolution meeting on the applicant's behalf.

(3) The department shall, within thirty (30) calendar days of receipt of a request for resolution meeting, send written notice to the applicant of the date, time and place of the meeting.

(4) The resolution meeting shall be conducted by the department in an informal manner. The applicant and the department may present any relevant evidence or testimony at the meeting in support of their respective positions.

(5) In lieu of requesting a resolution meeting, an applicant may submit additional information it wishes the department to consider.

(a) The additional information shall be received by the department within thirty (30) days of notice of the department's decision;

(b) The submission of additional documentation shall not constitute a request for a resolution meeting; and

(c) It shall not extend the thirty (30) day time period for requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to its initial adverse decision.

(a) The department shall provide written notice to the provider of the department's decision within thirty (30) calendar days from:

1. The date of the resolution meeting; or
2. The date additional information was received for consideration.

(b) The notice shall state the decision and the facts on which it is based, including references to applicable statutes and administrative regulations.

(7) The department may extend any of the time frames specified in this section, and upon written notice to the applicant, if:

(a) Such extension is determined to be necessary for the efficient administration of the resolution meeting process; or

(b) To prevent a miscarriage of justice with regard to the provider.

Section 5. Administrative Hearing Process. An applicant may appeal an adverse decision rendered by the department. Such appeals shall be in accordance with the provisions in 907 KAR 1:671, Section 9(1), (3), and (4) through (14).

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: December 18, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 22, 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 February 15, 1999 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Hiren B. Desai, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 35 hospital-based nursing facilities, 644 hospital-based nursing facility licensed beds, 174 Medicaid recipients.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been 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 have been 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: Standardized Medicaid enrollment process will be required.

2. Second and subsequent years: Standardized Medicaid enrollment process will be required.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$5,458,557.50 (Cost)

2. Continuing costs or savings: \$5,458,557.50 (Cost)

3. Additional factors increasing or decreasing costs: All previously participating beds have been grandfathered in, and, therefore, are already provided for in the budget. Also, any new participating beds will be accepted up to the budget capacity established in 907 KAR 1:025.

(b) Reporting and paperwork requirements: Enrollment staff review time will increase.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. \*Federal matching funds of 70.49% equaling \$3,847,737.18 and state matching funds of 29.51% equaling \$1,610,820.32 will be expended. State revenues for dual-licensed hospital based nursing facility beds will be funded as follows:

1. All previously participating beds have been grandfathered in, and, therefore, are already provided for in the budget.

2. Any new participating beds will be accepted up to the budget capacity established in 907 KAR 1:025.

(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: Providers will have to follow standardized licensing and enrollment procedures.

(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: Acute care hospitals will be able to provide both hospital and nursing facility services for Medicaid eligible 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: The availability of nursing facility services in acute care hospitals would be hindered.

(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. None

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: None

#### CABINET FOR HEALTH SERVICES

Department for Mental Health and Mental Retardation Services

Division for Mental Health

(New Administrative Regulation)

**908 KAR 3:025. Notification of discharge, transfer or escape of violent offenders.**

RELATES TO: KRS 202A.026, 202A.051, 202A.101, 202A.201, 202A.241, 202A.410, 439.3401

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 202A.410

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050 authorizes the Cabinet for Health Services to establish policies, procedures and administrative regulations necessary to carry out health programs. KRS 202A.410 directs the cabinet to notify law enforcement and correctional authorities of the discharge, transfer and escape of violent offenders from psychiatric facilities. This administrative regulation establishes the procedures for notifying law enforcement authorities that a violent offender has been discharged, or transferred or has escaped from a state psychiatric facility.

Section 1. Definitions. (1) "CHS" or "cabinet" means the Cabinet For Health Services.

(2) "Facility administrator" means the director of the facility or his designee.

(3) "State psychiatric facility" or "facility" means a hospital operated or contracted by the Department for Mental Health and Mental Retardation Services.

(4) "Violent offender" is defined in KRS 439.3401.

Section 2. Identification of Violent Offenders. (1) If a person is committed to a state psychiatric facility pursuant to a court order issued in accordance with KRS Chapter 202A and the order indicates that the person is charged with a crime, the person authorizing admission to the facility shall determine if the committed individual is a violent offender based on the charges specified in the commitment order and the information contained in the documents specified in KRS 202A.101(5).

(2) If a violent offender who has been involuntarily committed to a state psychiatric facility, is admitted to the facility, the person authorizing the admission shall notify the facility administrator that the violent offender has been admitted. The notification shall specify:

(a) The offender's name;

(b) The offender's date of birth;

(c) The criminal charge pending against the offender if applicable;

(d) The criminal charge for which the offender has been convicted if applicable;

(e) The county in which the offense occurred; and

(f) The location where the offender is housed within the facility.

Section 3 Required Procedures for Notification of Transfer or Discharge. (1) Prior to the discharge or transfer of a violent offender who has been involuntarily committed in accordance with KRS Chapter 202A, the facility administrator shall notify officials specified in KRS 202A.410 in the following manner:

(a) The Department of Corrections in accordance with the provisions of 501 KAR 14:010;

(b) The prosecutor in the county where the violent crime was committed by sending a certified or registered letter; and

(c) The law enforcement agency with jurisdiction in the area to which the violent offender is discharged or transferred by sending a certified or registered letter.

(2) Notification of prosecutors and law enforcement agencies shall:

(a) Include the date of discharge or transfer;

(b) The name and address of the facility to which a violent offender is transferred if applicable; and

(c) The information specified in Section 2(2)(a) through (e) of this administrative regulation.

(3) If a violent offender is ordered to be transferred to a psychiatric facility in accordance with KRS 202A.201 the psychiatric facility shall not transfer or discharge the offender except in accordance with KRS 202A.201(4).

Section 4. Required Procedures for Notification of Escape. (1) If a violent offender who has been involuntarily committed in accordance with KRS Chapter 202A escapes from a psychiatric facility, the facility administrator shall notify the officials specified in KRS 210.410 no later than one (1) hour after an escape is discovered. The notification process shall be to the following entities as follows:

(a) The Department of Corrections in accordance with the provi-

sions of 501 KAR 14:010;

(b) The prosecutor in the county where the violent crime was committed, by telephone, facsimile transmission, or other electronic device; and

(c) A local law enforcement agency that has jurisdiction in the area in which the facility is located, by telephone, facsimile transmission, or other electronic device.

(2) Notification of prosecutors and law enforcement agencies shall include:

(a) The date and time the escape was discovered; and

(b) The information specified in Section 2(2)(a) through (e) of this administrative regulation.

Section 5 Internal Procedures for Implementation. The facility administrator shall establish internal procedures to assure the proper and effective implementation of this administrative regulation. The internal procedures shall specify:

(1) Staff designated to make the notifications required by Sections 3 and 4 of this administrative regulation;

(2) Requirements for documentation of discharges, transfers, and escapes of violent offenders;

(3) Requirements for notifying the facility administrator if a violent offender is transferred, is discharged or escapes;

(4) Methods of monitoring the movement of violent offenders within the facility; and

(5) Methods for discovering, reporting, and documenting the escape of a violent offender.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 21, 1998

FILED WITH LRC: December 22, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held Monday, February 22, 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 Monday, February 15, 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:

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented to the extent 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: Requires reporting of incidents on an ad hoc basis. The number of incidents that must be reported will be minimal. So there will no significant effect.

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. Reporting can be performed by existing personnel within the current budget.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds shall be used to implement this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The authorizing statute mandates the reporting implemented by this administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: Law enforcement and criminal justice authorities will have enhanced ability to prevent crimes by mentally ill violent offenders.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on public health will result if the regulation is not implemented

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplicating:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because all affected facilities need to have equivalent requirements in order for the administrative regulation to have the intended effect.



ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of January 12, 1999

The January meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, January 12, 1999 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 December 8, 1998 meeting were approved.

Present were:

**Members:** John Arnold, Chairman; Senators Marshall Long, Joey Pendleton and Dick Roeding; Representatives Jimmy Lee, James Bruce and Woody Allen.

**LRC Staff:** Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Susan Eastman, Edna Lowery, Ellen Benzing, Cooper Whitt, DeeAnn Wenk.

**Guests:** Peggy Williams, Paula Pabon, Kentucky Legislative Ethics Commission; Maryellen Allen, Secretary of State; Angela Robinson, C. Dalene McCann, Don Speer, Finance and Administration Cabinet; Jane Gardner, Landscape Architect Board; Bill Maggard, Jr., Kentucky Board of Barbering; James E. Shane, Kentucky Commission on Military Affairs; Roy Grimes, John Wilson, Department of Fish and Wildlife Resources; Tamela Biggs, Amy Barker, Brenda Priestley, Department of Corrections; Stephanie C. Bingham, Dennis Mills, Kentucky Law Enforcement Council; Keith Horn, William M. Heffron, Brenda Buchwald, Carla Kirby, Department of Juvenile Justice; Gail Robinson, Department of Public Advocacy; Charlie Harman, Jim Roberts, Transportation Cabinet; Bob Tarvin, School Facilities Construction Commission; Steve Cox, Carla Montgomery, Peggy Guier, Zaring Robertson, Department of Workers' Claims; Brenda Parker, Chandra Venettozzi, Carrie Banahan, D.J. Wasson, Sharron S. Burton, Rosie Washington, Mark McGuire, Department of Insurance; Tim Faust, Billy S. Perkins, Department of Housing, Buildings and Construction; Cliff Jennings, Trish Howard, Ann Gordon, John Gray, Gwen Winters, Cookie Whitehouse, Sandra Rolland, Karen Doyle, Jayne Arnold, Cabinets for Health Services and Families and Children; Jane Chiles, Melissa Steven, AIG; Scott Gasser, Employers Service Corporation; Doug Reynolds, Kentucky Geological Survey; Carl Sumner, Insurance Institute of Kentucky; Jim Carlross, Jr.; John Brazel, Kentucky Chamber of Commerce; F. W. White, Union Cab Co. of Louisville; Jeff Mackin, Yellow Cab of Louisville; Franklin P. Friday, Jefferson County Clerk; Marian Hayden, Cull & Hayden; John P. Cooper, KMA/KBA; Donna G. Brown, Dandridge F. Walton, Ruby Jo Cummins, KAHCF; Dick Brown, Kentucky Associated Health Plans; Nancy Galvagni, Kentucky Hospital Association; Bart Baldwin, Children's Alliance; Sheila Schuster, Kyians for Health Care Reform; Mike Helton, Anthem; John T. McCarthy, Humana Inc.; Bob Stevens, St. Elizabeth; Barry Brown, Kentucky Ambulance Providers Association; Greg Brotzge, American Heart Association; Robert Barnett, Kentucky Pharmacists Association; Michael Collins, The Kentucky Post.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Legislative Ethics Commission**

2 KAR 2:010. Required forms. Paula Provone and Peggy Williams represented the Commission. Paula Pabon, Legal Counsel, and Peggy Williams, Principal Assistant, represented the Commission.

Subcommittee staff stated that this administrative regulation: (1) did not impose additional requirements; and (2) clarified what information was required.

Sections 1, 2, and 4 of this administrative regulation were amended to comply with the drafting requirements of KRS 13A.222(4).

2 KAR 2:020. Statement of financial disclosure. Subcommittee staff stated that the Commission had amended this administrative regulation to comply with statutory requirements, by amending the forms incorporated by reference to: (1) clarify the meanings of "family" and consumer goods;" and (2) make it clear that: a. the Statement of Financial Disclosure shall include information for the preceding calendar year; b. specific dollar amounts are not required for

specified categories; and c. consumer debts need not be disclosed.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

2 KAR 2:040. Updated registration short forms for employers and legislative agents. Subcommittee staff stated that the agency had amended this administrative regulation to establish short forms for filers who had no expenses or expenditures to report.

This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4).

**Secretary of State: Kentucky Lien Information System**

30 KAR 4:010 & E. Implementation of Kentucky Lien Information System. Mary Ellen Allen, General Counsel, represented the Secretary.

Subcommittee staff stated that KRS 355.9-401A provided, in part, that the financing statement, amendment, assignment, continuation, release or termination filed under KRS 355.9-401A shall be on a form prescribed by the Secretary of State.

Ms. Allen stated that: (1) the intent of House Bill 739, the Kentucky Lien Information System, was to: (a) be a pointer index to all financing statements filed in Kentucky; and (b) deter avoidance of local filing; (2) the form the Secretary of State prescribed was the form filed at the county level; and (3) the Secretary of State prescribed the form filed at the county level to ensure that: (a) filers maintained local filing requirements; and (b) the Secretary of State had the valuable information contained on the form filed at the county level, such as the time, date, and county of the filing.

Representative Bruce stated that: (1) he was one of the sponsors of House Bill 739; and (2) Ms. Allen had correctly stated the intent of House Bill 739.

In response to a question by Senator Roeding, Ms. Allen stated that: (1) the \$100.00 penalty fee was fair; (2) a letter was circulated to all interested persons informing them of the penalty fee; and (3) the intent of the penalty fee was to ensure compliance by all secured parties, so that the Kentucky Lien Information System would be useful to lenders.

In response to questions by Senator Roeding, Ms. Allen stated that the: (1) Secretary of State had not removed the \$1.00 filing fee; and (2) \$1.00 filing fee would not be imposed on a non-resident filer.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Sections 1 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

The Subcommittee approved a motion to request LRC to refer the requirement established by KRS 355.9-401A that the Secretary of State prescribe forms to the appropriate interim joint committee for recommendations to the General Assembly at its next Regular Session.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) Sections 1 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

**Kentucky Commission on Military Affairs**

202 KAR 5:010. Criteria for allocation of grant money. General James Shane, Executive Director, represented the Commission.

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 and Sections 1, 2, 3, 4, 5, 7, 8, 9, and 10 were amended to comply with the drafting requirements of KRS 13A.222(4); (3) Section 3 was amended to clarify the requirements of an eligible applicant; and (4) Section 9 was amended to clarify that staff shall not allocate grant money to qualified appli-

cants.

**Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. Tamela Biggs, Staff Attorney, represented the Department.

This administrative regulation was amended as follows: (1) the references in CPP 3.1, 3.5, 3.6, and 6.5 were amended to correct statutory citations; (2) CPP 3.1, VI.A.1. was amended to cross reference and require that employees comply with KRS 11A.020; (3) CPP 3.1, VI.C.1. was amended to cross reference KRS 11A.040(1); and (4) various drafting and formatting amendments were made to comply with KRS Chapter 13A.

501 KAR 6:999. Corrections secured policies and procedures. Pursuant to KRS 61.815(2)KRS 61.810(1)(i) and (k), and KRS 197.025(5), the Subcommittee went into closed session to review 501 KAR 6:999. Secured policies and procedures.

**Department of Criminal Justice Training: Kentucky Law Enforcement Council**

503 KAR 1:060. Definitions. Stephanie Bingham, General Counsel, and Dennis Mills, Executive Staff Adviser, represented the Department.

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 include definitions for applicant, certification, DOCJT Job Task Analysis, POPS, and significant life change; and (4) Drafting and formatting amendments to comply with KRS Chapter 13A.

503 KAR 1:080. Certification of schools. In response to questions by Representative Bruce, Mr. Mills stated that: (1) this administrative regulation applied to schools in Kentucky that conducted law enforcement training, including the: (a) Department of Criminal Justice Training; (b) Kentucky State Police Academy; (c) Louisville Police Department; (d) Lexington Police Department; (e) Jefferson County Police Department; and (f) Bowling Green Police Department; and (2) the Kentucky Law Enforcement Council was prohibited from controlling the criminal justice training at universities.

In response to questions by Senator Roeding, Mr. Mills stated that: (1) there was not a criminal justice training school in Northern Kentucky; and (2) a criminal justice training school in Covington had been closed because: (a) of the financial requirements for staff, equipment, and other needs; and (b) it was cheaper for the Department to send students to Department of Criminal Justice training, rather than a school in Covington.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 2 was amended to include criteria by which Department will inspect law enforcement training schools; (3) a new Section 7 was created to incorporate by reference the Application for School Certification; (4) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, Sections 1, 5, and 6 were amended to comply with the drafting requirements of KRS 13A.222(4); and (5) Sections 1, 2, and 4 were amended to comply with the formatting requirements of KRS 13A.220(4).

**Department of Juvenile Justice: Child Welfare**

505 KAR 1:010. Definitions. This administrative regulation was amended to place the definitions in alphabetical order, as required by KRS 13A.222(4).

505 KAR 1:040. Policies and procedures manual. Keith Horn, General Counsel, and Dr. William M. Heffron, Director of Mental Health Services, represented the Department. Gail Robinson, Juvenile Branch Manager for the Department of Public Advocacy appeared before the Subcommittee.

Subcommittee staff stated that: (1) this administrative regulation contained all of the policies and procedures for the Department of Juvenile Justice; (2) KRS Chapter 13A prohibited the promulgation of an administrative regulation containing every topic of a subject matter; (3) notwithstanding the need to promulgate separate administrative regulations for each topic, approval of this administrative regulation was required in order to comply with a consent decree

entered in a Federal lawsuit; (4) at a later date, Subcommittee staff would: (a) meet with Department staff; and (b) divide this administrative regulation into separate topical regulations; (5) the Department would then: (a) file new administrative regulations with separate topics; and (b) delete the items that are in the new administrative regulations from this administrative regulation; (6) this existing administrative regulation was amended to revise portions of the Policy and Procedures relating to Juveniles; (7) an issue was raised regarding the size of therapeutic activity groups; (8) the Federal government had filed a lawsuit against the Department of Juvenile Justice based upon the operation of Juvenile facilities; (9) the Department had signed a consent decree that limited therapeutic group activities to eight residents (Section 43.b.); (10) the Department wanted to amend DJJ 305 "Group Counseling" to increase group sizes from ten to twelve residents.

Mr. Horn stated that: (1) group counseling was one part of treatment for a juvenile in the Department program; (2) additionally, each juvenile received individualized counseling; (3) a comprehensive treatment plan was established for a juvenile; (4) the Department had to achieve substantial compliance to have the consent decree dismissed; (5) the variance in group size would not prevent the Department from achieving substantial compliance, even if the Federal government did not agree to change the cap size; (6) the number of residents in a group session, established in DJJ 305, was a maximum number only; (7) the actual size of a group would be based upon: (a) its purpose; (b) the juveniles in the group; and (c) the group member's particular problems; and (8) not every group would have twelve residents in it.

In response to questions by Chairman Arnold, Mr. Horn stated that: (1) he did not know if the Department had groups with more than eight residents; (2) the Department Director of Mental Health Services could answer questions regarding group size; (3) the idea behind Section 43 of the consent decree was for the State to reach certain goals for the treatment of juveniles; (4) the Department: (a) would not be prevented from being in substantial compliance if the cap size exceeded eight residents; and (b) was discussing changing the cap size with the Federal government; and (5) there were many parts to the consent decree, of which the group cap size was only a small part.

Ms. Robinson stated that: (1) she supervised lawyers who inspected residential treatment centers operated by the Department, pursuant to another consent decree; (2) the current group size in DJJ 305: (a) was ten residents; and (b) violated the requirements of the consent decree; (3) increasing the group size to twelve residents would not be good for juveniles receiving treatment; (4) on behalf of juveniles, she urged that the group size not be raised to twelve; (5) none of the suggestions made by the Department of Public Advocacy during the public comment period were incorporated into the administrative regulation; (6) the consent decree specifically provided, in Section 27.g., that juveniles should have access to a hotline to report abuse without involving staff in the process; (7) DJJ 140 also violated the consent decree, because the hotline was: (a) in a different building; or (b) locked room; (8) if a juvenile wanted to make a report, he had to ask a staff member to assist him in placing the call; (9) the staff member who supervised a juvenile could be the same person the juvenile wanted to report; (10) this did not promote the safety of the juveniles; (11) the quality assurance group had: (a) monitored the treatment centers for compliance with the consent decree; and (b) raised the issue of exceeding group number requirements; and (12) she had furnished Subcommittee staff with copies of the Monitor's reports.

In response to questions by Senator Pendleton, Mr. Horn stated that: (1) the consent decree was agreed upon and signed by the Commonwealth and Federal government; (2) the Federal government established a maximum number of eight residents in a group counseling session; (3) many people questioned why the consent decree had been signed; (4) there were problems with juvenile treatment in Kentucky; (5) the Department and Federal government had not completed discussions of this matter; (6) if the Department achieved substantial compliance, the consent decree would be dismissed; (7) the Department: (a) was working to achieve that goal in 1999; and (b) did not believe that this issue would prevent dismissal of the consent decree; (8) the Department's mental health experts

did not believe a cap of twelve residents per group would negatively impact treatment; and (9) he had to rely on the Department mental health experts in the design of the treatment program for Kentucky juveniles.

Senator Pendleton stated that: (1) he: (a) did not have a problem with twelve residents in a group, if the mental health experts agreed; and (b) had a problem with the Commonwealth: 1. entering into an agreement with the United States; and 2. not complying with that agreement; and (2) by its actions, the State: (a) had not shown good faith; and (b) should not have signed the consent decree, if it was not going to comply.

Mr. Horn stated that: (1) he State and Federal government continued to discuss this matter; (2) if the issue of group numbers became a major problem, the Department would amend the provision; (3) experts had monitored all of the mental health programs in the Department institutions; and (4) the monitors had not indicated that group size was a problem.

In response to questions by Senator Pendleton, Mr. Horn stated that: (1) he did not think that the failure to comply with the consent decree regarding group size had put the State in jeopardy; (2) if the Federal government insisted on a cap of eight residents, the Department would comply; (3) the problem with complying with the cap of eight residents was the number of: (a) residents in the facility; and (b) meetings that could be scheduled; and (4) the numbers fluctuated because, the Department did not know from month to month how many juveniles would be in a particular program.

Dr. Heffron stated that: (1) he thought the group size established in the consent decree had been based upon the literature on psychotherapy groups; (2) not every group operated by the Department was a psychotherapy group; (3) some groups: (a) were educational; and (b) did not address mental health issues; (4) if group categories were lumped together, it would interfere with the fact that some of the groups were not traditional psychotherapy groups; (5) when a juvenile entered a facility, he was placed in a group that he would stay with throughout his stay; (6) the residents: (a) attended activities together; (b) ate meals together; and (c) got to know each other in ways other than in the group; (7) he did not think increasing the group size to twelve would be a problem for the juveniles learning to interact with each other; (8) a smaller group size would probably be more effective, if: (a) the juveniles were in a hospital; and (b) had a limited amount of time; (9) even in a hospital, group size varied depending upon the purposes of the group; and (10) group size was not an absolute.

Senator Pendleton stated that he was also concerned that the administrative regulation had been promulgated before: (1) returning to the Court; and (2) getting the group size changed.

Mr. Horn stated that: (1) part of complying with the consent decree was getting all of the information into: (a) a policies and procedures manual; and (b) administrative regulation form; (2) by promulgating the administrative regulation, the Federal government would see that Kentucky was working to comply with the consent decree; and (3) the Federal government would: (a) review the administrative regulation; and (b) prepare a report if it objected to a particular policy.

Ms. Robinson stated that: (1) there was a report filed by the Federal monitor who reviewed Department compliance with the consent decree; and (2) in every report that had been filed, the monitor had raised the concern that the Department was not complying with the group size established in the consent decree.

In response to questions by Senator Roeding, Mr. Horn stated that: (1) when a court committed a child, it granted custody to the Department; (2) the Department decided where the child would be sent for treatment; (3) if he was removed from the community, the treatment goal was to: (a) treat him; (b) make him a better citizen; and (c) return him to the community; (4) the Department: (a) entered into a contract with the child; and (b) outlined the terms under which the child could return home; (5) if a child returned home and any term was violated, the Department could: (a) hold a hearing; and (b) return him to a treatment facility; (6) while many children responded well in treatment, they got into trouble again when they returned to the community; and (7) the Department divided revocation proceedings into two types: (a) juveniles who needed immediate placement because of: 1. recommitting offenses in the community;

or 2. other safety concerns; and (b) juveniles who had problems with: 1. attending school; and 2. obeying parents.

Senator Pendleton stated that he: (1) was hesitant to approve this administrative regulation; (2) wanted: (a) this administrative regulation deferred for one month; and (b) to review the monitoring reports; and (3) wanted the Department to respond regarding the hotline issue.

Department personnel were requested to send copies of the information to be submitted to the Regulations Compiler and Subcommittee legal staff.

Mr. Horn stated that: (1) the Department: (a) needed the new policies and procedures for treatment of juveniles; and (b) would have a problem if this administrative regulation was deferred until the next meeting of the Subcommittee; and (2) he did not object to removal of the group size requirements from the policy manual.

Subcommittee staff stated that: (1) if the group size requirements were deleted, the Department would not have a policy relating to group size; and (2) a policy was required by KRS Chapter 13A, because the policy was part of the implementation of applicable authority.

In response to questions relating to the removal of the group size requirements from the policy manual, Mr. Horn stated that: (1) the Department: (a) would function as it had, without the group size policy; and (b) functioned with group sizes of eight to ten residents; and (2) the policy on group size was what the mental health experts determined was proper.

Subcommittee staff stated that: (1) group size requirements were required to be established by administrative regulation; (2) the Department could not implement the statute without having the method of implementation established in an administrative regulation, through policies and procedures that had been established by: (a) material incorporated by reference; or (b) set out in the body of the administrative regulation; (3) a policy could not be established, unless it was established by administrative regulation; (4) the fact that group size related to treatment issues did not make a difference; (5) under KRS Chapter 13A.130, the Department could not establish a practice by policy, memorandum, or other form of action, other than through the promulgation of an administrative regulation; (6) KRS Chapter 13A, particularly KRS 13A.100, 13A.120, and 13A.130, provided that when a statute was implemented, if it was not clear and complete on its face, an administrative regulation was required; and (7) there was almost nothing that could be left out of an administrative regulation, other than interoffice procedures that met the criteria established by KRS Chapter 13A.

Mr. Horn stated that: (1) he did not agree that group size requirements had to be in an administrative regulation; and (2) the issue related to the Department's responsibility to treat the children.

Subcommittee staff stated that when an agency implemented its statutory function, it: (1) implementation was required by KRS Chapter 13A to be through the promulgation of an administrative regulation; and (2) could not be done by policy or memoranda that were not part of an administrative regulation.

Rep. Lee stated that: (1) this administrative regulation should be approved, subject to: (a) the material requested being submitted in writing to the Subcommittee; and (b) recall at the next Subcommittee meeting as an existing administrative regulation; and (2) if problems were found, the: (a) Department could agree to amend as required by the Subcommittee; or (b) the administrative regulation would be found deficient.

Subcommittee staff stated that: (1) the Department of Juvenile Justice should: (a) meet with the Department of Public Advocacy; (b) discuss issues raised by this administrative regulation; (c) respond to the issues, in writing, to the Subcommittee; and (d) submit a list of questions or objections to the Subcommittee; and (2) material or objections should be submitted to the Subcommittee before the next meeting so they could be properly reviewed.

Mr. Horn stated that: (1) the issue of the hotline was: (a) raised; and (b) answered in the Statement of Consideration; (2) the Department operated may different types of facilities, based upon the classification of the juveniles; (3) it would be difficult and cost prohibitive to eliminate staff involvement with the hotline in some facilities; (4) juveniles were classified as: (a) maximum security; (b) medium security; or (c) minimum security; and (5) based on the type

and layout of the facility, it might not be appropriate for a resident to have direct access to the phone.

In response to questions by Representative Lee, Ms. Robinson stated that: (1) her objection to a group size cap above eight residents related only to counseling sessions; (2) she: (a) would address the reasons why certain groups should be capped at eight; (b) was not involved in the process by which the State set the group cap at eight; and (c) would not object, if the Department proposed capping only psychotherapy groups at eight; (3) the policy did not indicate a group cap of eight in a psychotherapy group; and (4) she did not intend to give the impression that she objected to all meetings having more than eight residents.

In response to a question by Representative Bruce, Ms. Robinson stated that she: (1) thought the residential treatment center program was beneficial; (2) objected to certain policies; (3) did not keep statistics on success rates; and (4) had been involved with children who: (a) had completed the program; (b) had returned home; and (c) were doing what was required.

In response to a question by Representative Bruce, Mr. Horn stated that he would check with one of the Department divisions to determine if there were statistics on the success of the treatment.

Chairman Arnold stated that: (1) the Subcommittee would approve this administrative regulation, subject to the Department providing the necessary information before its February, 1999, meeting; (2) this administrative regulation would be recalled; and (3) if the Subcommittee disagreed with the Department of Juvenile Justice, this administrative regulation would be found deficient.

This administrative regulation was amended as follows: (1) Section 1 was amended to separately list the policies in the Policies and Procedures Manual; (2) definitions for "Abuse or Neglect" and "Mis-treatment" were added to DJJ 142; (3) DJJ 200 was amended to incorporate by reference certain forms; (4) DJJ 201 was amended to cross-reference forms; (5) DJJ 304 and 305 were amended to insert definitions for "Behavior contract", "cycle work", "relapse prevention planning", and "Regional qualified mental health professional"; (6) DJJ 323 was amended to define "isolation"; (7) DJJ 500 was amended to: (a) include the definition of "Juvenile Services Worker" and "Youth Worker; and (b) clarify the definition of "Support Staff"; (8) DJJ 602 was amended to include the definition of "Commissioner's warrant", "Safety concern", and "Supervised placement hearing"; (9) DJJ 620, III. was amended to provide that a youth that was rearrested shall be considered a risk to the community; (10) DJJ 620, III.A.5. was amended to clarify the rights of the youth at a probable cause hearing; and (11) drafting and formatting amendments to comply with KRS Chapter 13A.

505 KAR 1:050. Local juvenile delinquency prevention councils: formation procedure. Subcommittee staff stated that this new administrative regulation established the formation procedure for Local Juvenile Delinquency Councils, in accordance with House Bill 455, enacted during the 1998 Regular Session of the General Assembly.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Sections 1 and 2 were amended to delete language that repeated KRS 15A.300(1) and (2), as required by KRS 13A.120(2)(e); (3) Section 2(2), (4), and (5) were amended to comply with the formatting requirements of KRS 13A.220(5); and (4) Section 3 was amended to comply with the drafting requirements of KRS 13A.222(4).

505 KAR 1:060. Local juvenile delinquency prevention councils: operation and duties. Subcommittee staff stated that this new administrative regulation established the operation and duties of Local Juvenile Delinquency Councils, in accordance with House Bill 455.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to comply with the: (a) formatting requirements of KRS 13A.220(5); and (b) drafting requirements of KRS 13A.222(4); (3) Section 2 was amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Section 2(5) through (8) were amended to delete language that repeated KRS 15A.300(3)(b),(c),(d), and (e), as required by KRS 13A.120(2)(e).

505 KAR 1:070. Local juvenile delinquency prevention councils: Community Juvenile Justice Partnership Grant Program. Subcom-

mittee staff stated that this new administrative regulation established requirements for the administration and operation of grant programs under the Community Juvenile Justice Partnership Grant Program, in accordance with House Bill 455.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 1 was amended to comply with the: (a) formatting requirements of KRS 13A.220(5); and (b) the drafting requirements of KRS 13A.222(4); (3) Section 1(3) was amended to specify criteria for grant program solicitations; (4) Section 1(5) was amended to clarify the meaning of "issuer of grant program solicitations;" (5) Section 1(5)(c) was amended to clarify the activity that a council member shall avoid; (6) Section 1(7) was amended to delete language that repeated KRS 15A.300(3)(d), as required by KRS 13A.120(2)(e); (7) Section 1(8) was amended to conform with KRS 15A.300(3)(d); and (8) Section 1(9) was amended for clarity and to define "satisfactory performance" of a grant program.

The amendment was amended at Section 1(9) to comply with the drafting requirements of KRS 13A.222(4).

#### **School Facilities Construction Commission: Education Technology Funding Program**

750 KAR 2:010 & E. Education Technology Funding Program guidelines. Bob Tarvin, Executive Director, represented the Commission.

This administrative regulation was amended as follows: Section 3(2) was amended to clarify that the district shall provide the Commission evidence certifying that matching funds have been committed.

#### **Labor Cabinet: Department of Workers Claims**

803 KAR 25:026. Group self-insurers. Carla Montgomery, Staff Attorney, and Steve Cox, General Counsel, represented the Department.

In response to a question by Representative Bruce, Mr. Cox stated that: (1) as former employees of the Department of Insurance, both he and Ms. Montgomery: (a) were familiar with the previous problems relating to self-insured groups; and (b) recognized that some of the self-insurance groups were as large in premium volume as insurance carriers admitted to do business in Kentucky; and (2) the Department had attempted to create a stronger regulatory authority over these groups.

In response to questions by Senator Roeding, Mr. Cox stated that: (1) the Department: (a) had originally wanted to raise the threshold to \$10 million; and (b) had decided to keep it at \$5 million, after meeting with self-insurance groups; and (2) this administrative regulation was expected to affect 10 self-insureds who were registered and accredited with the Authority to do business in Kentucky; (4) the Department had met with those self-insureds many times about this administrative regulation; and (5) while the paperwork requirements had been changed to conform to changes in the statutory requirements for auditing self-insureds, there was not a significant change in the amount of paperwork.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 12 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (2) Section 11 was amended to delete language that repeated or summarized KRS Chapter 13B, as required by KRS 13A.120(2)(e).

803 KAR 25:170. Filing of claims information with the Department of Workers' Claims. In response to a question by Senator Roeding, Ms. Montgomery stated that workers' compensation carriers were made aware of the filing requirements established in this administrative regulation.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 4 and 5 were amended to comply with the drafting requirements of KRS 13A.222(4) and 13A.2251(2); and (3) Section 2(1) was amended to specify that carriers shall file the required form according to the time periods prescribed in KRS 342.038, rather

than repeating the statutory language, as required by KRS 13A.120(2)(e).

803 KAR 25:240. Workers' compensation unfair claims settlement practices. In response to a question by Representative Bruce, Mr. Cox stated that: (1) while an unfair claims settlement practice act had existed for every other line of property and casualty insurance for at least the last ten years, workers' compensation was not given that authority until the passage of House Bill 1, enacted during the 1996 First Extraordinary Session of the General Assembly; (2) Commissioner Turner had held 50 to 100 show cause hearings against self-insured employers relating to unfair claims settlement practices; and (3) the Department would look into any complaints brought to its attention.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1, 2 and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

#### **Department of Insurance: Health Insurance Contracts**

806 KAR 17:210 & E. Reporting requirements for the Kentucky Guaranteed Acceptance Program. Sharron Burton, General Counsel, and Rosie Washington, Branch Manager, represented the Department.

In response to a question by Chairman Arnold, Ms. Burton stated that: (1) this administrative regulation imposed reporting requirements concerning the: (a) Kentucky Guaranteed Acceptance Program ("GAP"); (b) dollar amounts: 1. in that program; and 2. being taken from that program; and (c) insureds who were members of the program; and (2) because the Department had difficulty translating the data received electronically on the quarterly reports, this administrative regulation was amended to require that the report be filed manually.

In response to a question by Senator Roeding, Ms. Burton stated that there were 91 people in the GAP program.

In response to questions by Senator Roeding, Ms. Washington stated that: (1) approximately 81 people were phased into the GAP program from Anthem; (2) House Bill 315, enacted during the 1998 Regular Session of the General Assembly, required that a person diagnosed with a high-cost condition in or after 1995 be able to continue to have health insurance with Anthem while going into the GAP program; (3) the GAP program: (a) was financially viable; (b) had received enough money from the state and insurers; and (c) was projected to be fully funded; (4) the Department: (a) had not received responses from approximately 100 of the 200 carriers required to support the program; and (b) would reassess the program's funding viability as more people joined the program in the next couple of years; (5) Humana, which agreed to participate, and Anthem were the two companies that sold individual policies for the GAP program; and (6) other insurance companies and stop-loss carriers within Kentucky who collected premiums from health benefit plans: (a) were required to pay into the pool; and (b) sold policies to small and large groups, associations, and employers;

In response to a question by Representative Bruce, Ms. Burton stated that: (1) 806 KAR 17:190 established: (a) alternative underwriting mechanism criteria, which was another way insurers could participate in the GAP program; and (b) termination requirements for the GAP program; and (2) 806 KAR 17:210 established reporting requirements for information on insureds and the money in the GAP program.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Section 1 were amended to correct statutory citations; and (2) Sections 3 and 5 were amended to correct the name of the required form.

#### **Cabinet for Health Services: Office of Inspector General: Division of Licensing and Regulation: Certificate of Need**

900 KAR 6:050. Certificate of need administrative regulations. John Gray, Executive Director, represented the Division. Nancy Galvagni, Kentucky Hospital Association, appeared before the Subcommittee.

Representative Bruce stated that he wanted this administrative regulation amended to: (1) specify in Section 7(1)(a)1. that applications that proposed to transfer surgical services shall: (a) not be reviewed for consistency with the State Health Plan; and (b) be reviewed under the nonsubstantive review provisions established in Section 8 of this administrative regulation; and (2) amend Section 8(1)(c) to: (a) delete language that authorized nonsubstantive review for a proposal for a physician owned magnetic resonance imaging service; and (b) authorize nonsubstantive review status to an application for a proposal that involves the transfer of surgical services from a licensed health facility to another licensed health facility or to a newly established health facility.

Subcommittee staff stated that: (1) issues had been raised regarding this administrative regulation which would be: (a) explained by Ms. Galvagni to the Subcommittee; and (b) the subject of discussions between the Cabinet, Ms. Galvagni, and Subcommittee staff prior to the next Subcommittee meeting; and (2) this administrative regulation would be called up as an existing administrative regulation at the Subcommittee's February meeting.

Ms. Galvagni stated that: (1) the Kentucky Hospital Association: (a) appreciated the Subcommittee's agreement agreeing to reconsider this administrative regulation at its February, 1998, meeting; and (b) wanted this administrative regulation to include enforcement provisions; (2) a Certificate of Need ("Certificate", "CON"): (a) did not specify if the Certificate of Need had been issued in response to a request for authorization to provide a limited service, such as a surgery center specifically for eye or pain surgery; and (b) should be limited to the specific purposes for which the certificate had been issued; and (3) she had received conflicting information regarding whether enforcement was the responsibility of the Certificate of Need office or Licensure office.

In response to questions by Chairman Arnold, Mr. Gray stated that while the biennial review process was a limited method of enforcement for a certificate of need, the Certificate of Need office: (1) had limited, if any, authority to revoke a Certificate of Need that had been implemented; and (2) believed that enforcement was the responsibility of licensure.

Chairman Arnold stated that because a person who had received a certificate of need for a surgery center to remove warts should not be operating on a person's eyes, enforcement was necessary.

Subcommittee staff stated that: (1) representatives of the Certificate of Need and Licensure offices would meet with Subcommittee staff and Ms. Galvagni to address: (a) this issue; and (b) an issue relating to personal care; and (2) the Subcommittee staff would report back to the Subcommittee at its February, 1998, meeting.

This administrative regulation was amended as follows: (1) Section 21(5) was amended to: (a) delete language relating to disciplinary action that may be taken for failure to comply with CON terms, because Cabinet action for failure was specified in KRS Chapter 216B; and (b) cross reference disciplinary proceedings established by KRS 216B.086 and 216B.990 for failure of a Certificate holder to comply with the terms of the Certificate of Need; (2) Section 7(1)(a)1. was amended to specify that applications that proposed to transfer surgical services shall: (a) not be reviewed for consistency with the state health plan; and (b) be reviewed under the nonsubstantive review provisions established in Section 8 of this administrative regulation; and (3) Section 8(1)(c) was amended to: (a) delete language that authorized nonsubstantive review for a proposal for a physician owned magnetic resonance imaging service; and (b) authorize nonsubstantive review status to an application for a proposal that involves the transfer of surgical services from a licensed health facility to another licensed health facility or to a newly established health facility.

The Subcommittee approved a motion by Representative Bruce, seconded by Senator Pendleton, to amend Sections 7 and 8 of this administrative regulation as requested by Representative Bruce.

#### **Cabinet for Families and Children: Department for Community Based Services: Division of Policy Development: Child Welfare**

905 KAR 1:050. Approval of adoption assistance. Cliff Jennings and Sandra Rollins represented the Department.

This administrative regulation was amended as follows: (1) the



STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to clarify eligibility for assistance; and (3) formatting amendments to comply with KRS 13A.220(4).

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Finance and Administration Cabinet: Office of the Secretary: Purchasing**

200 KAR 5:021 & E. Manual of policies and procedures. Don Speer, Commissioner, Department for Administration, Dalene McCann, Director, Division of Purchasing, Angela Robinson, Attorney, Finance and Administration Cabinet, Jim Roberts, Deputy Commissioner, Department for Vehicle Registration, Transportation Cabinet, appeared before the Subcommittee.

Chairman Arnold stated that: (1) questions had been raised concerning the policies in the manual that restricted and placed conditions on contracts for upkeep and radio service work relating to the statewide vehicle enforcement radio system; (2) the following conditions attached to a contract: (a) the vendor response time during off-peak hours was limited to maximum of two hours; (b) repair had to be completed in two days; and (c) a vendor had to be located within a sixty mile radius of Frankfort; (3) some of the questions raised related to the: (a) basis for the sixty mile radius; (b) percentage of mobile units located in Central Kentucky; (c) requirement that a vendor had to be within a sixty mile radius of Frankfort; and (d) the effect this had on service in other areas of the State; and (4) questions relating to the policies had been transmitted to the Finance and Transportation Cabinets.

Mr. Roberts stated that, with regard to the: (1) average time from loss of communications or need of repair until a unit was sent to Frankfort for repair: (a) if the radio was not operational, it would be fixed locally regardless of the complexity of the problem; and (b) if all communications were out, and a supervisor or employee was scheduled for training or meetings in Frankfort, the person going to Frankfort would bring the car and return the same day; (2) reason new installation of lights, cameras, and radios were in the same contract as two-way service for old and new units, rather than being separately contracted: (a) in the specifications the item, "other equipment", was intended to have the vendor perform the installation functions; and (b) one-vendor approach would ensure continuity, uniformity, and a single contact, or source of blame if problems arose; (3) reason for not having 3 service centers, even though 25% of the units were in eastern Kentucky, 25% of the units were in western Kentucky, and 50% of the units were in central Kentucky: (a) in most cases, the repair process worked better to have the radio system repaired by the initial installer; (b) with proper initial installation, there should be only minor problems; (c) minor repairs, adjustments, and total failure were handled locally; and (d) the Transportation Cabinet dealt with local dealers in: 1. Paducah; 2. Franklin; 3. Henderson; 4. London; and 5. Pikeville; (4) 41 cars west of Elizabethtown that were alleged to be too far from service: the Transportation Cabinet: (a) had not found that service was less or impaired by being too far away; and (b) requested it be notified of cases in which service was degraded because the vehicles were located west of Elizabethtown; (5) single contract, for radio communications and lighting, camera equipment and other items, after initial installation: (a) because the initial installer knew how the equipment was wired and configured, it was more efficient for the initial installer to repair the equipment; and (b) a problem caused by initial installation should be repaired by the initial installer at no additional cost; (6) reason minor repairs were made locally while larger problems were corrected in Frankfort: (a) problems were handled on a case by case basis; (b) not all major problems were handled in Frankfort; (c) the vendor is a certified Kenwood dealer, which is the type of equipment Vehicle Enforcement vehicles have, and other vendors might not be Kenwood dealers; and (d) a major problem could be due to improper installation, for which the initial installer should be responsible; (7) danger in officers being without communications until they can get an appointment in Frankfort: (a) officers were not sent out without communications; and (b) if they were in Frankfort for repairs and the equipment could not be repaired that day, they would be issued a

pool car with a working radio; (8) inability of the repair center to repair units from eastern or western Kentucky because it is overwhelmed with repairs: (a) the units would be given preference over normal installations, or authorization would be granted for the repair to be made locally; (b) officers would not return home without communications, because: 1. the equipment would be repaired; or 2. a pool car would be issued; and (c) a spare or swapped radio would be used for repair, if the item is deemed not to be repairable; (9) cost of drive time, extra trips, or the cost of an over-night stay: (a) in most cases, unless an officer was in Frankfort for another reason, the Transportation Cabinet would receive an estimate from a local vendor; (b) if extra trips have been required, they would be rare; and (c) the Transportation Cabinet did not recall that any over-night stay; and (10) reason State Police, and Fish and Wildlife, had service centers throughout the state that were made up of agency employees or a contracted firm, if one center was considered adequate: (a) the Transportation Cabinet understood that installations for Fish and Wildlife were made in Frankfort; (b) while Transportation Cabinet Motor Vehicles had 200 or fewer vehicles, the State Police had: 1. over 1,000 vehicles; and 2. 16 posts staffed by State Police personnel to maintain State Police equipment.

With regard to the reason a contract was issued for such a long time without requiring rebidding, which would appear to allow the original bidder continuously to renew his contract, Mr. Speer stated that: (1) an option to renew had to be agreed upon by both the Commonwealth and the vendor; (2) a state agency or the Finance and Administration Cabinet would review a vendor's performance before it recommended renewal of his contract; (3) an option to renew would vary, depending upon the type of contracted service; and (4) these contracts were: (a) contracts with options to renew; (b) 1 year contracts with four 1 year options to renew; and (c) were intended to ensure continuity and prevent a lapse in service that would occur if a new contract was required each year.

With regard to the requirement that a vendor be located within a 60-mile radius of Frankfort in order to be eligible to bid on a contract for upkeep and radio service work relating to the statewide vehicle enforcement radio system, Mr. Speer stated that, while the 60-mile radius requirement had been a business decision based on the variables that had been discussed: (1) the requirement that a vendor be physically located within a 60-mile radius of Frankfort: (a) should not have been a conditions of eligibility; and (b) would not be a condition of eligibility in future contract solicitations; and (2) emphasis would be placed on the delivery of services.

In response to questions by Chairman Arnold, Mr. Speer stated that: (1) the 60-mile radius requirement would be rescinded; (2) all vendors would be allowed to bid on the contracts; (3) the criteria would relate to service and repair in a timely manner.

Chairman Arnold state that: (1) this change was good; (2) there was not much difference between driving from Sturgis, Elizabethtown, Paducah, Morgantown, or Hopkinsville to Frankfort or driving from Frankfort to Sturgis, Elizabethtown, Paducah, Morgantown, or Hopkinsville and a vendor from areas other than a 60-mile radius of Frankfort could make the drive here. Mr. Speer stated that the requirement would be limited to meeting the service requirements in a timely manner.

Representative Allen stated that: (1) he wanted to raise an issue that, while unrelated to the subject matter of this administrative regulation, was serious; (2) on many occasions, he had noticed state vehicles exceeding posted speed limits, travelling at speeds in excess of seventy miles, and as much as 90 miles per hour; (3) these state vehicles were: (a) not State Police vehicles in pursuit; and (b) were vehicles belonging to Fish and Wildlife and the Transportation Cabinet; (4) could not understand why such excessive speed was allowed; (5) state employees driving state vehicles should observe the speed limits that citizens observed; (6) unsafe excessive speed by state vehicles was: (a) dangerous; (b) set a bad example; and (c) was disapproved and resented by citizens of the state; and (7) state agencies should at least send a memo to their employees instructing them to observe speed limits.

Mr. Roberts stated that: (1) speed limits applied to state employees; (2) if the license number and the date of an incident were reported to the Transportation Cabinet, it could have the Finance and Administration Cabinet obtain the driver's name, and take ac-



tion; and (3) agreed with Representative Allen's suggestion to send a memo to state employees.

**Board of Examiners and Registration of Landscape Architects**

201 KAR 10:050. Fees. In response to a question by Representative Allen, Ms. Gardner stated that: (1) this administrative regulation: (a) affected the national examination fees for licensure; and (b) did not affect current licensees in Kentucky; and (2) because the national supplier of the examination had restructured the examination from seven to five sections, the cost of the examination had decreased.

**Board of Barbering**

201 KAR 14:180. License fees, examination fees, renewal fees and expiration fees. Bill Maggard, Administrator, represented the Board.

In response to a question by Representative Bruce, Mr. Maggard stated that the fees: (1) were established in this administrative regulation; and (2) included: (a) a \$30 initial fee for an apprentice, barber, or barber shop; (b) a \$150 initial fee for barber school; (c) a \$50 initial fee for teachers; and (d) examination, renewal, and late fees.

In response to questions by Chairman Arnold, Mr. Maggard stated that: (1) the Board had previously charged fees: (a) under the direction of the last two budget bills; and (b) that exceeded the amounts authorized by the budget bills; (2) House Bill 602, enacted during the 1998 Regular Session of the General Assembly, established new limits, which brought the fees within the authorized limits; (3) while most of the fees established in this administrative regulation were the same as the previous fees, this administrative regulation included: (a) a \$70 decrease in the fee for renewals for barber schools; and (b) a \$5 decrease for all late fees; (4) the Board sent an annual newspaper to members; and (5) the renewal notice on the back of the license included information on the fees.

In response to a question by Senator Roeding, Mr. Maggard stated that the fees for a barber: (1) had not been increased; and (2) were \$30.

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game. Roy Grimes, Director of Wildlife, and John Wilson, Assistant Director, Public Affairs, represented the Department.

In response to a question by Representative Allen, Mr. Grimes stated that because duck and geese hunters were not authorized to leave the normal channels of a water system, a hunter who entered by boat on private property that had been flooded would be considered a trespasser.

**Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Plumbing**

815 KAR 20:120. Water supply and distribution. Tim Faust, Assistant Director, represented the Department.

In response to a question by Chairman Arnold, Mr. Faust stated that copper tubing and galvanized steel pipe could be joined, if the manufacturer's fitting specified in this administrative regulation was used.

**Electrical Inspectors**

815 KAR 35:015. Certification of electrical inspectors. Bill Perkins, Chief Electrical Inspector, represented the Department.

In response to questions by Senator Roeding, Mr. Perkins stated that: (1) this administrative regulation did not change the fees that had previously been established; (2) Senate Bill 18, enacted during the 1998 Regular Session of the General Assembly: (a) was referred to as the "straight pipe bill"; (b) made electrical inspectors responsible for compliance with its provisions; and (c) did not establish provisions for noncompliance; and (3) this administrative regulation: (a) established a procedure under which the Department would discuss the requirements of Senate Bill 18 with an electrical inspector who had not complied with its requirements; and (b) enabled the Department to enforce the Senate bill.

In response to questions by Representative Allen, Mr. Perkins

stated that: (1) prior to the enactment of Senate Bill 18, an electrical inspector conducted an inspection when it was requested; (2) Senate Bill 18 prohibited an electrical inspector from conducting an inspection until after the Health Department inspections had been completed; and (3) Senate Bill 18 was a good piece of legislation because it helped reduce solid waste problems, especially from trailers located on hillsides.

In response to questions by Chairman Arnold, Mr. Perkins stated that Senate Bill 18 was the "straight pipe bill", and prohibited a person from running a straight pipe from a mobile home or other structure to a hillside for solid waste disposal.

In response to questions by Representative Lee, Mr. Perkins stated that: (1) Senate Bill 18: (a) required a home builder to pull the permits from the health department; (b) did not: 1. require an electrical contractor or electrician to pull the permits; and 2. prohibit an electrician from performing the electrical work prior to the inspections; and (c) prohibited conducting an electrical inspection prior to the inspection of the septic and sewer systems; (2) if an electrical contractor filed for the electrical inspection, he would be asked for the other permits, because the electrical inspector was not allowed to conduct an inspection until the health department permits had been issued; and (3) the homeowner or contractor was responsible for making sure the permits had been pulled.

In response to questions by Chairman Arnold, Mr. Perkins stated that: (1) he would provide additional information to the Subcommittee, in writing, regarding the requirements from Senate Bill 18; and (2) because the health department was the agency that had determined that changing from a single or double wide trailer to a three-wide or multiple section home increased the capability of a septic tank, clarification about why a permit was not issued should come from the health department.

In response to a request by Representative Lee, Mr. Perkins stated that: (1) he had notified electrical inspectors in Kentucky that electricians were not responsible for obtaining permits from the health department: (a) through a letter; and (b) in two one-hour continuing education programs conducted at the electrical inspectors' meetings in February and August; (2) he believed that electricians should be licensed by the state because: (a) many other professions were required to be licensed; and (b) he had seen the results of non-licensed electricians, during his over forty years of electrical work, including work in the Fire Marshal's Office; and (3) enactment of a licensure requirement during the 2000 Regular Session of the General Assembly would be a positive improvement for Kentucky.

**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. John Gray, Executive Director, represented the Division.

**Cabinet for Health Services: Department for Medicaid Services: Division of Financial Management and Analysis: Medicaid Services**

907 KAR 1:391. Repeal of 907 KAR 1:390. Trish Howard represented the Department.

In response to a question by Chairman Arnold, Ms. Howard stated that this administrative regulation repealed 907 KAR 1:390, because the hearing services manual was now incorporated by reference into the hearing services administrative regulation, 907 KAR 1:038.

**The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the February 9, 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: State Treasury**

- 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.

**Revenue Cabinet: Department of Law: Division of Tax Policy: Selective Excise Tax; Motor Vehicle Usage**

- 103 KAR 44:060E. Motor vehicle usage tax valuation.

**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).
- 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 10:080. Continuing education.

**Board of Certification of Alcohol and Drug Counselors**

- 201 KAR 35:030. Code of ethics.
- 201 KAR 35:040. Continuing education requirements.

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

- 301 KAR 2:221E. 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.

**Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers**

601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles. Charles Harmon represented the Cabinet. Don Taylor, Vice President, Global Transportation; Jeff Macken, Yellow Cab, Louisville; and Bill White, Union Cab, Louisville, appeared before the Subcommittee.

Mr. Harmon stated that the Department supported this administrative regulation: (1) with the amendment suggested by Subcommittee staff; and (2) without additional amendments.

Mr. White stated that: (1) he: (a) owned and operated Union Cab of Louisville; and (b) supported amending this administrative regulation; (2) the amendments placed the rural and smaller cab companies on an even scale; (3) escrow permits: (a) enabled large cab companies to have back-up cabs: 1. without carrying insurance on those cabs, because large cab companies were self-insured; and 2. for use during special events, such as the Kentucky Derby; (b) created a hardship for smaller cab companies that were: 1. not self-insured; and 2. required to pay \$75 to \$100 per week per cab for insurance; and (4) it was not profitable for smaller cab companies to keep back-up vehicles on hand throughout the entire year.

Mr. Mack stated that he: (1) was with Yellow Cab in Louisville; and (2) wanted this administrative regulation deferred until the February 9, 1999, meeting of the Subcommittee to give his company additional time to work with the Department to establish a compromise for companies that had cab permits in escrow.

Mr. Harmon stated that while the Cabinet did not object to deferring this administrative regulation, this administrative regulation required certain actions by June 30, 1999, the end of the fiscal year.

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) Section 2(2) was amended to provide that if there is no protest, the commissioner shall approve sale, transfer, or lease; and (3) Drafting and formatting amendments to comply with KRS Chapter 13A.

Without objection, this administrative regulation was deferred.

**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.

**School Facilities Construction Commission: Procedures**

- 750 KAR 1:010E. Commission procedures.

**Kentucky Board of Tax Appeals: Tax Appeals**

- 802 KAR 1:010. Rules of practice and procedure.

**Labor Cabinet: Department of Workers Claims**

- 803 KAR 25:175E. Filing of insurance coverage and notice of policy changes or termination.

**Occupational Safety and Health Review Commission**

- 803 KAR 50:010. Hearings; procedure, disposition.

**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 17:190 & E. Guaranteed Acceptance Program requirements. Sharron Burton, General Counsel, represented the Subcommittee staff stated that the Department had agreed to defer consideration of this administrative regulation to work on issues that had been raised.
- 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.

**Cabinet for Health Services: Department for Public Health: 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: Division of Financial Management and Analysis: 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.

## **VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

### **Department for Mental Health and Mental Retardation Services: Substance Abuse**

908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260.

908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs.

### **OTHER BUSINESS:**

#### **New Subcommittee Member**

Chairman Arnold introduced Senator Marshall Long who had been appointed to the Subcommittee to fill the vacancy created by the retirement of Senator Kafoglis.

#### **Sound System**

Representative Lee stated that: (1) in 1996, he had submitted a request to LRC that the sound systems in all legislative committee rooms and the chambers be replaced; (2) he discussed the sound systems with LRC, during the 1999 Organizational Session of the General Assembly; (3) a pilot model had been accepted by LRC; (4) the sound systems would be: (a) sent out for bids; and (b) similar to the sound systems installed in the judicial branch; and (5) the microphone problem should be solved soon.

**The Subcommittee adjourned at 12:30 p.m. until February 9, 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 HEALTH AND WELFARE**  
**Meeting of November 18, 1998**

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of November 18, 1998, having been referred to the Committee on October 21, 1998 and November 17, 1998, pursuant to KRS 13A.290(6):

201 KAR 8:140  
201 KAR 20:070  
201 KAR 20:091  
201 KAR 2:110  
201 KAR 20:240  
201 KAR 20:260  
201 KAR 20:370  
904 KAR 3:025  
904 KAR 3:042  
905 KAR 2:160 & E  
907 KAR 1:026 & E  
907 KAR 1:626 & E  
908 KAR 2:210 & E

Gary Munsie, Kentucky Board of Dentistry, and Mark Bringelman, Assistant Attorney General, explained 201 KAR 8:140. There were no questions from committee members.

Nathan Goldman, Kentucky Board of Nursing, was there to explain 201 KAR 20:070, 201 KAR 20:091, 201 KAR 20:110, 201 KAR 20:240, 201 KAR 20:260 and 201 KAR 20:370 and answer questions. Representative Stine asked about a temporary work permit when coming to Kentucky, if a person would be required to have AIDS training before receiving a temporary work permit, requirement for verification of licensure status in 201 KAR 20:110. In 201 KAR 20:110 Senator Westwood asked why the requirement of a high school diploma was deleted for licensure. In 201 KAR 20:240 Representative Stine asked about increased licensure examination fee. A motion to approve 201 KAR 8:140, 201 KAR 20:070, 201 KAR 20:091, 201 KAR 20:110, 201 KAR 20:240, 201 KAR 20:260, and 201 KAR 20:370 was made by Representative Nunn, seconded by Representative Jordan, and approved by voice vote.

Chairman Neal and Senator Westwood again voiced their concerns about getting the administrative regulations in a more timely manner. Chairman Neal said he would talk with the LRC and Rep. John Arnold, Chairman, Administrative Regulations Review Subcommittee, to come up with a solution to the problem.

Cliff Jennings, Department of Community Based Services, Cabinet for Families and Children, explained 904 KAR 3:025 and 904 KAR 3:042 and answered questions from committee members. Senator Westwood said 904 KAR 3:025 permits drugs felons to remain eligible for food stamp benefits and asked if the 1996 welfare reform law excluded them. A motion to approve 904 KAR 3:025 and 904 KAR 3:042 was made by Representative Marzian, seconded by Representative Stein, and approved by voice vote.

Carol Jordan, Executive Director, Governor's Office of Child Abuse and Domestic Violence Services, explained 908 KAR 2:210 & E and answered questions from committee members. Representative Stine asked why the statutory definition of domestic violence had been changed in the regulation and if this change violated statutory authority. Representative Nunn asked what the qualifications were for art therapy. Representative Heleringer asked if health care providers were being certified to receive a third party reimbursement and if this would have an effect on health insurance rates. A motion to approve 908 KAR 2:210 & E was made by Representative Jordan, seconded by Representative Stein, and approved by voice vote.

Cliff Jennings, Department for Community Based Services, Cabinet for Families and Children, explained 905 KAR 2:160 & E. There were no questions from committee members. A motion to

adopt 905 KAR 2:160 & E was made by Representative Marzian, seconded by Representative Stein, and approved by voice vote.

Duane Dringenberg and Cheryl Younger, Department for Medicaid Services, Cabinet for Health Services, explained 907 KAR 1:026 & E and 907 KAR 1:626 & E and answered questions from committee members. Chairman Neal asked if these regulations provided more services to people who need it and why had fees not increased for several years. Representative Jordan asked if the reimbursement amount was increased, were any services cut, why dental sealants would be limited to recipients ages 5 through 20, and about prior authorization of coverage for surgery. Representative Heleringer asked if any service would not be reimbursed if these regulations were adopted and if it added any other requirements, and how much it would cost to add dental sealants and increase the fees. Representative Marzian asked if there would be any savings. A motion to approve 907 KAR 1:026 & E and 907 KAR 1:626 & E was made by Representative Jordan, seconded by Representative Stein, and approved by voice vote.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the November 18, 1998 meeting, which are hereby incorporated by reference.

**SPECIAL SUBCOMMITTEE ON ENERGY**  
**Meeting of December 18, 1998**

The following administrative regulations were available for consideration by the Special Subcommittee on Energy during its meeting of December 18, 1998, having been referred to the Committee on December 17, 1998, pursuant to KRS 13A.290(6):  
807 KAR 5:063

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 18, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT**  
**Meeting of January 8, 1999**

The following administrative regulations were considered by the Interim Joint Committee on Local Government during its meeting of January 8, 1999, having been referred to the Committee on December 17, 1998, pursuant to KRS 13A.290(6):

815 KAR 45:025  
815 KAR 45:035

**VOLUME 25, NUMBER 8 – FEBRUARY 1, 1999**

815 KAR 45:050  
815 KAR 45:060  
815 KAR 45:080  
815 KAR 45:090  
815 KAR 45:100

The following administrative regulations were approved at the Committee meeting pursuant to KRS 13A.320:

815 KAR 45:025  
815 KAR 45:035  
815 KAR 45:050  
815 KAR 45:060  
815 KAR 45:080

None of the administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

The following administrative regulations were deferred pursuant to KRS 13A.300:

815 KAR 45:090  
815 KAR 45:100

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 8, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE  
Meeting of December 16, 1998**

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of December 16, 1998, having been referred to the Committee on November 17, 1998, pursuant to KRS 13A.290(6):

900 KAR 2:031  
902 KAR 20:081  
902 KAR 55:105  
902 KAR 55:110  
902 KAR 55:115  
905 KAR 2:141  
907 KAR 1:034  
907 KAR 1:035  
908 KAR 1:340

Kay Kirkland, Department for Medicaid Services, Cabinet for Health Services, answered questions about fee increases and health screenings for 907 KAR 1:034 and 907 KAR 1:034.

A motion was made, seconded, and approved by voice vote to approve 900 KAR 2:031, 902 KAR 20:081, 902 KAR 55:105, 902 KAR 55:110, 902 KAR 55:115, 905 KAR 2:141, 907 KAR 1:034, 907 KAR 1:035, AND 908 KAR 1:340.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the December 16, 1998 meeting, which are hereby incorporated by reference.

# CUMULATIVE SUPPLEMENT

**Locator Index - Effective Dates ..... H2**

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 ..... H14**

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 ..... H24**

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
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## VOLUME 24

The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

12 KAR 4:170E	2326	4-7-98
Expired		10-18-98
31 KAR 4:120E	2575	4-22-98
Expired		11-18-98
200 KAR 15:010E	2327	4-7-98
Expired		10-18-98
302 KAR 20:040E	2330	4-3-98
Replaced		10-16-98
401 KAR 5:002E	2576	4-17-98
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

907 KAR 1:645E	2350	4-6-98
Replaced		9-16-98
907 KAR 1:755E	2100	2-18-98
Withdrawn		9-1-98
907 KAR 3:030E	1639	12-19-97
Expired		7-21-98
908 KAR 2:210E	2352	4-6-98
Expired		10-18-98

### ORDINARY ADMINISTRATIVE REGULATIONS:

202 KAR 3:010	2782	(See Volume 25)
202 KAR 3:030	2783	(See Volume 25)
600 KAR 6:050		
Amended	2760	(See Volume 25)
600 KAR 6:060		
Amended	2762	(See Volume 25)
600 KAR 6:080		
Amended	2765	(See Volume 25)
601 KAR 2:020	2784	(See Volume 25)
810 KAR 1:001		
Amended	2445	(See Volume 25)
810 KAR 1:009		
Amended	2447	10-12-98
810 KAR 1:015		
Amended	2450	(See Volume 25)
810 KAR 1:016		
Amended	2452	(See Volume 25)
811 KAR 1:090		
Amended	2454	(See Volume 25)
811 KAR 1:215		
Amended	2456	10-12-98
902 KAR 50:031		
Amended	1573	
902 KAR 50:032		
Amended	1575	
902 KAR 55:033		
Amended	1578	
907 KAR 1:595	2788	(See Volume 25)
907 KAR 3:030	2790	(See Volume 25)
908 KAR 1:311	2484	
908 KAR 1:370	2485	(See Volume 25)

\*Statement of Consideration Not Filed by Deadline

## VOLUME 25

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
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**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)

20 KAR 1:040E	1015	10-15-98
20 KAR 1:070E	1017	10-15-98
20 KAR 1:080E	1018	10-15-98
30 KAR 4:010E	539	7-15-98

31 KAR 4:130E	36	5-20-98
Expired		12-18-98
40 KAR 2:070E	540	7-15-98
Replaced	1581	1-19-99
40 KAR 2:075E	541	7-15-98
Replaced	1582	1-19-99
40 KAR 2:076E	543	7-15-98
Replaced	1584	1-19-99
40 KAR 6:010E	543	7-15-98
Replaced	1265	1-19-99



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
105 KAR 1:170E	222	7-14-98	735 KAR 2:060E	243	6-30-98
Replaced	589	11-20-98	Expired		1-18-99
105 KAR 1:205E	1561	12-1-98	750 KAR 1:010E	1022	9-23-98
105 KAR 1:230E	223	7-14-98	750 KAR 2:010E	244	7-1-98
Replaced	1351	11-24-98	787 KAR 1:200E	245	6-30-98
200 KAR 5:021E	548	7-17-98	Replaced	914	12-17-98
200 KAR 6:060E	225	7-15-98	803 KAR 2:306E	246	7-2-98
Replaced	946	12-17-98	Expired		1-18-99
200 KAR 22:005E	549	7-17-98	803 KAR 2:307E	249	7-2-98
Expired		2-18-99	Expired		1-18-99
201 KAR 9:330E	1338	11-12-98	803 KAR 2:308E	251	7-2-98
201 KAR 9:335E	1339	11-12-98	Expired		1-18-99
201 KAR 9:340E	1340	11-12-98	803 KAR 2:311E	253	7-2-98
201 KAR 20:420E	1829	1-4-99	Expired		1-18-99
201 KAR 20:430E	1830	1-4-99	803 KAR 2:316E	255	7-2-98
201 KAR 20:440E	1830	1-4-99	Expired		1-18-99
301 KAR 2:181E	551	7-16-98	803 KAR 2:317E	256	7-2-98
Replaced	1271	1-19-99	Expired		1-18-99
301 KAR 2:221E	1341	10-22-98	803 KAR 2:320E	258	7-13-98
301 KAR 2:222E	1343	10-22-98	Withdrawn		1-15-99
301 KAR 2:223E	1347	10-22-98	Resubmitted	1835	1-15-99
301 KAR 2:225E	552	8-10-98	803 KAR 2:403E	264	7-2-98
Replaced	1095	1-19-99	Expired		1-18-99
301 KAR 2:226E	1019	9-23-98	803 KAR 2:404E	265	7-2-98
301 KAR 6:005E	554	7-16-98	Expired		1-18-99
Replaced	1272	1-19-99	803 KAR 2:418E	269	7-2-98
405 KAR 10:010E	1562	11-24-98	Expired		1-18-99
500 KAR 13:010E	1831	12-30-98	803 KAR 2:425E	271	7-2-98
501 KAR 1:030E	226	7-14-98	Withdrawn		1-15-99
Replaced	1352	12-17-98	Resubmitted	1840	1-15-99
501 KAR 1:050E	229	7-14-98	803 KAR 2:500E	1841	1-15-99
Replaced	1037	11-20-98	803 KAR 25:175E	1349	10-28-98
501 KAR 2:070E	230	7-14-98	806 KAR 15:040E	560	7-21-98
Replaced	1355	12-17-98	806 KAR 17:160E	272	6-19-98
501 KAR 6:020E	231	7-14-98	Replaced	1363	12-17-98
Replaced	1355	12-17-98	806 KAR 17:170E	564	8-6-98
501 KAR 6:190E	1564	12-4-98	806 KAR 17:180E	275	6-19-98
501 KAR 6:200E	1567	12-4-98	Expired		1-18-99
501 KAR 6:210E	1568	12-4-98	806 KAR 17:190E	277	7-2-98
501 KAR 14:010E	233	7-14-98	806 KAR 17:200E	278	7-2-98
Replaced	1038	11-20-98	Expired		1-18-99
502 KAR 31:020E	234	7-14-98	806 KAR 17:210E	280	7-2-98
Expired		1-18-99	806 KAR 17:220E	281	7-2-98
503 KAR 1:140E	1570	11-30-98	Replaced	1363	12-17-98
601 KAR 1:040E	1573	12-14-98	904 KAR 2:006E	775	9-14-98
603 KAR 7:080E	37	5-15-98	904 KAR 2:018E	42	5-15-98
Expired		12-18-98	Expired		12-18-98
702 KAR 7:125E	555	8-6-98	904 KAR 2:116E	782	9-15-98
Replaced	1597	1-19-99	904 KAR 2:370E	786	9-14-98
704 KAR 3:480E	1021	10-14-98	904 KAR 2:380E	44	6-15-98
704 KAR 20:720E	558	7-15-98	Expired		12-18-98
Replaced	1602	1-19-99	904 KAR 2:490E	283	6-22-98
705 KAR 4:240E	559	8-6-98	Expired		1-18-99
Replaced	1284	1-19-99	907 KAR 1:013E	1025	9-29-98
725 KAR 1:070E	1832	1-6-99	907 KAR 1:025E	285	6-30-98
735 KAR 2:010E	236	6-30-98	Withdrawn		1-15-99
Replaced	1357	12-3-98	Resubmitted	1844	1-15-99
735 KAR 2:020E	238	6-30-98	907 KAR 1:635E	790	9-1-98
Replaced	1358	12-3-98	907 KAR 1:755E	793	9-1-98
735 KAR 2:030E	239	6-30-98	907 KAR 3:065E	48	5-15-98
Replaced	1359	12-3-98	Expired		12-18-98
735 KAR 2:040E	240	6-30-98	907 KAR 3:090E	1851	1-11-99
Replaced	1360	12-3-98	907 KAR 3:100E	1854	1-11-99
735 KAR 2:050E	241	6-30-98	907 KAR 4:020E	1856	1-15-99
Replaced	1361	12-3-98	921 KAR 2:015E	1862	1-14-99

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>			11 KAR 14:050	457	
2 KAR 2:010			As Amended	815	10-1-98
Amended	1425		11 KAR 14:060	459	
As Amended	1868		As Amended	815	10-1-98
2 KAR 2:020			11 KAR 14:070	460	
Amended	1426		As Amended	815	10-1-98
As Amended	1868		11 KAR 14:080	462	
2 KAR 2:040			As Amended	815	10-1-98
Amended	1427		11 KAR 15:010	464	
As Amended	1868		As Amended	816	10-1-98
9 KAR 1:010			11 KAR 15:020	465	
Amended	883	1-19-99	As Amended	817	10-1-98
9 KAR 1:015			11 KAR 15:030	467	
Amended	883		As Amended	817	10-1-98
As Amended	1577	1-19-99	11 KAR 15:040	468	
9 KAR 1:030			As Amended	818	10-1-98
Amended	884		11 KAR 15:050	470	
As Amended	1577	1-19-99	As Amended	818	10-1-98
9 KAR 1:035			11 KAR 15:060	472	
Repealed	1259	1-19-99	As Amended	819	10-1-98
9 KAR 1:036	1259	1-19-99	11 KAR 15:070	474	
9 KAR 1:040			As Amended	819	10-1-98
Amended	1086		12 KAR 1:115		
As Amended	1579	1-19-99	Amended	1943	
9 KAR 1:050			12 KAR 2:031		
Amended	887		Amended	892	
As Amended	1580	1-19-99	12 KAR 2:041		
11 KAR 3:100			Amended	1087	
Amended	375		12 KAR 2:046		
As Amended	798	10-1-98	Amended	893	
11 KAR 4:050			12 KAR 2:051		
Amended	385		Amended	894	
As Amended	806	10-1-98	12 KAR 2:056		
11 KAR 4:070	450		Amended	894	
As Amended	808	10-1-98	12 KAR 2:061		
11 KAR 5:001			Amended	895	
Amended	390		12 KAR 2:066		
As Amended	809	10-1-98	Amended	897	
11 KAR 5:130			12 KAR 3:012		
Amended	888	12-3-98	Amended	1088	
11 KAR 8:030			12 KAR 3:017		
Amended	890		Amended	1090	
Amended	1398	1-19-99	12 KAR 3:022		
11 KAR 12:010			Amended	898	
Amended	392		12 KAR 3:027		
As Amended	810	10-1-98	Amended	899	
11 KAR 12:040			12 KAR 3:037		
Amended	393		Amended	900	
As Amended	811	10-1-98	12 KAR 3:042		
11 KAR 12:060			Amended	1091	
Amended	395		13 KAR 2:020		
As Amended	812		Amended	1428	
Reprint	991	10-1-98	Amended	1899	
11 KAR 12:070			13 KAR 2:090	1479	
Amended	397		Amended	1903	
As Amended	812	10-1-98	30 KAR 4:010	1259	
11 KAR 14:010	451		As Amended	1869	
As Amended	813	10-1-98	31 KAR 4:120	1260	1-19-99
11 KAR 14:020	453		31 KAR 4:130	1261	1-19-99
As Amended	813	10-1-98	32 KAR 2:050		
11 KAR 14:030	454		Amended	1092	
As Amended	814	10-1-98	As Amended	1581	1-19-99
11 KAR 14:040	456		32 KAR 2:210		
As Amended	814	10-1-98	Amended	1680	



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
40 KAR 2:070			201 KAR 8:140		
Amended	1093		Amended	590	
As Amended	1581	1-19-99	As Amended	1029	11-18-98
40 KAR 2:075	1263		201 KAR 8:440	475	
As Amended	1582	1-19-99	As Amended	819	9-16-98
40 KAR 2:076	1265		201 KAR 9:320	687	
As Amended	1584	1-19-99	201 KAR 10:050		
40 KAR 6:010	1265	1-19-99	Amended	1432	
101 KAR 1:325			201 KAR 10:080		
Amended	398	10-12-98	Amended	1433	
103 KAR 7:010			201 KAR 11:230		
Repealed	677	10-22-98	Amended	1681	
103 KAR 7:011	677	10-22-98	201 KAR 11:400		
103 KAR 7:020			Amended	1683	
Repealed	677	10-22-98	201 KAR 11:410	1745	
103 KAR 44:060	1743		201 KAR 14:180	1482	
105 KAR 1:170			201 KAR 15:030		
Amended	589	11-20-98	Amended	592	
105 KAR 1:230			As Amended	1030	11-13-98
Amended	901		201 KAR 20:070		
As Amended	1351	11-24-98	Amended	592	
200 KAR 5:021			As Amended	1030	11-18-98
Amended	903		201 KAR 20:090		
200 KAR 6:060	946	12-17-98	Repealed	1031	11-18-98
200 KAR 7:010			201 KAR 20:091	689	
Repealed	139	9-8-98	As Amended	1031	11-18-98
200 KAR 7:011	139	9-8-98	201 KAR 20:110		
200 KAR 15:010			Amended	594	
Amended	400	10-22-98	As Amended	1031	11-18-98
201 KAR 2:015			201 KAR 20:240		
Amended	904		Amended	596	
Died		11-11-98	As Amended	1032	11-18-98
201 KAR 2:030			201 KAR 20:260		
Amended	906		Amended	597	
Died		11-11-98	As Amended	1033	11-18-98
201 KAR 2:040			201 KAR 20:370		
Amended	907		Amended	598	
Died		11-11-98	As Amended	1034	11-18-98
201 KAR 2:050			Amended	1945	
Amended	908		201 KAR 25:031		
Died		11-11-98	Amended	1947	
201 KAR 2:165			201 KAR 26:121		
Amended	1944		Amended	403	
201 KAR 2:185			As Amended	820	9-16-98
Amended	1945		201 KAR 26:125		
201 KAR 6:010			Amended	406	
Repealed	1268	1-19-99	As Amended	823	9-16-98
201 KAR 6:011	1268	1-19-99	201 KAR 26:180		
201 KAR 6:020	678		Amended	407	
As Amended	1584	1-19-99	As Amended	823	9-16-98
201 KAR 6:030	679		201 KAR 26:215		
As Amended	1584	1-19-99	Amended	408	9-16-98
201 KAR 6:040	680		201 KAR 34:030	476	
As Amended	1585	1-19-99	As Amended	824	10-12-98
201 KAR 6:050	681		201 KAR 34:040	476	
As Amended	1585	1-19-99	As Amended	826	10-12-98
201 KAR 6:060	681		201 KAR 35:030	947	
As Amended	1585	1-19-99	201 KAR 35:040	949	
201 KAR 6:070	682		201 KAR 36:020	480	
As Amended	1586	1-19-99	As Amended	828	9-16-98
201 KAR 6:080	685		201 KAR 36:030	481	
As Amended	1587	1-19-99	As Amended	829	9-16-98
201 KAR 6:090	686		201 KAR 36:040	483	
As Amended	1588	1-19-99	As Amended	831	9-16-98
			201 KAR 36:050	485	
			As Amended	832	9-16-98

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
202 KAR 3:010			401 KAR 59:001		
As Amended	299		Amended	1446	
202 KAR 3:030			401 KAR 60:005	2042	
Amended	584		401 KAR 61:001		
As Amended	834	10-12-98	Amended	1450	
202 KAR 5:010	1269		401 KAR 63:001		
As Amended	1869		Amended	1454	
301 KAR 1:058			401 KAR 63:002	2046	
Amended	1684		401 KAR 63:021		
301 KAR 1:090			Amended	603	1-19-99
Amended	409		401 KAR 63:022		
As Amended	834	10-16-98	Repealed	711	1-19-99
301 KAR 1:140			401 KAR 63:024	711	1-19-99
Amended	1686		401 KAR 63:105	1483	
301 KAR 1:155			401 KAR 65:001		
Amended	410		Amended	1458	
As Amended	834	10-16-98	401 KAR 68:010	1747	
301 KAR 1:201			401 KAR 68:020	1748	
Amended	411	10-16-98	401 KAR 68:048	1750	
301 KAR 2:020			401 KAR 68:065	1751	
Repealed		4-6-95	401 KAR 68:090	1753	
301 KAR 2:049			401 KAR 68:100	1754	
Amended	1688		401 KAR 68:150	1756	
301 KAR 2:132	2034		401 KAR 68:200	1757	
301 KAR 2:140			402 KAR 3:020	1759	
Amended	1690		402 KAR 3:030	1761	
301 KAR 2:142			405 KAR 7:097	2048	
Amended	1692		415 KAR 1:050		
301 KAR 2:144			Amended	1097	
Amended	1693		415 KAR 1:060		
301 KAR 2:179	486		Amended	1099	
As Amended	835	10-16-98	Amended	1906	
301 KAR 2:181	1271	1-19-99	415 KAR 1:070		
301 KAR 2:221			Amended	1102	
Amended	1695		Amended	1909	
301 KAR 2:222			415 KAR 1:080		
Amended	1697		Amended	1104	
301 KAR 2:223			Amended	1912	
Amended	1700		415 KAR 1:090		
301 KAR 2:225			Amended	1110	
Amended	1095	1-19-99	Amended	1917	
301 KAR 2:226	1746		415 KAR 1:100		
301 KAR 2:251			Amended	1112	
Amended	1435		415 KAR 1:110		
301 KAR 5:020			Amended	1114	
Amended	600		Amended	1919	
As Amended	1035	11-18-98	415 KAR 1:114		
301 KAR 5:030			Amended	1119	
Amended	602		415 KAR 1:116	1272	
As Amended	1036	11-18-98	Amended	1925	
301 KAR 6:005	1272	1-19-99	415 KAR 1:120		
301 KAR 6:051	2035		Amended	1122	
302 KAR 20:040			415 KAR 1:130		
Amended	415	10-16-98	Amended	1128	
302 KAR 20:051	488		415 KAR 1:135	1274	
Withdrawn		10-9-98	415 KAR 1:140	2052	
307 KAR 6:010	2035		501 KAR 1:030		
401 KAR 5:002	690	11-18-98	Amended	607	
401 KAR 5:009	701		As Amended	1352	12-17-98
Amended	1061	11-19-98	501 KAR 1:050		
401 KAR 50:010			Amended	610	
Amended	1437		As Amended	1037	11-20-98
401 KAR 51:001			501 KAR 2:070	713	
Amended	1442		As Amended	1355	12-17-98
401 KAR 57:002	2037				
401 KAR 57:019	2039				



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
501 KAR 6:020			601 KAR 1:115		
Amended	611		Amended	418	
As Amended	1355	12-17-98	Amended	871	
Amended	1461		As Amended	1877	
Amended	1702		601 KAR 1:140		
501 KAR 6:040			Amended	420	
Amended	125	10-12-98	As Amended	1039	11-20-98
501 KAR 6:110			601 KAR 1:145		
Amended	126	10-12-98	Amended	422	
501 KAR 6:140			Amended	873	
Amended	1948		As Amended	1040	11-20-98
501 KAR 6:170			601 KAR 1:200		
Amended	1950		Amended	1704	
501 KAR 6:190	2054		601 KAR 1:201	1762	
501 KAR 6:200	2057		601 KAR 2:020		
501 KAR 6:210	2058		Amended	352	
501 KAR 6:999			As Amended	565	9-1-98
Amended	1463		601 KAR 9:135		
501 KAR 8:010			Amended	425	
Repealed	490	10-12-98	Amended	875	
501 KAR 8:011	490	10-12-98	As Amended	1042	11-20-98
501 KAR 14:010	713		603 KAR 4:050	1765	
As Amended	1038	11-20-98	603 KAR 4:055	1767	
502 KAR 31:020	1276		603 KAR 7:080	1492	
As Amended	1590	1-19-99	701 KAR 5:020		
503 KAR 1:060			Repealed	1279	1-19-99
Amended	613		701 KAR 5:021	1279	1-19-99
As Amended	1870		701 KAR 5:120	1279	1-19-99
503 KAR 1:080			702 KAR 3:060		
Amended	614		Amended	617	
As Amended	1871		As Amended	1045	11-5-98
503 KAR 1:100			702 KAR 3:110		
Amended	1951		Amended	618	11-5-98
503 KAR 1:140	2059		702 KAR 4:150		
503 KAR 3:005	1278	1-19-99	Repealed	1281	1-19-99
503 KAR 3:010			702 KAR 4:151	1281	1-19-99
Amended	1130		702 KAR 6:100	1768	
As Amended	1591	1-19-99	702 KAR 7:065		
503 KAR 3:040	2063		Amended	127	
505 KAR 1:010	1485		As Amended	1046	11-5-98
As Amended	1872		702 KAR 7:125		
505 KAR 1:040			Amended	1137	
Amended	909		As Amended	1597	1-19-99
As Amended	1872		703 KAR 5:010	1281	1-19-99
505 KAR 1:050	1486		704 KAR 3:035		
As Amended	1874		Amended	1141	1-19-99
505 KAR 1:060	1488		704 KAR 3:480	1770	
As Amended	1875		704 KAR 7:070		
505 KAR 1:070	1490		Amended	1143	1-19-99
As Amended	1876		704 KAR 20:050		
600 KAR 5:010			Repealed	1282	1-19-99
Amended	615		704 KAR 10:051	1282	1-19-99
As Amended	1038	11-20-98	704 KAR 20:015		
600 KAR 6:010			Amended	1711	
Amended	1952		704 KAR 20:022		
600 KAR 6:050			Amended	1712	
As Amended	836	10-6-98	704 KAR 20:305		
600 KAR 6:060			Amended	429	
As Amended	837	10-6-98	As Amended	841	10-1-98
600 KAR 6:065	2067		704 KAR 20:460		
600 KAR 6:070			Amended	1144	
Amended	1954		As Amended	1601	1-19-99
600 KAR 6:080			704 KAR 20:690		
Amended	350		Amended	129	9-3-98
As Amended	839	10-6-98			



**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>
704 KAR 20:700			803 KAR 2:306		
Amended	910		Amended	1151	1-19-99
As Amended	1357	12-3-98	803 KAR 2:307		
704 KAR 20:710			Amended	1153	1-19-99
Amended	619		803 KAR 2:308		
As Amended	1046	11-5-98	Amended	1155	1-19-99
704 KAR 20:720	1283		803 KAR 2:311		
As Amended	1602	1-19-99	Amended	1158	1-19-99
705 KAR 4:240	1284	1-19-99	803 KAR 2:316		
707 KAR 1:270	1771		Amended	1159	1-19-99
725 KAR 1:070	714	11-5-98	803 KAR 2:317		
735 KAR 1:010			Amended	1161	1-19-99
Amended	1146	1-19-99	803 KAR 2:320		
735 KAR 1:020			Amended	1162	1-19-99
Amended	1149	1-19-99	803 KAR 2:403		
735 KAR 2:010	951		Amended	1168	1-19-99
As Amended	1357	12-3-98	803 KAR 2:404		
735 KAR 2:020	953		Amended	1170	1-19-99
As Amended	1358	12-3-98	803 KAR 2:418		
735 KAR 2:030	954		Amended	1173	1-19-99
As Amended	1359	12-3-98	803 KAR 2:425		
735 KAR 2:040	955		Amended	1175	1-19-99
As Amended	1360	12-3-98	803 KAR 25:021		
735 KAR 2:050	956		Amended	1464	
As Amended	1361	12-3-98	Amended	1927	
735 KAR 2:060	958	1-19-99	803 KAR 25:026		
750 KAR 1:010			Amended	1176	
Amended	1959		Amended	1667	
750 KAR 2:010			As Amended	1879	
Amended	912		803 KAR 25:089		
As Amended	1878		Amended	915	
755 KAR 1:070	959	12-3-98	As Amended	1362	11-18-98
772 KAR 1:010	139	9-3-98	803 KAR 25:170		
772 KAR 1:020	141	9-3-98	Amended	1180	
772 KAR 1:030	142	9-3-98	As Amended	1883	
772 KAR 1:040	142	9-3-98	803 KAR 25:175		
772 KAR 1:050	144	9-3-98	Amended	1962	
772 KAR 1:060	145	9-3-98	803 KAR 25:240	1285	
772 KAR 1:070	146	9-3-98	Amended	1671	
781 KAR 1:030			As Amended	1884	
Amended	131		803 KAR 50:010		
As Amended	844	10-1-98	Amended	1467	
781 KAR 1:050			804 KAR 4:190		
Amended	431		Repealed	716	11-13-98
As Amended	845	10-1-98	804 KAR 4:195	716	11-13-98
781 KAR 1:060			804 KAR 4:350	717	
Repealed	566	9-3-98	As Amended	1048	11-13-98
781 KAR 1:061			806 KAR 3:130		
As Amended	566	9-3-98	Repealed	852	10-12-98
781 KAR 1:070			806 KAR 3:131	491	
Amended	913		As Amended	852	10-12-98
As Amended	1362	12-3-98	806 KAR 9:240		
782 KAR 1:030			Repealed	1048	11-20-98
Amended	133		806 KAR 9:241	492	
As Amended	847	10-1-98	As Amended	1048	11-20-98
782 KAR 1:040			806 KAR 14:130	1496	
Amended	136		806 KAR 15:040	1772	
Withdrawn		8-31-98	806 KAR 17:140		
787 KAR 1:200			Repealed by 806-17:141E		4-15-98
Amended	914	12-17-98	806 KAR 17:150	718	
789 KAR 1:010	147		As Amended	1049	11-20-98
As Amended	850	10-1-98	806 KAR 17:160	960	
802 KAR 1:010			As Amended	1363	12-17-98
Amended	434		806 KAR 17:170	1775	
Amended	880		806 KAR 17:180	961	
			Amended	1400	1-19-99

**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>
806 KAR 17:190	1286		900 KAR 1:070		
806 KAR 17:210	1288		Recodified as 920-1:070		10-30-98
As Amended	1885		900 KAR 2:020		
806 KAR 17:220	963		Amended	1216	1-19-99
As Amended	1363	12-17-98	900 KAR 2:030		
806 KAR 39:080			Repealed	1364	12-16-98
Repealed	852	10-12-98	900 KAR 2:031	965	
806 KAR 39:081	493		As Amended	1364	12-16-98
As Amended	852	10-12-98	900 KAR 6:030		
807 KAR 5:063			Amended	1217	
Amended	916		900 KAR 6:050		
Amended	1402	12-18-98	Amended	1218	
808 KAR 1:030			Amended	1672	
Repealed	1289	1-19-99	As Amended	1885	
808 KAR 1:031	1289	1-19-99	902 KAR 2:090		
808 KAR 1:060			Amended	620	
Amended	1182	1-19-99	As Amended	1619	1-19-99
808 KAR 1:070			902 KAR 4:110	1291	
Repealed	1289	1-19-99	Amended	1930	
808 KAR 3:050			902 KAR 8:019	1498	
Amended	1183	1-19-99	Withdrawn		12-16-98
808 KAR 6:005			902 KAR 8:022	1498	
Repealed	1290	1-19-99	Withdrawn		12-16-98
808 KAR 6:006	1290	1-19-99	902 KAR 8:023	1501	
808 KAR 12:020			Withdrawn		12-16-98
Amended	1185		902 KAR 8:024	1504	
As Amended	1602	1-19-99	Withdrawn		12-16-98
810 KAR 1:001			902 KAR 8:025	1506	
As Amended	852	10-12-98	Withdrawn		12-16-98
810 KAR 1:015			902 KAR 8:026	1512	
As Amended	854	10-12-98	Withdrawn		12-16-98
810 KAR 1:016			902 KAR 8:027	1513	
As Amended	855	10-12-98	Withdrawn		12-16-98
811 KAR 1:090			902 KAR 8:028	1516	
As Amended	856	10-12-98	Withdrawn		12-16-98
815 KAR 7:105			902 KAR 13:010		
Amended	1186		Amended	1963	
815 KAR 20:120			902 KAR 13:025	2069	
Amended	1187		902 KAR 13:030		
815 KAR 35:015			Amended	1965	
Amended	1193		902 KAR 13:050		
815 KAR 45:025			Amended	1966	
Amended	1196		902 KAR 13:055	2072	
As Amended	1603	1-8-99	902 KAR 13:070		
815 KAR 45:035			Amended	1975	
Amended	1197		902 KAR 13:080		
As Amended	1604	1-8-99	Amended	1978	
815 KAR 45:050			902 KAR 13:090		
Amended	1200		Amended	1981	
As Amended	1606	1-8-99	902 KAR 13:110		
815 KAR 45:060			Amended	1984	
Amended	1202		902 KAR 13:131	2073	
As Amended	1608	1-8-99	902 KAR 14:080		
815 KAR 45:080			Amended	1225	
Amended	1205		As Amended	1622	1-19-99
As Amended	1610	1-8-99	902 KAR 20:016		
815 KAR 45:090			Amended	1714	
Amended	1209		902 KAR 20:036		
As Amended	1613		Amended	1232	1-19-99
815 KAR 45:100			902 KAR 20:041		
Amended	1213		Amended	1722	
As Amended	1616		902 KAR 20:078		
900 KAR 1:030			Amended	1725	
Recodified as 920-1:030		10-30-98			
900 KAR 1:041	2068				



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
902 KAR 20:081			904 KAR 2:400		
Amended	623		Amended	642	
Amended	1071		As Amended	1640	1-19-99
As Amended	1364		904 KAR 2:410		
902 KAR 20:134	1292		Amended	644	
902 KAR 20:360	1293		As Amended	1642	1-19-99
Amended	1931		904 KAR 2:470		
902 KAR 22:040	2074		Recodified as 921-5:470		10-30-98
902 KAR 55:010			904 KAR 2:490	969	
Amended	625		Amended	1405	1-19-99
As Amended	1628	1-19-99	904 KAR 2:500	2075	
902 KAR 55:030			904 KAR 2:510	2077	
Amended	627		904 KAR 3:010		
As Amended	1630	1-19-99	Recodified as 921-3:010		10-30-98
902 KAR 55:045			904 KAR 3:020		
Amended	629		Recodified as 921-3:020		10-30-98
As Amended	1631	1-19-99	904 KAR 3:025		
902 KAR 55:105	721		Amended	919	
Amended	1074		As Amended	1369	
As Amended	1366		904 KAR 3:030		
902 KAR 55:110	966		Recodified as 921-3:030		10-30-98
As Amended	1367		904 KAR 3:035		
902 KAR 55:115	723		Recodified as 921-3:035		10-30-98
As Amended	1369		904 KAR 3:042		
904 KAR 2:001			Amended	922	
Amended	632		As Amended	1371	
As Amended	1633	1-19-99	904 KAR 3:045		
904 KAR 2:006			Recodified as 921-3:045		10-30-98
Amended	1989		904 KAR 3:050		
904 KAR 2:015			Recodified as 921-3:050		10-30-98
Recodified as 921-2:015		10-30-98	904 KAR 3:060		
904 KAR 2:016			Recodified as 921-3:060		10-30-98
Amended	1997		904 KAR 3:070		
904 KAR 2:017			Recodified as 921-3:070		10-30-98
Amended	2006		904 KAR 3:080		
904 KAR 2:018	967		Recodified as 921-3:080		10-30-98
As Amended	1635	1-19-99	905 KAR 1:010		
904 KAR 2:020			Recodified as 922-1:010		10-30-98
Amended	634		905 KAR 1:030		
As Amended	1635		Recodified as 922-1:030		10-30-98
As Amended	1892	1-19-99	905 KAR 1:050		
904 KAR 2:035			Amended	1477	
Recodified as 921-2:035		10-30-98	As Amended	1893	
904 KAR 2:040			905 KAR 1:140		
Recodified as 921-2:040		10-30-98	Recodified as 922-1:140		10-30-98
904 KAR 2:046			905 KAR 1:150		
Recodified as 921-2:046		10-30-98	Recodified as 922-1:150		10-30-98
904 KAR 2:050			905 KAR 1:170		
Recodified as 921-2:050		10-30-98	Recodified as 922-1:170		10-30-98
904 KAR 2:055			905 KAR 1:210		
Recodified as 921-2:055		10-30-98	Recodified as 922-1:210		10-30-98
904 KAR 2:060			905 KAR 1:230		
Recodified as 921-2:060		10-30-98	Recodified as 922-1:230		10-30-98
904 KAR 2:116			905 KAR 1:300		
Amended	2009		Recodified as 922-1:300		10-30-98
904 KAR 2:118			905 KAR 1:310		
Recodified as 921-4:118		10-30-98	Recodified as 922-1:310		10-30-98
904 KAR 2:370			905 KAR 1:320		
Amended	2013		Amended	926	
904 KAR 2:380			As Amended	1649	1-19-99
Amended	636		905 KAR 1:330		
As Amended	1636	1-19-99	Amended	1236	
904 KAR 2:390			As Amended	1652	1-19-99
Amended	640		905 KAR 1:350		
As Amended	1639	1-19-99	Recodified as 922-1:350		10-30-98

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
905 KAR 1:360			905 KAR 8:200		
Recodified as 922-1:360		10-30-98	Recodified as 923-1:200		10-30-98
905 KAR 2:001			905 KAR 8:210		
Recodified as 922-2:001		10-30-98	Recodified as 923-1:210		10-30-98
905 KAR 2:090			905 KAR 8:220		
Amended	1729		Recodified as 923-1:210		10-30-98
905 KAR 2:100			905 KAR 8:230		
Amended	1241		Recodified as 923-1:230		10-30-98
As Amended	1657		906 KAR 1:110		
As Amended	1894	1-19-99	Amended	1246	
905 KAR 2:110			Withdrawn		1-6-99
Recodified as 922-2:110		10-30-98	906 KAR 1:130	2079	
905 KAR 2:120			907 KAR 1:002		
Recodified as 922-2:120		10-30-98	Amended	1731	
905 KAR 2:140			907 KAR 1:006		
Repealed	1375	12-16-98	Amended	437	
905 KAR 2:141	724		As Amended	858	9-16-98
As Amended	1375		907 KAR 1:011		
905 KAR 2:160	725		Amended	438	
Amended	1075		As Amended	859	9-16-98
As Amended	1375	11-18-98	907 KAR-1:019		
905 KAR 3:010			Amended	1248	
Recodified as 922-3:010		10-30-98	Amended	1937	
905 KAR 3:020			907 KAR 1:021		
Recodified as 922-3:020		10-30-98	Amended	1252	
905 KAR 3:030			Amended	1940	
Recodified as 922-3:030		10-30-98	907 KAR 1:022		
905 KAR 3:040			Amended	649	
Recodified as 922-3:040		10-30-98	As Amended	1051	10-21-98
905 KAR 5:040			907 KAR 1:026		
Recodified as 922-5:040		10-30-98	Amended	654	
905 KAR 5:050			As Amended	1379	11-18-98
Recodified as 922-5:050		10-30-98	907 KAR 1:034		
905 KAR 5:060			Amended	930	
Recodified as 922-5:060		10-30-98	As Amended	1380	
905 KAR 5:070			907 KAR 1:035		
Recodified as 922-5:070		10-30-98	Amended	933	
905 KAR 5:080			As Amended	1382	
Recodified as 922-5:080		10-30-98	907 KAR 1:038		
905 KAR 6:010			Amended	1254	
Recodified as 922-6:010		10-30-98	As Amended	1660	1-19-99
905 KAR 6:040			907 KAR 1:039		
Recodified as 922-6:040		10-30-98	Amended	1255	
905 KAR 6:060			As Amended	1661	1-19-99
Recodified as 922-6:060		10-30-98	907 KAR 1:360		
905 KAR 6:070			Amended	1257	
Recodified as 922-6:070		10-30-98	As Amended	1662	1-19-99
905 KAR 7:060			907 KAR 1:382		
Recodified as 922-7:060		10-30-98	Repealed	1298	1-19-99
905 KAR 7:100			907 KAR 1:383	1298	1-19-99
Recodified as 922-7:100		10-30-98	907 KAR 1:391	1524	
905 KAR 7:250			907 KAR 1:560		
Recodified as 922-7:250		10-30-98	Amended	655	
905 KAR 8:090			As Amended	1055	10-21-98
Recodified as 923-1:090		10-30-98	907 KAR 1:563	731	
905 KAR 8:140			As Amended	1058	10-21-98
Recodified as 923-1:140		10-30-98	907 KAR 1:595		
905 KAR 8:160			Amended	585	
Recodified as 923-1:160		10-30-98	As Amended	863	9-16-98
905 KAR 8:170			907 KAR 1:605		
Recodified as 923-1:170		10-30-98	Amended	442	
905 KAR 8:180			As Amended	864	9-16-98
Recodified as 923-1:180		10-30-98	907 KAR 1:626		
905 KAR 8:190			Amended	659	
Recodified as 923-1:190		10-30-98	As Amended	1383	11-18-98



**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>
907 KAR 1:635			921 KAR 3:010		
Amended	1735		Recodified from 904-3:010		10-30-98
907 KAR 1:640			921 KAR 3:020		
Amended	444		Recodified from 904-3:020		10-30-98
As Amended	865	9-16-98	921 KAR 3:030		
907 KAR 1:645			Recodified from 904-3:030		10-30-98
Amended	447		921 KAR 3:035		
As Amended	867	9-16-98	Recodified from 904-3:035		10-30-98
907 KAR 1:755	1776		921 KAR 3:045		
907 KAR 1:780	2080		Recodified from 904-3:045		10-30-98
907 KAR 3:005			921 KAR 3:050		
Amended	1737		Recodified from 904-3:050		10-30-98
907 KAR 3:010			921 KAR 3:060		
Amended	1739		Recodified from 904-3:060		10-30-98
907 KAR 3:030			921 KAR 3:070		
Amended	586		Recodified from 904-3:070		10-30-98
As Amended	868	9-16-98	921 KAR 3:080		
907 KAR 3:065	1299		Recodified from 904-3:080		10-30-98
As Amended	1662		921 KAR 4:118		
908 KAR 1:310			Recodified from 904-2:118		10-30-98
Amended	2017		921 KAR 5:470		
908 KAR 1:340			Recodified from 904-2:470		10-30-98
Amended	935		922 KAR 1:010		
As Amended	1384		Recodified from 905-1:010		10-30-98
908 KAR 1:370			922 KAR 1:030		
Amended	355		Recodified from 905-1:030		10-30-98
908 KAR 2:120			922 KAR 1:040		
Amended	661		Recodified from 905-1:040		10-30-98
Amended	1407	1-19-99	922 KAR 1:150		
908 KAR 2:130			Recodified from 905-1:150		10-30-98
Amended	664		922 KAR 1:170		
Amended	1410	1-19-99	Recodified from 905-1:170		10-30-98
908 KAR 2:140			922 KAR 1:210		
Amended	667		Recodified from 905-1:210		10-30-98
Amended	1414	1-19-99	922 KAR 1:230		
908 KAR 2:160			Recodified from 905-1:230		10-30-98
Amended	670		922 KAR 1:300		
Amended	1417	1-19-99	Recodified from 905-1:300		10-30-98
908 KAR 2:200			922 KAR 1:310		
Amended	672		Recodified from 905-1:310		10-30-98
Amended	1420		922 KAR 1:350		
As Amended	1663	1-19-99	Recodified from 905-1:350		10-30-98
908 KAR 2:210	734		922 KAR 1:360		
Amended	1082		Recodified from 905-1:360		10-30-98
As Amended	1393	11-18-98	922 KAR 2:011		
908 KAR 3:025	2082		Recodified from 905-2:011		10-30-98
908 KAR 3:050			922 KAR 2:110		
Amended	1741		Recodified from 905-2:110		10-30-98
920 KAR 1:030			922 KAR 2:120		
Recodified from 900-1:030		10-30-98	Recodified from 905-2:120		10-30-98
920 KAR 1:070			922 KAR 3:010		
Recodified from 900-1:070		10-30-98	Recodified from 905-3:010		10-30-98
921 KAR 2:015			922 KAR 3:020		
Recodified from 904-2:150		10-30-98	Recodified from 905-3:020		10-30-98
921 KAR 2:035			922 KAR 3:030		
Recodified from 904-2:035		10-30-98	Recodified from 905-3:030		10-30-98
921 KAR 2:040			922 KAR 3:040		
Recodified from 904-2:040		10-30-98	Recodified from 905-3:040		10-30-98
921 KAR 2:046			922 KAR 5:040		
Recodified from 904-2:046		10-30-98	Recodified from 905-5:040		10-30-98
921 KAR 2:050			922 KAR 5:050		
Recodified from 904-2:050		10-30-98	Recodified from 905-5:050		10-30-98
921 KAR 2:055			922 KAR 5:060		
Recodified from 904-2:055		10-30-98	Recodified from 905-5:060		10-30-98
921 KAR 2:060			922 KAR 5:070		
Recodified from 904-2:060		10-30-98	Recodified from 905-5:070		10-30-98

**LOCATOR INDEX - EFFECTIVE DATES**

<b>Regulation Number</b>	<b>25 Ky.R Page No.</b>	<b>Effective Date</b>	<b>Regulation Number</b>	<b>25 Ky.R. Page No.</b>	<b>Effective Date</b>
922 KAR 5:080					
Recodified from 905-5:080		10-30-98			
922 KAR 6:010					
Recodified from 905-6:010		10-30-98			
922 KAR 6:040					
Recodified from 905-6:040		10-30-98			
922 KAR 6:060					
Recodified from 905-6:060		10-30-98			
922 KAR 6:070					
Recodified from 905-6:070		10-30-98			
922 KAR 7:060					
Recodified from 905-7:060		10-30-98			
922 KAR 7:100					
Recodified from 905-7:100		10-30-98			
922 KAR 7:250					
Recodified from 905-7:250		10-30-98			
923 KAR 1:090					
Recodified from 905-8:090		10-30-98			
923 KAR 1:140					
Recodified from 905-8:140		10-30-98			
923 KAR 1:160					
Recodified from 905-8:160		10-30-98			
923 KAR 1:170					
Recodified from 905-8:170		10-30-98			
923 KAR 1:180					
Recodified from 905-8:180		10-30-98			
923 KAR 1:190					
Recodified from 905-8:190		10-30-98			
923 KAR 1:200					
Recodified from 905-8:200		10-30-98			
923 KAR 1:210					
Recodified from 905-8:210		10-30-98			
923 KAR 1:220					
Recodified from 905-8:220		10-30-98			
923 KAR 1:230					
Recodified from 905-8:230		10-30-98			



## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

## KRS INDEX

6.666	2 KAR	2:010	44.030	11 KAR	4:050
	2 KAR	2:040	Chapter 45A	200 KAR	5:021
6.787	2 KAR	2:020		200 KAR	7:011
6.807	2 KAR	2:010		907 KAR	4:020E
	2 KAR	2:040	45A.800-45A.835	600 KAR	6:010
6.821	2 KAR	2:010		600 KAR	6:065
	2 KAR	2:040		600 KAR	6:070
6.824	2 KAR	2:010	45A.838	600 KAR	6:010
6.827	2 KAR	2:010		600 KAR	6:065
	2 KAR	2:040		600 KAR	6:070
11A.040	9 KAR	1:050	Chapter 56	200 KAR	7:011
11A.050	9 KAR	1:010	56.463	200 KAR	6:060
11A.080	9 KAR	1:015	56.800	200 KAR	6:060
	9 KAR	1:030	56.803	200 KAR	6:060
11A.100	9 KAR	1:030	61.525	105 KAR	1:170
	9 KAR	1:036	61.526	105 KAR	1:170
11A.211	9 KAR	1:040	61.540	105 KAR	1:170
11A.216	9 KAR	1:040	61.542	105 KAR	1:170
11A.221	9 KAR	1:040	61.545	105 KAR	1:170
11A.231	9 KAR	1:040	61.600	105 KAR	1:205E
11A.233	9 KAR	1:040	61.625	105 KAR	1:170
11A.241	9 KAR	1:040	61.637	105 KAR	1:230
11A.990	9 KAR	1:040	61.874	201 KAR	20:240
12.290	735 KAR	1:010	67A.620	904 KAR	2:410
	735 KAR	1:020	72.020	201 KAR	9:330E
	735 KAR	2:010		201 KAR	9:335E
	735 KAR	2:020		201 KAR	9:340E
	735 KAR	2:030		201 KAR	20:420E
	735 KAR	2:040		201 KAR	20:430E
	735 KAR	2:050		201 KAR	20:440E
	735 KAR	2:060	78.540	105 KAR	1:170
13A.310	900 KAR	1:041	95.620	904 KAR	2:410
Chapter 13B	20 KAR	1:070E	95.878	904 KAR	2:410
	802 KAR	1:010	Chapter 95A	815 KAR	45:035
	907 KAR	1:560		815 KAR	45:060
	907 KAR	1:563		815 KAR	45:080
13B.005-13B.170	905 KAR	1:320	95A.040	815 KAR	45:025
13B.010	500 KAR	13:010E		815 KAR	45:050
13B.170	500 KAR	13:010E		815 KAR	45:090
14.150	30 KAR	4:010	95A.050	815 KAR	45:025
15.330	503 KAR	1:060	95A.262	815 KAR	45:050
	503 KAR	1:080		815 KAR	45:100
	503 KAR	1:100	Chapter 96A	603 KAR	7:080
	503 KAR	1:140	96A.010	907 KAR	3:065
15.450	503 KAR	1:060	96A.095	907 KAR	3:065
15.550	503 KAR	3:040	96A.170	907 KAR	3:065
15A.070	503 KAR	3:005	100.324	807 KAR	5:063
	503 KAR	3:010	103.200	200 KAR	15:010
	503 KAR	3:040	103.2101	200 KAR	15:010
15A.300	505 KAR	1:010	103.286	200 KAR	15:010
	505 KAR	1:050	117.045	31 KAR	4:120
	505 KAR	1:060	117.085	31 KAR	4:130
	501 KAR	1:070	121.130	32 KAR	2:050
16.530	105 KAR	1:170	121.140	32 KAR	2:050
16.582	105 KAR	1:205E		32 KAR	2:210
17.165	905 KAR	2:090	131.310-131.370	802 KAR	1:010
	905 KAR	2:100	131.565	11 KAR	4:050
17.510	502 KAR	31:020	132.420	103 KAR	7:011
17.510-17.991	501 KAR	6:190	133.120	802 KAR	1:010
	501 KAR	6:200	136.392	815 KAR	45:060
17.520	502 KAR	31:020		815 KAR	45:080
17.530	502 KAR	31:020	138.450-138.470	103 KAR	44:060
17.564	501 KAR	6:210	138.463	601 KAR	1:140
18A.075	101 KAR	1:325		601 KAR	1:145
18A.0751	101 KAR	1:325	138.4631	601 KAR	1:145
18A.111	101 KAR	1:325	138.655-138.7291	601 KAR	1:200

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	601 KAR 1:201		301 KAR 2:226
140.250	103 KAR 7:011	150.320	301 KAR 2:225
140.990	103 KAR 7:011	150.330	301 KAR 2:221
148.029	301 KAR 2:179		301 KAR 2:222
149.330	402 KAR 3:020		301 KAR 2:223
	402 KAR 3:030		301 KAR 2:225
149.332	402 KAR 3:020		301 KAR 2:226
	402 KAR 3:030	150.340	301 KAR 2:221
149.334	402 KAR 3:020		301 KAR 2:222
	402 KAR 3:030		301 KAR 2:223
149.342	402 KAR 3:020		301 KAR 2:225
149.344	402 KAR 3:020		301 KAR 2:226
	402 KAR 3:030		301 KAR 2:251
149.346	402 KAR 3:020	150.360	301 KAR 1:090
	402 KAR 3:030		301 KAR 2:140
149.348	402 KAR 3:020		301 KAR 2:142
	402 KAR 3:030		301 KAR 2:144
149.350	402 KAR 3:020		301 KAR 2:179
	402 KAR 3:030		301 KAR 2:223
149.355	402 KAR 3:020		301 KAR 2:225
	402 KAR 3:030	150.370	301 KAR 2:049
150.010	301 KAR 1:058		301 KAR 2:251
	301 KAR 1:155	150.390	301 KAR 2:132
	301 KAR 2:049		301 KAR 2:140
	301 KAR 2:132		301 KAR 2:142
	301 KAR 2:181		301 KAR 2:144
	301 KAR 2:221		301 KAR 2:179
	301 KAR 2:222	150.395	301 KAR 2:132
	301 KAR 2:223	150.399	301 KAR 2:049
	301 KAR 2:226		301 KAR 2:251
150.015	301 KAR 2:223	150.400	301 KAR 1:058
150.025	301 KAR 1:058		301 KAR 2:049
	301 KAR 1:090		301 KAR 2:251
	301 KAR 1:140	150.410	301 KAR 2:049
	301 KAR 2:179		301 KAR 2:251
	301 KAR 2:181	150.445	301 KAR 1:155
	301 KAR 2:049	150.450	301 KAR 1:140
	301 KAR 2:221		301 KAR 1:155
	301 KAR 2:222	150.470	301 KAR 1:201
	301 KAR 2:225	150.600	301 KAR 2:221
	301 KAR 2:226		301 KAR 2:222
	301 KAR 2:251		301 KAR 2:223
150.090	301 KAR 5:030		301 KAR 2:226
150.092	301 KAR 2:181	150.603	301 KAR 2:223
150.105	301 KAR 2:179		301 KAR 2:225
150.120	301 KAR 1:155	150.620	301 KAR 2:049
150.170	301 KAR 1:155		301 KAR 2:181
	301 KAR 2:181		301 KAR 2:225
	301 KAR 2:223	150.630	301 KAR 2:223
	301 KAR 5:030	150.640	301 KAR 2:179
150.175	301 KAR 1:090	150.710	301 KAR 2:179
	301 KAR 1:155	150.990	301 KAR 1:155
	301 KAR 2:140		301 KAR 1:201
	301 KAR 2:142		301 KAR 2:049
	301 KAR 2:144		301 KAR 2:132
	301 KAR 2:223		301 KAR 2:140
	301 KAR 5:030		301 KAR 2:142
150.180	301 KAR 2:132		301 KAR 2:144
150.195	301 KAR 5:020		301 KAR 2:221
	301 KAR 5:030		301 KAR 2:222
150.235	301 KAR 2:223		301 KAR 2:223
	301 KAR 5:030		301 KAR 2:226
150.240	301 KAR 2:223		301 KAR 2:251
150.305	301 KAR 2:140		301 KAR 5:020
	301 KAR 2:142		301 KAR 5:030
	301 KAR 2:144	Chapter 151B	603 KAR 7:080
	301 KAR 2:221	151B.190	781 KAR 1:030
	301 KAR 2:222		781 KAR 1:050
	301 KAR 2:223		781 KAR 1:070



## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

151B.450 789 KAR 1:010  
 151B.465 789 KAR 1:010  
 154.12-203 202 KAR 5:010  
 154.20-250-154.20-284 307 KAR 6:010  
 154.45-090 601 KAR 1:145  
 156.070 701 KAR 5:021  
 702 KAR 3:060  
 702 KAR 4:151  
 702 KAR 6:100  
 702 KAR 7:065  
 156.095 704 KAR 3:035  
 156.0951 704 KAR 3:035  
 156.101 704 KAR 3:035  
 156.160 13 KAR 2:020  
 701 KAR 5:120  
 702 KAR 3:110  
 702 KAR 6:100  
 704 KAR 10:051  
 705 KAR 4:240  
 Chapter 157 603 KAR 7:080  
 750 KAR 1:010  
 702 KAR 3:110  
 707 KAR 1:270  
 702 KAR 7:125  
 702 KAR 7:125  
 702 KAR 7:125  
 704 KAR 20:015  
 704 KAR 20:022  
 157.615 750 KAR 2:010  
 157.650 750 KAR 2:010  
 157.655 750 KAR 2:010  
 157.660 750 KAR 2:010  
 157.665 750 KAR 2:010  
 158.030 702 KAR 7:125  
 158.060 702 KAR 7:125  
 158.070 13 KAR 2:090  
 702 KAR 7:125  
 704 KAR 3:035  
 702 KAR 7:125  
 600 KAR 5:010  
 704 KAR 7:070  
 702 KAR 7:125  
 702 KAR 7:125  
 702 KAR 7:125  
 702 KAR 7:125  
 160.291 702 KAR 3:060  
 160.450 702 KAR 3:060  
 161.010 704 KAR 20:015  
 161.020 704 KAR 20:460  
 704 KAR 20:710  
 161.027 704 KAR 20:460  
 704 KAR 20:710  
 161.028 704 KAR 20:305  
 704 KAR 20:700  
 704 KAR 20:710  
 704 KAR 20:720  
 161.030 704 KAR 20:305  
 704 KAR 20:460  
 704 KAR 20:690  
 704 KAR 20:700  
 704 KAR 20:710  
 704 KAR 20:720  
 161.048 704 KAR 20:720  
 161.095 704 KAR 20:015  
 704 KAR 20:022  
 161.200 702 KAR 7:125  
 161.210 702 KAR 3:060

161.700 904 KAR 2:410  
 Chapter 163 603 KAR 7:080  
 163.450-163.470 782 KAR 1:040  
 163.470 782 KAR 1:030  
 163.510 735 KAR 1:010  
 735 KAR 1:020  
 735 KAR 2:010  
 735 KAR 2:020  
 735 KAR 2:030  
 735 KAR 2:040  
 735 KAR 2:050  
 735 KAR 2:060  
 164.001 13 KAR 2:020  
 164.011 13 KAR 2:020  
 164.020 13 KAR 2:020  
 13 KAR 2:090  
 13 KAR 2:020  
 164.030 11 KAR 5:001  
 164.740-164.785 11 KAR 3:100  
 164.744 11 KAR 8:030  
 164.744-164.753 11 KAR 5:130  
 164.748 11 KAR 3:100  
 11 KAR 4:050  
 164.753 11 KAR 3:100  
 11 KAR 8:030  
 164.7535 11 KAR 5:130  
 164.769 11 KAR 8:030  
 164.780 11 KAR 5:130  
 164.785 11 KAR 5:130  
 164.7911 13 KAR 2:090  
 164.7927 13 KAR 2:090  
 164A.300-164A.380 11 KAR 12:010  
 164A.305 11 KAR 12:040  
 164A.310 11 KAR 12:070  
 164A.325 11 KAR 12:060  
 164A.330 11 KAR 12:040  
 11 KAR 12:070  
 164A.335 11 KAR 12:070  
 164A.350 11 KAR 12:060  
 164A.410 772 KAR 1:060  
 164A.560 772 KAR 1:010  
 772 KAR 1:020  
 164A.565 772 KAR 1:010  
 772 KAR 1:020  
 164A.570 772 KAR 1:030  
 164A.575 772 KAR 1:020  
 772 KAR 1:040  
 164A.580 772 KAR 1:020  
 772 KAR 1:040  
 164A.585 772 KAR 1:020  
 772 KAR 1:040  
 164A.590 772 KAR 1:020  
 164A.595 772 KAR 1:040  
 772 KAR 1:020  
 164A.600 772 KAR 1:040  
 772 KAR 1:020  
 164A.605 772 KAR 1:020  
 772 KAR 1:050  
 164A.610 755 KAR 1:070  
 772 KAR 1:070  
 164A.620 772 KAR 1:020  
 772 KAR 1:060  
 725 KAR 1:070  
 725 KAR 1:070  
 603 KAR 4:055  
 603 KAR 4:055  
 603 KAR 4:055  
 603 KAR 4:055



KRS SECTION	REGULATION	KRS SECTION	REGULATION
177.575	603 KAR 4:055		904 KAR 2:016
177.576	603 KAR 4:055		904 KAR 2:017
186.020	601 KAR 9:135		904 KAR 2:018
186.050	601 KAR 9:135		904 KAR 2:370
186.051	601 KAR 9:135		904 KAR 2:500
186.276	601 KAR 1:115	205.2001	904 KAR 2:016
186.281	601 KAR 1:115	205.2003	904 KAR 2:006
	601 KAR 1:145		904 KAR 2:017
186.286	601 KAR 1:115		904 KAR 2:370
186.570	904 KAR 2:410		904 KAR 2:500
186.650	601 KAR 1:200	205.2005	904 KAR 2:006
	601 KAR 1:201	205.210	904 KAR 2:016
189.910-189.950	902 KAR 14:080	205.211	904 KAR 2:016
Chapter 189A	908 KAR 1:310		904 KAR 2:017
Chapter 194	603 KAR 7:080		904 KAR 2:018
194.025	907 KAR 1:563	205.231	907 KAR 1:560
194.060	505 KAR 1:040		907 KAR 1:563
194A.025	907 KAR 3:065	205.237	907 KAR 1:560
194A.030	902 KAR 4:110		907 KAR 1:563
	906 KAR 1:130	205.245	921 KAR 2:015E
194B.050	904 KAR 2:001	205.520	907 KAR 1:002
	904 KAR 2:116		907 KAR 1:006
	905 KAR 1:050		907 KAR 1:011
Chapter 195	603 KAR 7:080		907 KAR 1:013E
195.025	907 KAR 3:065		907 KAR 1:019
Chapter 196	501 KAR 6:020		907 KAR 1:026
	501 KAR 6:040		907 KAR 1:034
	501 KAR 6:110		907 KAR 1:035
	501 KAR 6:140		907 KAR 1:038
	501 KAR 6:170		907 KAR 1:039
	501 KAR 6:999		907 KAR 1:360
196.035	501 KAR 8:011		907 KAR 1:383
Chapter 197	501 KAR 6:020		907 KAR 1:391
	501 KAR 6:040		907 KAR 1:560
	501 KAR 6:110		907 KAR 1:605
	501 KAR 6:140		907 KAR 1:626
	501 KAR 6:170		907 KAR 1:635
	501 KAR 6:999		907 KAR 1:640
197.020	501 KAR 8:011		907 KAR 1:645
198B.010	815 KAR 7:105		907 KAR 3:005
198B.040	815 KAR 7:105	205.550	907 KAR 3:010
198B.050	815 KAR 7:105	205.560	907 KAR 1:021
198B.060	815 KAR 7:105	205.565	907 KAR 1:013E
198B.080	815 KAR 7:105	205.595	904 KAR 2:410
198B.110	815 KAR 7:105	205.6316	907 KAR 1:019
198B.260	815 KAR 7:105	205.640	907 KAR 1:013E
198B.990	815 KAR 7:105	205.703	904 KAR 2:006
199.420-199.990	505 KAR 1:040	205.710-205.800	904 KAR 2:001
199.555	905 KAR 1:050		904 KAR 2:380
199.557	905 KAR 1:050		904 KAR 2:400
199.892-199.896	905 KAR 2:141		904 KAR 2:410
	905 KAR 2:160	205.8451	907 KAR 3:090E
199.894-199.898	905 KAR 2:090	205.8477	907 KAR 3:090E
199.898	905 KAR 2:100	205.992	904 KAR 2:380
199.8982	905 KAR 2:100	Chapter 209	603 KAR 7:080
200.080-200.120	505 KAR 1:040	Chapter 210	603 KAR 7:080
200.600-200.645	505 KAR 1:040	210.290	900 KAR 1:041
Chapter 202A	603 KAR 7:080	210.700-210.760	908 KAR 3:050
202A.026	908 KAR 3:025	211.090	902 KAR 4:110
202A.051	908 KAR 3:025	211.180	902 KAR 2:090
202A.101	908 KAR 3:025		902 KAR 4:110
202A.201	908 KAR 3:025	211.950-211.956	902 KAR 14:080
202A.241	908 KAR 3:025	211.952	902 KAR 13:010
202A.410	501 KAR 14:010	211.960-211.968	902 KAR 13:010
	908 KAR 3:025		902 KAR 13:025
Chapter 202B	603 KAR 7:080		902 KAR 13:030
Chapter 205	603 KAR 7:080		902 KAR 13:050
205.010	904 KAR 2:006		902 KAR 13:055
205.200	904 KAR 2:006		902 KAR 13:070



KRS SECTION	REGULATION	KRS SECTION	REGULATION
211.990	902 KAR 13:080	218A.160	902 KAR 55:010
	902 KAR 13:090	218A.170	902 KAR 55:010
	902 KAR 13:110	218A.170-218A.240	902 KAR 55:105
	902 KAR 13:010	218A.200	902 KAR 55:010
	902 KAR 13:025	218A.202	902 KAR 55:110
	902 KAR 13:030	218A.204	902 KAR 55:105
	902 KAR 13:050	218A.281	902 KAR 55:105
	902 KAR 13:055	218A.282	902 KAR 55:105
	902 KAR 13:070	218A.284	902 KAR 55:105
	902 KAR 13:080	218A.286	902 KAR 55:105
	902 KAR 13:090	218A.288	902 KAR 55:105
	902 KAR 13:110	Chapter 222	908 KAR 1:310
	902 KAR 20:360		908 KAR 1:340
	902 KAR 2:090	224.01-010	401 KAR 5:002
	902 KAR 20:016		401 KAR 50:010
	201 KAR 8:140		401 KAR 51:001
	902 KAR 2:090		401 KAR 59:001
213.101	902 KAR 2:090		401 KAR 61:001
214.034	603 KAR 7:080		401 KAR 63:001
214.175	900 KAR 2:031		401 KAR 65:001
214.615	900 KAR 2:020	224.10	401 KAR 5:009
215.520	201 KAR 6:011	224.10-100	401 KAR 5:002
215.560	201 KAR 6:020		401 KAR 57:002
Chapter 216	201 KAR 6:030		401 KAR 57:019
216.550	201 KAR 6:080		401 KAR 60:005
216.567	201 KAR 6:090		401 KAR 63:002
216A.070	201 KAR 6:020		401 KAR 63:021
	201 KAR 6:040		401 KAR 63:024
	201 KAR 6:070		401 KAR 63:105
216A.080	201 KAR 6:060		401 KAR 65:001
216A.090	201 KAR 6:050		401 KAR 68:010
	201 KAR 6:060		401 KAR 68:020
216A.110	908 KAR 1:310		401 KAR 68:048
216A.130	900 KAR 6:030		401 KAR 68:065
Chapter 216B	900 KAR 6:050		401 KAR 68:090
216B.010-216B.130	902 KAR 14:080		401 KAR 68:100
	902 KAR 20:016		401 KAR 68:150
	902 KAR 20:036		401 KAR 68:200
	902 KAR 20:041		402 KAR 3:020
	902 KAR 20:078		402 KAR 3:030
	902 KAR 20:081	224.10-110	401 KAR 5:002
	902 KAR 20:134	224.16-050	401 KAR 5:002
	902 KAR 20:360	224.16-060	401 KAR 5:002
216B.020	907 KAR 1:780	224.20-100	401 KAR 50:010
216B.410	201 KAR 9:330E		401 KAR 51:001
	201 KAR 9:335E		401 KAR 57:002
	201 KAR 9:340E		401 KAR 57:019
	201 KAR 20:420E		401 KAR 59:001
	201 KAR 20:430E		401 KAR 60:005
	201 KAR 2):440E		401 KAR 61:001
216B.455	900 KAR 6:030		401 KAR 63:001
	900 KAR 6:050		401 KAR 63:002
	902 KAR 20:134		401 KAR 63:021
216B.990	900 KAR 6:030		401 KAR 63:024
	900 KAR 6:050		401 KAR 63:105
	902 KAR 14:080		401 KAR 68:010
	902 KAR 20:016		401 KAR 68:020
	902 KAR 20:036		401 KAR 68:048
	902 KAR 20:041		401 KAR 68:065
	902 KAR 20:078		401 KAR 68:090
	902 KAR 20:081		401 KAR 68:100
	902 KAR 20:134		401 KAR 68:150
	902 KAR 20:360		401 KAR 68:200
Chapter 217	201 KAR 2:185	224.20-110	401 KAR 50:010
217.005-217.215	902 KAR 55:115		401 KAR 51:001
217.992	902 KAR 55:115		401 KAR 57:002
218A.020-218A.130	902 KAR 55:045		401 KAR 57:019
218A.030-218A.140	902 KAR 55:105		401 KAR 59:001
218A.150	902 KAR 55:010		401 KAR 60:015



## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

224.20-120

224.60-110

224.60-120

224.60-130

224.60-140

401 KAR	61:001	224.70
401 KAR	63:001	224.70-100
401 KAR	63:002	224.70-110
401 KAR	63:021	224.73
401 KAR	63:024	227.450
401 KAR	63:105	227.489
401 KAR	68:010	227.490
401 KAR	68:020	227.4901
401 KAR	68:048	235.040
401 KAR	68:065	235.050
401 KAR	68:090	235.070
401 KAR	68:100	235.080
401 KAR	68:150	235.280
401 KAR	68:200	241.060
401 KAR	50:010	243.040
401 KAR	51:001	250.491-250.631
401 KAR	57:002	
401 KAR	57:019	
401 KAR	59:001	
401 KAR	60:005	
401 KAR	61:001	
401 KAR	63:001	
401 KAR	63:002	
401 KAR	63:021	
401 KAR	63:024	
401 KAR	63:105	
401 KAR	68:010	
401 KAR	68:020	
401 KAR	68:048	Chapter 257
401 KAR	68:065	Chapter 273
401 KAR	68:090	278.020
401 KAR	68:100	278.650
401 KAR	68:150	Chapter 281
401 KAR	68:200	
415 KAR	1:114	
415 KAR	1:140	281.014
415 KAR	1:050	281.615
415 KAR	1:060	
415 KAR	1:070	281.617
415 KAR	1:080	281.618
415 KAR	1:090	281.6185
415 KAR	1:100	281.619
415 KAR	1:110	281.620
415 KAR	1:120	281.625
415 KAR	1:050	281.626
415 KAR	1:060	
415 KAR	1:070	281.627
415 KAR	1:080	281.635
415 KAR	1:090	281.637
415 KAR	1:100	281.650
415 KAR	1:110	
415 KAR	1:114	281.655
415 KAR	1:116	281.660
415 KAR	1:120	287.050
415 KAR	1:130	287.061
415 KAR	1:135	287.180
415 KAR	1:140	288.450
415 KAR	1:050	288.470
415 KAR	1:060	288.600
415 KAR	1:070	289.031
415 KAR	1:080	289.061
415 KAR	1:090	290.015
415 KAR	1:100	290.055
415 KAR	1:110	290.100
415 KAR	1:116	290.225
415 KAR	1:120	290.585
415 KAR	1:130	290.715
415 KAR	1:135	291.440
415 KAR	1:140	291.520

401 KAR	5:009
401 KAR	5:002
401 KAR	5:002
401 KAR	5:009
815 KAR	35:015
815 KAR	35:015
815 KAR	35:015
815 KAR	35:015
301 KAR	6:005
301 KAR	6:005
301 KAR	6:005
301 KAR	6:005
301 KAR	6:051
804 KAR	4:195
804 KAR	4:350
12 KAR	2:031
12 KAR	2:041
12 KAR	2:046
12 KAR	2:051
12 KAR	2:056
12 KAR	2:061
12 KAR	2:066
12 KAR	3:012
12 KAR	3:017
12 KAR	3:022
12 KAR	3:027
12 KAR	3:037
12 KAR	3:042
302 KAR	20:040
603 KAR	7:080
807 KAR	5:063
807 KAR	5:063
601 KAR	1:040E
601 KAR	1:115
603 KAR	7:080
907 KAR	3:065
601 KAR	1:040E
601 KAR	1:140
601 KAR	1:040E
601 KAR	1:040E
907 KAR	3:065
601 KAR	1:040E
601 KAR	1:040E
601 KAR	1:040E
601 KAR	1:140
601 KAR	1:145
601 KAR	1:040E
907 KAR	3:065
601 KAR	1:040E
601 KAR	1:040E
601 KAR	1:140
601 KAR	1:140
601 KARk	1:040E
808 KAR	1:031
808 KAR	1:031
808 KAR	1:060
808 KAR	1:031
808 KAR	6:006
808 KAR	6:006
808 KAR	1:031
808 KAR	1:060
808 KAR	1:031
808 KAR	1:060
808 KAR	3:050
808 KAR	3:050
808 KAR	3:050
808 KAR	3:050
808 KAR	1:031
808 KAR	6:006



KRS SECTION	REGULATION	KRS SECTION	REGULATION
294.020	808 KAR 12:020	314.111	201 KAR 20:260
304.12-085	806 KAR 17:170	314.131	201 KAR 20:260
304.12-230	803 KAR 25:240	314.142	201 KAR 20:240
304.14-120	806 KAR 14:130	314.161	201 KAR 20:240
304.15-020	806 KAR 15:040	314.181	201 KAR 20:420E
304.15-700-304.15-725	806 KAR 15:040		201 KAR 20:430E
304.17A-100	907 KAR 4:020E		201 KAR 20:440E
304.17A-200	806 KAR 17:160	Chapter 315	201 KAR 2:015
	806 KAR 17:170		201 KAR 2:040
304.17A-220	806 KAR 17:160		201 KAR 2:050
	806 KAR 17:170		201 KAR 2:165
304.17A-230	806 KAR 17:170		201 KAR 2:185
304.17A-260	806 KAR 17:220	315.191	201 KAR 2:030
304.17A-300	907 KAR 4:020E	316.125	201 KAR 15:030
304.17A-310	907 KAR 4:020E	316.130	201 KAR 15:030
304.17A-460	806 KAR 17:210	316.140	201 KAR 15:030
304.38	907 KAR 4:020E	318.010	815 KAR 20:120
304.38-050	806 KAR 14:130	318.130	815 KAR 20:120
304.39-350	806 KAR 39:081	318.150	815 KAR 20:120
304.40-075	902 KAR 22:040	318.165	815 KAR 20:120
309.085	201 KAR 35:040	318.200	815 KAR 20:120
309.1315	201 KAR 34:040	319.015	201 KAR 26:215
	201 KAR 35:030	319.032	201 KAR 26:121
309.1335	201 KAR 34:030		201 KAR 26:180
Chapter 310	902 KAR 20:016	319.050	201 KAR 26:125
311.241-311.247	902 KAR 20:016	320.120	907 KAR 1:019
311.450	201 KAR 25:031	320.210	902 KAR 20:081
311.560	902 KAR 20:081	323A.060	201 KAR 10:050
311.595	201 KAR 9:320	323A.100	201 KAR 10:050
311.597	201 KAR 9:320		201 KAR 10:080
311.621-311.643	201 KAR 9:330E	323A.210	201 KAR 10:080
	201 KAR 9:335E	324.160	201 KAR 11:400
	201 KAR 9:340E		201 KAR 11:410
	201 KAR 20:430E	324.281	201 KAR 11:230
	201 KAR 20:440E	335.515	201 KAR 36:040
311.660	201 KAR 9:330E	335.535	201 KAR 36:020
	201 KAR 9:335E		201 KAR 36:030
	201 KAR 9:340E	335.540	201 KAR 36:040
311.710-311.830	902 KAR 20:360		201 KAR 36:050
311.720	902 KAR 4:110	335.545	201 KAR 36:050
311.990	902 KAR 20:016	338.051	803 KAR 2:306
313.080	201 KAR 8:140		803 KAR 2:307
	201 KAR 8:440		803 KAR 2:308
313.305	201 KAR 8:140		803 KAR 2:311
	201 KAR 8:440		803 KAR 2:316
314.011	902 KAR 20:081		803 KAR 2:317
	902 KAR 20:360		803 KAR 2:320
	907 KAR 1:019		803 KAR 2:403
314.031	201 KAR 20:110		803 KAR 2:404
314.041	201 KAR 20:070		803 KAR 2:418
	201 KAR 20:110		803 KAR 2:425
	201 KAR 20:240		803 KAR 2:500E
	201 KAR 20:260		803 KAR 50:010
	201 KAR 20:370	338.061	803 KAR 2:306
314.042	201 KAR 20:240		803 KAR 2:307
	201 KAR 20:370		803 KAR 2:308
	902 KAR 20:081		803 KAR 2:311
	902 KAR 20:360		803 KAR 2:316
314.051	201 KAR 20:070		803 KAR 2:317
	201 KAR 20:110		803 KAR 2:320
	201 KAR 20:240		803 KAR 2:403
	201 KAR 20:260		803 KAR 2:404
	201 KAR 20:370		803 KAR 2:418
314.071	201 KAR 20:240		803 KAR 2:425
	201 KAR 20:370		803 KAR 2:500E
314.073	201 KAR 20:240	341.360	907 KAR 1:011
314.091	201 KAR 20:370	341.380	787 KAR 1:200
314.101	201 KAR 20:091	Chapter 342	803 KAR 25:021
	201 KAR 20:110		803 KAR 25:026



## KRS SECTION

## REGULATION

342.0011	803 KAR	25:175
342.019	803 KAR	25:089
342.020	803 KAR	25:089
342.035	803 KAR	25:089
342.038	803 KAR	25:170
342.039	803 KAR	25:170
342.267	803 KAR	25:240
342.340	803 KAR	25:175
342.735	803 KAR	25:089
350.010	405 KAR	7:097
350.020	405 KAR	7:097
	405 KAR	10:010E
350.028	405 KAR	7:097
350.060	405 KAR	10:010E
350.062	405 KAR	10:010E
350.064	405 KAR	10:010E
350.130	405 KAR	7:097
350.150	405 KAR	7:097
350.151	405 KAR	7:097
	405 KAR	10:010E
350.465	405 KAR	7:097
	405 KAR	10:010E
355.2A-103	30 KAR	4:010
350.550-350.597	405 KAR	7:097
350.990	405 KAR	7:097
355.9-105	30 KAR	4:010
355.9-401A	30 KAR	4:010
355.9-402	30 KAR	4:010
355.9-403	30 KAR	4:010
355.9-404	30 KAR	4:010
355.9-405	30 KAR	4:010
355.9-406	30 KAR	4:010
367.150	40 KAR	2:070
	40 KAR	2:075
	40 KAR	2:076
367.46971	40 KAR	2:070
	40 KAR	2:075
	40 KAR	2:076
367.46973	40 KAR	2:070
	40 KAR	2:075
	40 KAR	2:076
367.46981	40 KAR	2:070
	40 KAR	2:075
	40 KAR	2:076
393.010	20 KAR	1:040E
	20 KAR	1:070E
393.040	20 KAR	1:040E
393.110	20 KAR	1:040E
	20 KAR	1:080E
393.140	20 KAR	1:040E
393.150	20 KAR	1:040E
393.160	20 KAR	1:070E
403.210-403.240	904 KAR	2:001
	904 KAR	2:400
403.215	904 KAR	2:410
403.715-403.785	908 KAR	2:210
405.060	904 KAR	2:410
405.405	904 KAR	2:410
405.430-405.510	904 KAR	2:410
405.440	904 KAR	2:001
405.520	904 KAR	2:001
	904 KAR	2:400
	904 KAR	2:390
406.011-406.180	904 KAR	2:410
407.5101-407.5701	904 KAR	2:001
407.5101-407.5902	904 KAR	2:410
427.120	904 KAR	2:410
427.125	904 KAR	2:410
431.240	501 KAR	8:011
431.600	905 KAR	1:330

## KRS SECTION

## REGULATION

Chapter 439	501 KAR	6:020
	501 KAR	6:040
	501 KAR	6:110
	501 KAR	6:140
	501 KAR	6:170
	501 KAR	6:999
439.340	501 KAR	1:030
439.3401	908 KAR	3:025
439.352	501 KAR	1:050
439.356	501 KAR	1:050
439.358	501 KAR	1:050
446.400	201 KAR	9:330E
	201 KAR	9:335E
	201 KAR	9:340E
	201 KAR	20:420E
	201 KAR	20:430E
	201 KAR	20:440E
523.043	501 KAR	1:050
532.043	501 KAR	1:030
532.060	501 KAR	1:030
	501 KAR	1:050
533.010	501 KAR	2:070
600.010	905 KAR	1:330
605.115	907 KAR	1:034
	907 KAR	1:035
605.130	905 KAR	1:330
620.010-620.050	905 KAR	1:330
620.020	500 KAR	13:010E
620.990	905 KAR	1:330
Chapter 645	603 KAR	7:080
1994 Acts c. 370	12 KAR	1:115
1998 Acts c. 22	301 KAR	6:051
1998 Acts c. 24	301 KAR	2:132
1998 Acts c. 57	905 KAR	1:330
	905 KAR	2:100
1998 Acts c. 75	105 KAR	1:230
1998 Acts c. 105	105 KAR	1:170
	105 KAR	1:230
1998 Acts c. 153	905 KAR	2:100
1998 Acts c. 166	601 KAR	1:140
	601 KAR	1:145
1998 Acts c. 193	201 KAR	14:180
1998 Acts c. 228	907 KAR	1:019
	907 KAR	1:021
1998 Acts c. 231	807 KAR	5:063
1998 Acts c. 256	11 KAR	4:070
	11 KAR	14:010
	11 KAR	14:020
	11 KAR	14:030
	11 KAR	14:040
	11 KAR	14:050
	11 KAR	14:060
	11 KAR	14:070
	11 KAR	14:080
1998 Acts c. 303	905 KAR	1:330
1998 Acts c. 312	806 KAR	9:241
1998 Acts c. 330	701 KAR	5:120
1998 Acts c. 339	905 KAR	1:330
1998 Acts c. 363	806 KAR	14:130
1998 Acts c. 380	907 KAR	1:013E
1998 Acts c. 426	905 KAR	1:330
1998 Acts c. 444	705 KAR	4:240
1998 Acts c. 473	806 KAR	3:131
1998 Acts c. 483	806 KAR	3:131
	806 KAR	39:081
1998 Acts c. 496	806 KAR	17:150
	806 KAR	17:180
	806 KAR	17:190
1998 Acts c. 519	707 KAR	1:270



KRS SECTION	REGULATION		KRS SECTION	REGULATION	
1998 Acts c. 524	905 KAR	2:100		401 KAR	65:001
1998 Acts c. 531	907 KAR	1:019		401 KAR	68:010
1998 Acts c. 542	30 KAR	4:010E		401 KAR	68:020
1998 Acts c. 556	201 KAR	8:440		401 KAR	68:048
1998 Acts c. 561	907 KAR	1:021		401 KAR	68:065
1998 Acts c. 565	905 KAR	2:100		401 KAR	68:090
1998 Acts c. 566	603 KAR	4:055		401 KAR	68:100
1998 Acts c. 575	11 KAR	4:070		401 KAR	68:150
	11 KAR	15:010		401 KAR	68:200
	11 KAR	15:020		415 KAR	1:050
	11 KAR	15:030		415 KAR	1:060
	11 KAR	15:040		415 KAR	1:070
	11 KAR	15:050		415 KAR	1:080
	11 KAR	15:060		415 KAR	1:090
	11 KAR	15:070		415 KAR	1:100
1998 Acts c. 580	704 KAR	3:480		415 KAR	1:110
1998 Acts c. 581	40 KAR	2:070		415 KAR	1:120
	40 KAR	2:075	42 CFR	902 KAR	20:016
	40 KAR	2:076		904 KAR	2:016
1998 Acts c. 598	703 KAR	5:010		907 KAR	1:011
1998 Acts c. 606	40 KAR	6:010		907 KAR	1:019
1998 Acts c. 614	902 KAR	20:360		907 KAR	1:021
1998 Acts c. 615	600 KAR	5:010		907 KAR	1:022
	905 KAR	2:160		907 KAR	1:025E
1998 Acts c. 616	40 KAR	6:010		907 KAR	1:034
7 CFR	702 KAR	6:100		907 KAR	1:035
	904 KAR	3:025		907 KAR	1:038
	904 KAR	3:042		907 KAR	1:360
20 CFR	921 KAR	2:015E		907 KAR	1:560
21 CFR	902 KAR	55:010		907 KAR	1:563
	902 KAR	55:045		907 KAR	1:605
	908 KAR	1:340		907 KAR	1:626
23 CFR	600 KAR	6:010		907 KAR	1:645
	600 KAR	6:065		907 KAR	1:755
	600 KAR	6:070		907 KAR	3:065
26 CFR	105 KAR	1:230		907 KAR	3:090E
29 CFR	105 KAR	1:205E		907 KAR	3:100E
	803 KAR	2:306	45 CFR	806 KAR	17:160
	803 KAR	2:307		904 KAR	2:001
	803 KAR	2:308		904 KAR	2:006
	803 KAR	2:311		904 KAR	2:016
	803 KAR	2:316		904 KAR	2:116
	803 KAR	2:317		904 KAR	2:380
	803 KAR	2:320		904 KAR	2:390
	803 KAR	2:403		904 KAR	2:400
	803 KAR	2:404		904 KAR	2:410
	803 KAR	2:418		905 KAR	1:320
	803 KAR	2:425		905 KAR	2:141
	803 KAR	2:500E		905 KAR	2:160
30 CFR	405 KAR	7:097	48 CFR	600 KAR	6:010
	405 KAR	10:010E		600 KAR	6:065
31 CFR	11 KAR	4:050		600 KAR	6:070
34 CFR	11 KAR	3:100	49 CFR	600 KAR	6:010
	11 KAR	15:060		600 KAR	6:065
	781 KAR	1:030		600 KAR	6:070
	781 KAR	1:050		601 KAR	1:040E
	782 KAR	1:030		601 KAR	1:200
	782 KAR	1:040		601 KAR	1:201
40 CFR	401 KAR	5:002	50 CFR	301 KAR	2:221
	401 KAR	5:009		301 KAR	2:222
	401 KAR	50:010		301 KAR	2:223
	401 KAR	51:001		301 KAR	2:226
	401 KAR	57:002	7 USC	904 KAR	2:141
	401 KAR	59:001		904 KAR	3:025
	401 KAR	60:005		904 KAR	3:042
	401 KAR	61:001	8 USC	905 KAR	2:160
	401 KAR	63:001		904 KAR	2:006
	401 KAR	63:002		904 KAR	3:025
	401 KAR	63:105		907 KAR	1:011

## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

15 USC  
20 USC

25 USC  
26 USC

29 USC

30 USC

31 USC  
33 USC  
38 USC  
42 USC

921 KAR 2:015E  
904 KAR 2:410  
11 KAR 3:100  
11 KAR 15:010  
908 KAR 2:120  
908 KAR 2:130  
908 KAR 2:140  
908 KAR 2:160  
908 KAR 2:200  
904 KAR 2:016  
11 KAR 12:070  
105 KAR 1:230  
105 KAR 1:205E  
735 KAR 2:020  
781 KAR 1:030  
781 KAR 1:050  
782 KAR 1:030  
782 KAR 1:040  
905 KAR 1:320  
405 KAR 7:097  
405 KAR 10:010E  
11 KAR 4:050  
401 KAR 5:002  
907 KAR 1:011  
401 KAR 50:010  
401 KAR 51:001  
401 KAR 57:002  
401 KAR 59:001  
401 KAR 60:005  
401 KAR 61:001  
401 KAR 63:001  
401 KAR 63:002  
401 KAR 63:105  
401 KAR 65:001  
401 KAR 68:010  
401 KAR 68:020  
401 KAR 68:048  
401 KAR 68:065  
401 KAR 68:090  
401 KAR 68:100  
401 KAR 68:150  
401 KAR 68:200  
500 KAR 13:010E  
702 KAR 6:100  
735 KAR 2:020  
806 KAR 17:160  
806 KAR 17:220  
904 KAR 2:001  
904 KAR 2:006  
904 KAR 2:016  
904 KAR 2:017  
904 KAR 2:018  
904 KAR 2:116  
904 KAR 2:141  
904 KAR 2:370  
904 KAR 2:410  
904 KAR 2:490  
904 KAR 2:510  
905 KAR 1:050  
905 KAR 1:320  
905 KAR 2:100  
905 KAR 2:160  
907 KAR 1:002  
907 KAR 1:006  
907 KAR 1:011  
907 KAR 1:019  
907 KAR 1:021  
907 KAR 1:022  
907 KAR 1:025E

49 USC

PL 105-33

PL 105-34  
PL 105-185  
EO 98-731

EO 396-1576

907 KAR 1:026  
907 KAR 1:034  
907 KAR 1:035  
907 KAR 1:038  
907 KAR 1:560  
907 KAR 1:563  
907 KAR 1:605  
907 KAR 1:626  
907 KAR 1:645  
907 KAR 1:755  
907 KAR 3:065  
907 KAR 3:090E  
907 KAR 3:100E  
907 KAR 4:020E  
601 KAR 1:200  
601 KAR 1:201  
601 KAR 9:135  
603 KAR 7:080  
907 KAR 1:006  
907 KAR 4:020E  
11 KAR 12:070  
904 KAR 3:025  
904 KAR 2:001  
904 KAR 2:116  
505 KAR 1:040



## SUBJECT INDEX

### **ABORTIONS**

(See Public Health)

### **ABSENTEE BALLOT**

(See Elections, State Board)

### **ABUSE INVESTIGATIONS**

(See Justice Cabinet)

### **AD VALOREM TAX**

(See Taxation)

### **AGENTS, CONSULTANTS, SOLICITORS, ADJUSTERS**

(See Insurance)

### **AGRICULTURAL EXPERIMENT STATION**

(See also particular subject)  
Commercial feeds; 12 KAR Chapter 2  
Pet food; 12 KAR Chapter 3  
Seed; 12 KAR Chapter 1

### **AGRICULTURE**

Livestock sanitation; 302 KAR Chapter 20

### **AIR QUALITY**

Administrative Procedures

Definitions, abbreviations; 401 KAR 50:010

Chemical Accident Prevention

Emergency response; 401 KAR 68:090

General provisions; 401 KAR 68:010

Hazard assessment; 401 KAR 68:020

Program 2 Prevention Program; 401 KAR 68:048

Program 3 Prevention Program; 401 KAR 68:065

Rank management plan; 401 KAR 68:150

Recordkeeping; 401 KAR 68:200

Regulated substances for accidental release prevention; 401 KAR 68:100

Existing Source Standards

Definitions, abbreviations; 401 KAR 61:001

General Standards of Performance

Existing sources emitting toxic air pollutants; 401 KAR 63:021

Repeal of 401 KAR 63:022; 401 KAR 63:024

Hazardous Pollutants

40 CFR Part 61 national emission standards for hazardous air pollutants; 401 KAR 57:002

Repeal of various regulations; 401 KAR 57:019

Mobile Source-related Emissions

Definitions, abbreviations; 401 KAR 65:001

New Source Requirements; Nonattainment Areas

Definitions, abbreviations; 401 KAR 51:001

New Source Standards

Definitions, abbreviations; 401 KAR 59:001

New Source Performance Standards

40 CFR Part 60 standards of performance for new stationary sources; 401 KAR 60:005

Performance, General Standards

Control technology determinations for major sources; 401 KAR 63:105

Definitions, abbreviations; 401 KAR 63:001

40 CFR Part 63 national emission standards for hazardous air pollutants; 401 KAR 63:002

### **ALCOHOL AND DRUG COUNSELORS**

Code of ethics; 201 KAR 35:030

Continuing education requirements; 201 KAR 35:040

### **ALCOHOLIC BEVERAGE CONTROL**

Licensing

Out-of-state brewers' licenses; 804 KAR 4:350

Repeal of 804 KAR 4:190; 804 KAR 4:195

### **AMBULANCE SERVICES**

(See Public Health)

### **ARCHITECTS**

(See Landscape Architects)

### **ARCHIVES**

(See Libraries and Archives)

### **ART THERAPISTS**

Code of ethics; 201 KAR 34:040

Continuing education requirements; 201 KAR 34:030

### **ASSESSMENT AND ACCOUNTABILITY (EDUCATION)**

(See Learning Results Services)

### **ASSISTIVE TECHNOLOGY LOAN CORPORATION**

General eligibility criteria; 789 KAR 1:010

### **BARBERING**

Fees: license, examination, renewal, expiration; 201 KAR 14:180

### **BLIND, DEPARTMENT FOR**

Appeal procedures; 782 KAR 1:040

Scope and nature of services; 782 KAR 1:030

### **BUILDING CODE**

Kentucky Building Code/1997; 815 KAR 7:105

### **CABINET FOR FAMILIES AND CHILDREN**

Community-Based Services

Family support; 921 KAR Chapter 2

Social Insurance

Food Stamp Program; 904 KAR Chapter 3

Public assistance; 904 KAR Chapter 2

### **CERTIFICATE OF NEED**

Administrative regulations; 900 KAR 6:050

Expenditure minimums; 900 KAR 6:030

### **CHEMICAL ACCIDENT PREVENTION**

(See Air Quality)

### **CHIEF STATE SCHOOL OFFICER'S OFFICE**

(See Education, Arts, and Humanities Cabinet)

### **CHILD WELFARE**

(See Juvenile Justice, or Community-Based Services)

### **CHILDREN'S HEALTH INSURANCE PROGRAM**

(See Medicaid)

### **CLASS D FELONS**

(See Corrections)

### **COLLEGES, UNIVERSITIES**

(See Postsecondary Education)

### **COMMONWEALTH MERIT SCHOLARSHIP PROGRAM**

(See Higher Education Assistance Authority)



## SUBJECT INDEX

### COMMUNICABLE DISEASES

(See Public Health)

### COMMUNITY-BASED SERVICES

#### Family Support

Supplemental programs for persons who are aged, blind, or have a disability; 921 KAR 2:015E

### COMMISSION ON MILITARY AFFAIRS

(See Military Affairs Commission)

### COMMUNITY-BASED SERVICES

#### Child Welfare

Adoption assistance, approval; 905 KAR 1:050

Child protective services; 905 KAR 1:330

Fair hearing; 905 KAR 1:320

#### Day Care

Child day care assistance program; 905 KAR 2:160

Child care facility licensure; 905 KAR 2:090

Family child care homes, certification; 905 KAR 2:100

Repeal of 905 KAR 2:140; 905 KAR 2:141

### CONSUMER LOANS

(See Financial Institutions)

### CONSUMER PROTECTION

No Telephone Solicitation Calls List; 40 KAR 2:075

Telephone solicitation merchants, registration procedure; 40 KAR 2:070

Violations of act, procedures, notification; 40 KAR 2:076

### CONTROLLED SUBSTANCES

(See Public Health)

### CORRECTIONS, DEPARTMENT OF

#### Class D Felons

Work release; 501 KAR 2:070

#### Execution Hearings

Repeal of 501 KAR 8:010; 501 KAR 8:011

#### Institution Policies and Procedures

Bell County Forestry Camp; 501 KAR 6:140

Certification procedures for mental health professionals performing sex offender risk assessments; 501 KAR 6:190

Corrections policies and procedures; 501 KAR 6:020

Green River Correctional Complex; 501 KAR 6:170

Kentucky State Penitentiary; 501 KAR 6:040

Roederer Correctional Complex; 501 KAR 6:110

Secured policies and procedures; 501 KAR 6:999

Sex offender community notification; 501 KAR 6:210

Sex offender risk assessment procedures; 501 KAR 6:200

#### Parole Board

Determining parole eligibility; 501 KAR 1:030

Granting final discharge from parole; 501 KAR 1:050

Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR 14:010

### COUNSELORS (PROFESSIONAL)

Code of ethics; 201 KAR 36:040

Complaint management process; 201 KAR 36:050

Continuing education requirements; 201 KAR 36:030

Fees, renewal date; 201 KAR 36:020

### CREDIT UNIONS

(See Financial Institutions)

### CRIMINAL JUSTICE TRAINING

Law Enforcement Council; 503 KAR Chapter 1

Law enforcement training; 503 KAR Chapter 3

### DAY CARE

(See Community-Based Services)

### DEAF AND HARD OF HEARING (COMMISSION)

#### Interpreter Referral Services

Definitions; 735 KAR 2:010

Grievance procedure; 735 KAR 2:060

Interpreter protocols; 735 KAR 2:040

Interpreter qualifications; 735 KAR 2:030

Processing requests for services; 735 KAR 2:050

Program parameters; 735 KAR 2:020

#### Telecommunication Devices

Specialized telecommunications equipment, processing system including vendor participation, security, maintenance, repair; 735 KAR 1:020

Telecommunications devices, eligibility requirements, application, certification; 735 KAR 1:010

### DEER

(See Fish and Wildlife Resources)

### DENTAL HYGIENISTS

(See Dentistry)

### DENTISTRY

Continuing education compliance; 201 KAR 8:140

Fee schedule; 201 KAR 8:440

### DISTRICT SUPPORT SERVICES

#### Facilities Management

Repeal of 702 KAR 4:150; 702 KAR 4:151

#### Food Service Programs

Appeal procedures for School, Community Nutrition Program; 702 KAR 6:100

#### School Administration, Finance

Document filing dates; 702 KAR 3:110

Procedure for payment of employees; 702 KAR 3:060

#### School Terms, Attendance, Operations

High school interscholastic athletics, designation of agent; 702 KAR 7:065

Pupil attendance; 702 KAR 7:125

### ECONOMIC DEVELOPMENT CABINET

#### Venture Capital

Kentucky Investment Fund Act; 307 KAR 6:010

### EDUCATION, ARTS, AND HUMANITIES CABINET

#### Chief State School Officer's Office

Prevention of sexually explicit materials transmitted to schools via computer; 701 KAR 5:120

Repeal of 701 KAR 5:020; 701 KAR 5:021

#### Deaf and Hard of Hearing Commission

Telecommunications devices; 735 KAR Chapter 1

Interpreter referral services; 735 KAR Chapter 2

#### Education Department

##### District Support Services

Facilities management; 702 KAR Chapter 4

Food service programs; 702 KAR Chapter 6

School administration, finance; 702 KAR Chapter 3

School terms, attendance, operation; 702 KAR Chapter 7

##### Learning Programs Development

Elementary, Secondary Education Act; 704 KAR Chapter 10

Instruction; 704 KAR Chapter 3

Learning support services; 704 KAR Chapter 7

##### Learning Results Services

Assessment and accountability; 703 KAR Chapter 5

##### Special Instructional Services

Exceptional and handicapped programs; 707 KAR Chapter 1

Instructional programs; 705 KAR Chapter 4



## SUBJECT INDEX

Education Professional Standards Board; 704 KAR Chapter 20  
Libraries and Archives  
Archives; 725 KAR Chapter 1

### EDUCATION DEPARTMENT

District Support Services  
Facilities management; 702 KAR Chapter 4  
Food services programs; 702 KAR Chapter 6  
School administration, finance; 702 KAR Chapter 3  
School terms, attendance, operation; 702 KAR Chapter 7  
Learning Programs Development  
Elementary, Secondary Education Act; 704 KAR Chapter 10  
Instruction; 704 KAR Chapter 3  
Learning support services; 704 KAR Chapter 7  
Learning Results Services  
Assessment and accountability; 703 KAR Chapter 5  
Special Instructional Services  
Exceptional and handicapped programs; 707 KAR Chapter 1  
Instructional programs; 705 KAR Chapter 4

### EDUCATION PROFESSIONAL STANDARDS BOARD

Admission to teacher education, standards; 704 KAR 20:700  
Continuing education alternative to planned fifth year program; 704 KAR 20:022  
Examination prerequisites for principal certification; 704 KAR 20:460  
Kentucky Teacher Internship Program; 704 KAR 20:690  
Professional certificate for exceptional work experience, limited to secondary education; 704 KAR 20:720  
Professional certificate for instructional leadership-school principal, all grades; 704 KAR 20:710  
Rank I classification; 704 KAR 20:015  
Written examination prerequisites for teacher certification; 704 KAR 20:305

### EDUCATION TECHNOLOGY FUNDING PROGRAM

(See School Facilities Construction Commission)

### EDUCATIONAL SAVINGS PLAN TRUST

(See Higher Education Assistance Authority)

### ELECTIONS, STATE BOARD

Forms and Procedures  
Absentee ballot application by facsimile; 31 KAR 4:130  
Additional precinct officers; 31 KAR 4:120

### ELECTRICAL INSPECTORS

Certification of electrical inspectors; 815 KAR 35:015

### ELEMENTARY, SECONDARY EDUCATION ACT

(See Learning Programs Development)

### EMBALMERS, FUNERAL DIRECTORS

Fees; 201 KAR 15:030

### EMERGENCY MEDICAL SERVICES

(See Public Health)

### EMERGENCY MEDICAL TECHNICIANS

(See Public Health)

### EMPLOYEES, STATE

(See also Personnel)

Personnel  
Board; 101 KAR Chapter 1  
Retirement; 105 KAR Chapter 1

### EMPLOYMENT SERVICES

Unemployment Insurance  
Maximum weekly benefit rate; 787 KAR 1:200

### ENGINEERING

(See also Transportation)  
Repeal of 200 KAR 7:010; 200 KAR 7:011

### ENVIRONMENTAL PROTECTION

Air quality; 401 KAR Chapters 50 through 65  
Water; 401 KAR Chapter 5

### ETHICS

(See Executive Branch Ethics Commission, or Legislative Ethics Commission)

### EXCEPTIONAL, HANDICAPPED PROGRAMS

(See Special Instructional Services)

### EXECUTION HEARINGS

(See Corrections)

### EXECUTIVE BRANCH ETHICS COMMISSION

Administrative proceedings; 9 KAR 1:030  
Financial disclosure statement; 9 KAR 1:010  
Outside employment of public servant, approval; 9 KAR 1:050  
Preadministrative proceedings; 9 KAR 1:015  
Registration statement, card; executive agency lobbying handbook; 9 KAR 1:040  
Repeal of 9 KAR 1:035; 9 KAR 1:036

### FAMILIES AND CHILDREN CABINET

Community-Based Services  
Child welfare; 905 KAR Chapter 1  
Day care; 905 KAR Chapter 2  
Repeal of 900 KAR 1:040; 900 KAR 1:041

### FAMILY HEALTH CARE PROVIDERS

(See Public Health)

### FEED (COMMERCIAL)

Additives; 12 KAR 2:041  
Feed with additives, directions, precautionary statements; 12 KAR 2:031  
List of manufacturers; 12 KAR 2:056  
Manufacturing conditions; 12 KAR 2:051  
Poisonous or deleterious substances, 12 KAR 2:046  
Registration; 12 KAR 2:061  
Suitability; 12 KAR 2:066

### FINANCE AND ADMINISTRATION

Engineering; 200 KAR Chapter 7  
Personnel pilot programs; 200 KAR Chapter 22  
Private Activity Bond Allocation Committee; 200 KAR Chapter 15  
Property; 200 KAR Chapter 6  
Purchasing; 200 KAR Chapter 5

### FINANCIAL INSTITUTIONS

Administration  
Automated teller machines; 808 KAR 1:060  
Repeal of 808 KAR 1:030 and 808 KAR 1:070; 808 KAR 1:031  
Consumer Loans  
Repeal of 808 KAR 6:005; 808 KAR 6:006  
Credit Unions  
Conduct; 808 KAR 3:050  
Mortgage Loan Companies, brokers  
Claims of exemption; 808 KAR 12:020

### FIRE DEPARTMENTS (LOCAL)

Commission meets and proceedings; 815 KAR 45:025  
Education incentive; 815 KAR 45:035  
Firefighter's training facility grants; obtaining; 815 KAR 45:050  
Fire protection instructors, certification, qualifications; 815 KAR



## SUBJECT INDEX

45:090

Survivor benefits for death of a firefighter; 815 KAR 45:060  
Volunteer fire department aid; 815 KAR 45:080  
Volunteer fire department loan fund; 815 KAR 45:100

### FISH AND WILDLIFE RESOURCES

#### Fish

Commercial fishing requirements; 301 KAR 1:155  
Bow fishing; 301 KAR 1:090  
Fishing limits; 301 KAR 1:201  
Special commercial fishing permit; 301 KAR 1:140  
Turtles, method of taking; 301 KAR 1:058

#### Game

Dove, wood duck, teal, other migratory game bird hunting; 301 KAR 2:225  
Elk depredation permits; 301 KAR 2:132  
Fall wild turkey hunting; 301 KAR 2:144  
Furbearers, small game, hunting, trapping; 301 KAR 2:251  
Quota deer hunt procedures; 301 KAR 2:181  
Small game, furbearer hunting on public areas; 301 KAR 2:049  
Spring wild turkey hunting; 301 KAR 2:142  
State park deer hunts; 301 KAR 2:179  
Waterfowl hunting requirements; 301 KAR 2:222  
Waterfowl reporting requirements; 301 KAR 2:223  
Waterfowl seasons, limits; 301 KAR 2:221  
Wild turkey hunting; 301 KAR 2:140  
Youth waterfowl hunting season; 301 KAR 2:226

#### Licensing

License agent requirements, responsibilities; 301 KAR 5:020  
Purchasing licenses, obtaining replacement licenses; 301 KAR 5:030

#### Water Patrol

Boat registration fees; 301 KAR 6:050  
Repeal of 301 KAR 6:050; 301 KAR 6:051

### FOOD STAMP PROGRAM

(See Social Insurance)

### FORESTRY

Best management practices for timber harvesting operations; 402 KAR 3:030  
Master Logger Program; 402 KAR 3:020

### FUNERAL DIRECTORS

(See Embalmers and Funeral Directors)

### HAZARDOUS POLLUTANTS

(See Air Quality)

### HEALTH DEPARTMENTS, LOCAL

(See Public Health)

### HEALTH INSURANCE CONTRACTS

(See Insurance)

### HEALTH SERVICES AND FACILITIES

(See Public Health)

### HEALTH SERVICES CABINET

Certificate of need; 900 KAR Chapter 6  
Inspector General; 906 KAR Chapter 1  
Long-term Care; 900 KAR Chapter 2  
Medicaid  
Children's Health Insurance Program; 907 KAR Chapter 4  
Medicaid services; 907 KAR Chapter 1  
Payments and services; 907 KAR Chapter 3  
Mental Health/Mental Retardation Services  
Institutional care; 908 KAR Chapter 3  
Mental health; 908 KAR Chapter 2

Substance abuse; 908 KAR Chapter 1

#### Public Health

Communicable diseases; 902 KAR Chapter 2  
Controlled substances; 902 KAR Chapter 55  
Emergency medical technicians; 902 KAR Chapter 13  
Family health care providers; 902 KAR Chapter 22  
Health services, facilities; 902 KAR Chapter 20  
Local health departments; 902 KAR Chapter 8  
Maternal and child health; 902 KAR Chapter 4

### HIGHER EDUCATION ASSISTANCE AUTHORITY

#### Authority

Authority claims, set off; 11 KAR 4:050  
Reports by postsecondary institutions; 11 KAR 4:070

#### Commonwealth Merit Scholarship Program

Definitions; 11 KAR 15:010  
Determination procedure; 11 KAR 15:040  
Disbursement; 11 KAR 15:050  
Dual enrollment under consortium agreement; 11 KAR 15:030  
Overaward, refund, repayment procedure; 11 KAR 15:060  
Records and reports; 11 KAR 15:070  
Student eligibility report; 11 KAR 15:020

#### Educational Savings Plan Trust

Benefits payable from the fund; 11 KAR 12:070  
Definitions; 11 KAR 12:010  
Residency classification for vested participation agreements; 11 KAR 12:040  
Refund cancellation, payment; 11 KAR 12:060

#### Grant Program

Definitions; 11 KAR 5:001  
Student application; 11 KAR 5:130

#### Loan Program

Administrative wage garnishment; 11 KAR 3:100

#### Osteopathic Medicine Scholarship Program

Application of payments; 11 KAR 14:060  
Award determination; 11 KAR 14:020  
Disbursement process; 11 KAR 14:030  
Notification; 11 KAR 14:070  
Overawards and refunds; 11 KAR 14:040  
Process; 11 KAR 14:010  
Records and administrative regulations; 11 KAR 14:050  
Repayment deferment; 11 KAR 14:080

#### Teacher Scholarship Loan Program

Teacher scholarships; 11 KAR 8:030

### HIGHWAYS

#### Mass Transportation

Human service transportation delivery; 603 KAR 7:080

#### Right of Way

Limited supplemental guide signs; 603 KAR 4:050  
Scenic highways and byways; 603 KAR 4:055

### HOME HEALTH

(See Public Services)

### HOUSING, BUILDINGS AND CONSTRUCTION

Electrical inspectors; 815 KAR Chapter 35  
Kentucky Building Code; 815 KAR Chapter 7  
Local fire departments; 815 KAR Chapter 45  
Plumbing; 815 KAR Chapter 20

### INSPECTOR GENERAL (HEALTH SERVICES)

Administrative subpoenas guidelines; 906 KAR 1:130  
Critical access hospital services; 906 KAR 1:110

### INSTRUCTION (EDUCATION)

(See Learning Programs Development)



## SUBJECT INDEX

### INSURANCE

- Agents, Consultants, Solicitors, Adjusters
  - Repeal of 806 KAR 9:240; 806 KAR 9:241
- Authorization of Insurers, General Requirements
  - Repeal of 806 KAR 3:130; 806 KAR 3:131
- Health Insurance Contracts
  - Approval criteria, requirements for reentry into the Kentucky health insurance market; 806 KAR 17:220
  - Creditable coverage for health insurance; 806 KAR 17:160
  - Genetic testing; 806 KAR 17:170
  - Guaranteed Acceptance Program reporting requirements; 806 KAR 17:210
  - Guaranteed Acceptance Program requirements; 806 KAR 17:190
  - Health benefit plan rate filing requirements; 806 KAR 17:150
  - Severity codes for high-cost conditions; 806 KAR 17:200E
  - Standard health benefit plan, comparison format; 806 KAR 17:180
- Insurance Contract
  - Electronic applications, forms, signatures; 806 KAR 14:130
- Life Insurance and Annuity Contracts
  - Licensing, reporting, general requirements for viatical settlement providers and brokers; 806 KAR 15:040
- Motor Vehicle Reparations (No-fault)
  - Repeal of 806 KAR 39:080; 806 KAR 39:081

### INTERPRETER REFERRAL SERVICES

(See Deaf and Hard of Hearing (Commission))

### INSTRUCTIONAL PROGRAMS

(See Special Instructional Services)

### JUSTICE CABINET

- Abuse Investigation
  - Appeals hearings for substantial abuse investigations; 500 KAR 13:010E
- Corrections Department
  - Class D felons; 501 KAR Chapter 2
  - Execution hearings; 501 KAR Chapter 8
  - Institution policies and procedures; 501 KAR Chapter 6
  - Parole Board; 501 KAR Chapter 1
  - Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR Chapter 14
- Criminal Justice Training
  - Law Enforcement Council; 503 KAR Chapter 1
  - Law Enforcement Training
    - General training provisions; 503 KAR Chapter 3
- Juvenile Justice
  - Child welfare; 505 KAR Chapter 1
- State Police
  - Sex Offender Registration System; 502 KAR Chapter 31

### JUVENILE JUSTICE

- Child Welfare
  - Definitions; 505 KAR 1:010
  - Local Juvenile Delinquency Prevention Councils
    - Community Juvenile Justice Partnership Grant Program; 505 KAR 1:070
    - Formation procedures; 505 KAR 1:050
    - Operation, duties; 505 KAR 1:060
    - Policies and procedures manual; 505 KAR 1:040

### KENTUCKY LIEN INFORMATION SYSTEM

Implementation of system; 30 KAR 4:010

### KENTUCKY LOAN PROGRAM

(See Higher Education Assistance Authority)

### KENTUCKY VICTIM AND WITNESS PROTECTION PROGRAM

Program; 40 KAR 6:010

### KENTUCKY WORKS

(See Social Insurance)

### LABOR CABINET

- Occupational safety, health; 803 KAR Chapter 2
- Occupational safety, health review commission; 803 KAR Chapter 50
- Workers' claims; 803 KAR Chapter 25

### LANDSCAPE ARCHITECTS

- Continuing education; 201 KAR 10:080
- Fees; 201 KAR 10:050

### LAW, DEPARTMENT OF

- Consumer protection; 40 KAR Chapter 2
- Kentucky Victim, Witness Protection Program; 40 KAR Chapter 6

### LAW ENFORCEMENT COUNCIL

- Certification of instructors; 503 KAR 1:100
- Certification of schools; 503 KAR 1:080
- Definitions; 503 KAR 1:060
- Peace officer professional standards; 503 KAR 1:140

### LAW ENFORCEMENT TRAINING

- General Training Provisions
  - Basic training, conduct, procedures, penalties; 503 KAR 3:010
- Definitions; 503 KAR 3:005
- Telecommunications academy trainee requirements, misconduct, penalties, discipline procedures; 503 KAR 3:040

### LEARNING PROGRAMS DEVELOPMENT

- Elementary, Secondary Education Act
  - Repeal of 704 KAR 10:050; 704 KAR 10:051
- Instruction
  - Annual professional development plan; 704 KAR 3:035
  - Early reading incentive grants; 704 KAR 3:480
- Learning Support Services
  - Guidelines for dropout prevention programs; 704 KAR 7:070

### LEARNING RESULTS SERVICES

- Assessment and Accountability
  - Strategies for reducing time required for writing portfolio preparation; 703 KAR 5:010

### LEARNING SUPPORT SERVICES

(See Learning Programs Development)

### LEGISLATIVE ETHICS COMMISSION

- Financial disclosure statement; 2 KAR 2:020
- Registration short form for employers, legislative agents; 2 KAR 2:040
- Required forms; 2 KAR 2:010

### LIBRARIES AND ARCHIVES

- Archives
  - Standards for documents presented for recording; 725 KAR 1:070E

### LIEN INFORMATION SYSTEM

(See Kentucky Lien Information System)

### LIVESTOCK SANITATION

- Composting of domestic livestock, poultry, fish; 302 KAR 20:051
- Entry into Kentucky; 302 KAR 20:040

### LOCAL HEALTH DEPARTMENTS

(See Public Health)

### LONG-TERM CARE

- Appeals; 900 KAR 2:020
- Repeal of 900 KAR 2:030; 900 KAR 2:031



## SUBJECT INDEX

### MATERNAL AND CHILD HEALTH

(See Public Health)

### MEDICAID

Children's Health Insurance Program

Program; 907 KAR 4:020E

Medicaid Services

Converted dual-licensed hospital-based nursing facility beds; 907 KAR 1:780

Definitions; 907 KAR 1:002

Dental services; 907 KAR 1:026

Dental services reimbursement; 907 KAR 1:626

Drugs, amounts payable; 907 KAR 1:021

Early, periodic screening, diagnosis, treatment services, special services; 907 KAR 1:034

Early, periodic screening, diagnosis, treatment services, special services, payments; 907 KAR 1:035

Hearing services, payments; 907 KAR 1:039

Hearing, vision program services; 907 KAR 1:038

Hospital Care Program, conditions of coverage; 907 KAR 1:635

Hospital inpatient services, payments; 907 KAR 1:013E

Income standards; 907 KAR 1:640

Initial, continuing eligibility, procedures for determining; 907 KAR 1:605

Medicaid covered services hearings, appeals; 907 KAR 1:563

Medicaid hearings, appeals regarding eligibility; 907 KAR 1:560

Nursing, intermediate care facilities for the mentally retarded; 907 KAR 1:022

Nursing, intermediate care facilities for the mentally retarded, payments; 907 KAR 1:025E

Pharmacy services; 907 KAR 1:019

Preadmission Screening, Resident Review Program; 907 KAR 1:755

Preventive, remedial public health services provided through interagency agreement; 907 KAR 1:360

Repeal of 907 KAR 1:382; 907 KAR 1:383

Repeal of 907 KAR 1:390; 907 KAR 1:391

Resource standards; 907 KAR 1:645

Technical eligibility requirements; 907 KAR 1:011

Title XVIII benefits, coverage for eligible persons; 907 KAR 1:006

Payment and Services

Acquired brain injury services; 907 KAR 3:090E

Acquired brain injury services payments; 907 KAR 3:100E

Nonemergency medical transportation waiver services, payments; 907 KAR 3:065

Physicians' services; 907 KAR 3:005

Physicians' services reimbursement; 907 KAR 3:010

### MEDICAL LICENSURE

Physician training, supervision of noncertified individuals in the use of automatic external defibrillators (AEDs), procedures; 201 KAR 9:320

Determination of death by paramedic; 201 KAR 9:330E

Discontinuance of resuscitation by paramedic; 201 KAR 9:335E

Paramedic training in determination of death, discontinuance of resuscitation; 201 KAR 9:340E

### MENTAL HEALTH, MENTAL RETARDATION SERVICES

Institutional Care

Notification of discharge, transfer, escape of violent offenders; 908 KAR 3:025

Per diem rate pursuant to the "Patient Liability Act of 1978"; 908 KAR 3:050

Mental Health

Domestic violence offender treatment certification standards; 908 KAR 2:210

Kentucky Early Intervention Program

Assessment, service planning; 908 KAR 2:130

Coverage, payment for services; 908 KAR 2:200

Covered services; 908 KAR 2:160

Primary service coordination, assistive technology; 908 KAR 2:140

Program; 908 KAR 2:120

Substance Abuse

Certification standards, administrative procedures for DUI programs; 908 KAR 1:310

Narcotic Treatment Program; 908 KAR 1:340

### MILITARY AFFAIRS COMMISSION

Criteria for allocation of grant money; 202 KAR 5:010

### MOREHEAD STATE UNIVERSITY

Affiliated corporations; 755 KAR 1:070

### MORTGAGE LOAN COMPANIES, BROKERS

(See Financial Institutions)

### MOTOR CARRIERS

(See Vehicle Regulation)

### MOTOR VEHICLE REPARATIONS

(See Insurance)

### MOTOR VEHICLE TAX

(See Vehicle Regulation; and Taxation)

### MURRAY STATE UNIVERSITY

Affiliated corporations; 772 KAR 1:070

Annual audit; 772 KAR 1:030

Financial management responsibility delegation; 772 KAR 1:020

Fund acquisition, disbursement, accounting system, records and annual report; 772 KAR 1:010

Fund for excellence; 772 KAR 1:060

Issuance of bonds; 772 KAR 1:050

Purchase, inventories, sales of surplus property, capital construction procedures; 772 KAR 1:040

### NATURAL RESOURCES, ENVIRONMENTAL PROTECTION

Environmental Protection

Air Quality; 401 KAR Chapters 50 through 63

Water; 401 KAR Chapter 5

Natural Resources

Forestry; 402 KAR Chapter 3

Surface mining reclamation, enforcement; 405 KAR Chapters 7-10

### NONPUBLIC SCHOOL TRANSPORTATION

(See Transportation)

### NURSING (BOARD OF)

Applications for licensure and registration; 201 KAR 20:370

Determination of death by registered nurse employed by ambulance service; 201 KAR 20:420E

Discontinuance of resuscitation by registered nurse employed by ambulance service; 201 KAR 20:430E

Fees for applications and services; 201 KAR 20:240

Licensure and registration applications; 201 KAR 20:370

Licensure by endorsement; 201 KAR 20:110

Licensure by examination; 201 KAR 20:070

Prelicensure programs of nursing, organization, administration; 201 KAR 20:260

Repeal of 201 KAR 20:090; 201 KAR 20:091

Training of registered nurse employed by ambulance service in determination of death and discontinuance of resuscitation; 201 KAR 20:440E

### NURSING HOME ADMINISTRATORS

Code of ethics; 201 KAR 6:080

Complaint management process; 201 KAR 6:090



## SUBJECT INDEX

Continuing education requirements; 201 KAR 6:070  
Fees; 201 KAR 6:060  
License renewal; 201 KAR 6:040  
Licensure, other requirements; 201 KAR 6:020  
Licensure by endorsement; 201 KAR 6:050  
Repeal of 201 KAR 6:010; 201 KAR 6:011  
Temporary permits; 201 KAR 6:030

### **OCCUPATIONAL SAFETY, HEALTH**

Air contaminants; 803 KAR 2:320E  
Fire protection; 803 KAR 2:311  
Hazardous materials; 803 KAR 2:307  
Maritime employment; 803 KAR 2:500E  
Occupational health, environmental control; 803 KAR 2:306; 803 KAR 2:403  
Personal protective equipment; 803 KAR 2:308  
Personal protective, life saving equipment; 803 KAR 2:404  
Special industries; 803 KAR 2:317  
Toxic and hazardous substances; 803 KAR 2:425E  
Underground construction, caissons, cofferdams, compressed air; 803 KAR 2:418  
Welding, cutting, brazing; 803 KAR 2:316

### **OCCUPATIONAL SAFETY, HEALTH REVIEW COMMISSION**

Hearings, procedure, disposition; 803 KAR 50:010

### **OCCUPATIONS AND PROFESSIONS**

Alcohol and drug counselors; 201 KAR 35:030  
Art therapists; 201 KAR Chapter 34  
Barbering; 201 KAR Chapter 14  
Counselors (professional); 201 KAR Chapter 36  
Dentistry; 201 KAR 8:440  
Embalmers and funeral directors; 201 KAR Chapter 15  
Landscape architects; 201 KAR Chapter 10  
Medical licensure; 201 KAR Chapter 9  
Nursing; 201 KAR Chapter 20  
Nursing home administrators; 201 KAR Chapter 6  
Pharmacists; 201 KAR Chapter 2  
Podiatry; 201 KAR Chapter 25  
Psychology; 201 KAR Chapter 26  
Real Estate Commission; 201 KAR Chapter 11

### **OSTEOPATHIC MEDICINE SCHOLARSHIP PROGRAM**

(See Higher Education Assistance Authority)

### **PARAMEDICS.**

(See Medical Licensure)

### **PAROLE BOARD**

(See Corrections)

### **PENAL INSTITUTIONS**

(See Corrections Department)

### **PERSONAL CARE HOMES**

(See Public Health)

### **PERSONNEL**

(See also Employees, State)

Board

Probationary periods; 101 KAR 1:325

### **PERSONNEL PILOT PROGRAMS**

Repeal of 200 KAR 22:010, 020, 030, 050, 060, 070, 080, 090, 100, 110, 120, 130; 200 KAR 22:005E

### **PET FOOD**

Additives; 12 KAR 3:037  
Brand and product names; 12 KAR 3:017

Caloric content statement; 12 KAR 3:042  
Guarantees; 12 KAR 3:022  
Ingredients; 12 KAR 3:027  
Uniform labeling format; 12 KAR 3:012

### **PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND**

Certification of contracting companies; 415 KAR 1:116  
Claims procedures; 415 KAR 1:080  
Contractor certification; 415 KAR 1:114  
Contractor costs; 415 KAR 1:110  
Definitions; 415 KAR 1:050  
Financial audits; 415 KAR 1:135  
Financial responsibility account; 415 KAR 1:060  
Hearings; 415 KAR 1:120  
Laboratory certification; 415 KAR 1:140  
Petroleum storage tank account; 415 KAR 1:070  
Ranking system; 415 KAR 1:090  
Small owners tank removal account; 415 KAR 1:130  
Third party claims; 415 KAR 1:100

### **PHARMACY BOARD**

Continuing education; 201 KAR 2:015  
Fees, licenses and permits; 201 KAR 2:050  
Intern registration; 201 KAR 2:040  
License transfer; 201 KAR 2:030  
Prescription drug refills; 201 KAR 2:185  
Prescription information transfer; 201 KAR 2:165

### **PLUMBING**

Water supply and distribution; 815 KAR 20:120

### **PODIATRY BOARD**

Continuing education; 201 KAR 25:031

### **POSTSECONDARY EDUCATION, COUNCIL ON**

Public Educational Institutions

Admission guidelines to state-supported postsecondary education institutions; 13 KAR 2:020

Kentucky Educational Excellence Scholarship Program; 13 KAR 2:090

### **PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE**

Formula for allocation of private activity bonds; 200 KAR 15:010

### **PROPERTY (STATE)**

Lease of new construction; 200 KAR 6:060

### **PSYCHIATRIC OR FORENSIC PSYCHIATRIC FACILITY VICTIM NOTIFICATION SYSTEM**

(See Corrections)

### **PSYCHOLOGY (BOARD)**

Health service provider designation; 201 KAR 26:125  
Licensure or certification by reciprocity; 201 KAR 26:180  
Nonresident status; 201 KAR 26:215  
Scope of practice; 201 KAR 26:121

### **PUBLIC HEALTH**

Communicable Diseases

Tuberculosis detection, prevention, control; 902 KAR 2:090

Controlled Substances

Controlled substance prescription blanks, requirements; 902 KAR 55:015

Drug possession by hospice, home health agency; 902 KAR 55:115

Exempt prescription products; 902 KAR 55:045

Licensing of manufacturers, wholesalers; 902 KAR 55:010

Prescription controlled substances, monitoring system; 902 KAR



## SUBJECT INDEX

55:1210

- Schedule IV substances; 902 KAR 55:030
- Emergency Medical Services, Ambulance Service Providers
  - Class I ground ambulance providers; 902 KAR 14:080
- Emergency Medical Technicians
  - Basic authorized procedures; 902 KAR 13:080
  - Basic course requirements; 902 KAR 13:055
  - Basic instructors; 902 KAR 13:070
  - Definitions; 902 KAR 13:010
  - Disciplinary actions; 902 KAR 13:090
  - Educational institutions, testing agencies; 902 KAR 13:025
  - Examination, certification, recertification requirements; 902 KAR 13:050
  - Fees; 902 KAR 13:030
  - First responder training, examination, certification; 902 KAR 13:110
  - Repeal of 902 KAR 13:020 and 13:130; 902 KAR 13:131
- Family Health Care Providers
  - Charitable health care providers; 902 KAR 22:040
- Health Services and Facilities
  - Abortion facilities; 902 KAR 20:360
  - Family care homes, operation and services; 902 KAR 20:041
  - Group homes, operations and services; 902 KAR 20:078
  - Home health agencies, operation, services; 902 KAR 20:081
  - Hospitals, operations and services; 902 KAR 20:016
  - Personal care homes, operation, services; 902 KAR 20:036
  - Repeal of 902 KAR 20:135; 902 KAR 20:134
- Local Health Departments
  - Accounting/auditing requirements; 902 KAR 8:024
  - Board of health requirements; 902 KAR 8:022
  - Environmental health program standards; 902 KAR 8:028
  - Financial management requirements; 902 KAR 8:025
  - Operations requirements; 902 KAR 8:023
  - Public health taxing district requirements; 902 KAR 8:026
  - Repeal of 902 KAR 8:020; 902 KAR 8:019
  - Unique personal and community services; 902 KAR 8:027
- Maternal and Child Health
  - Abortion information; 902 KAR 4:110

### PUBLIC PROTECTION AND REGULATION

- Alcoholic Beverage Control
  - Licensing; 804 KAR Chapter 4
- Financial Institutions
  - Administration; 808 KAR Chapter 1
  - Consumer loans; 808 KAR Chapter 6
  - Credit unions; 808 KAR Chapter 3
  - Mortgage loan companies, brokers; 808 KAR Chapter 12
- Housing, Buildings and Construction
  - Electrical inspectors; 815 KAR Chapter 35
  - Kentucky Building Code; 815 KAR Chapter 7
  - Local fire departments; 815 KAR Chapter 45
  - Plumbing; 815 KAR Chapter 20
- Insurance
  - Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9
  - Authorization of Insurers, general requirements; 806 KAR Chapter 3
  - Health insurance contracts; 806 KAR Chapter 17
  - Insurance contract; 806 KAR Chapter 14
  - Life insurance, annuity contracts; 806 KAR Chapter 15
  - Motor vehicle reparations (no-fault); 806 KAR Chapter 39
- Petroleum Storage Tank Environmental Assurance Fund; 415 KAR Chapter 1
- Public Service Commission; 807 KAR Chapter 5
- Tax Appeals Board; 802 KAR Chapter 1

### PUBLIC SERVICE COMMISSION

- Antenna towers for cellular telecommunications services or personal communication services, filing requirements and procedures for construction proposals; 807 KAR 5:063

### PURCHASING

- Manual of policies and procedures; 200 KAR 5:021

### REAL ESTATE COMMISSION

- Agency disclosure requirements; 201 KAR 11:400
- Broker duties pursuant to designated agency; 201 KAR 11:410
- Mandatory continuing education; 201 KAR 11:230

### REGISTRY OF ELECTION FINANCE

- Practice and Procedure
  - Conciliation; 32 KAR 2:050
  - Judicial hearing procedures; 32 KAR 2:210

### RETIREMENT

- Kentucky Employees Retirement System
  - Eligibility for disability retirement; 105 KAR 1:205E
  - Membership form requirements; 105 KAR 1:170
  - Reemployment after retirement; 105 KAR 1:230

### REVENUE

- (See also Taxation)
- Ad Valorem Tax
  - Local assessment; 103 KAR Chapter 7
- Selective Excise Tax
  - Motor vehicle usage; 103 KAR Chapter 44

### SCHOOL FACILITIES CONSTRUCTION COMMISSION

- Education Technology Funding Program
  - Guidelines; 750 KAR 2:010
- Procedures
  - Commission procedures; 750 KAR 1:010

### SECRETARY OF STATE

- Kentucky Lien Information System; 30 KAR Chapter 4

### SEED

- Sampling, analyzing, testing, tolerances; 12 KAR 1:115

### SELECTIVE EXCISE TAX

- (See Taxation)

### SEX OFFENDERS

- (See Corrections, Department of; or State Police)

### SOCIAL INSURANCE

- Food Stamp Program
  - Employment and Training Program; 904 KAR 3:042
  - Technical requirements; 904 KAR 3:025
- Public Assistance
  - Child support collection, distribution; 904 KAR 2:410
  - Child Support Program
    - Application process; 904 KAR 2:380
    - Confidentiality, program administration contracts, agreements; 904 KAR 2:020
    - Paternity establishment; 904 KAR 2:390
  - Definitions; 904 KAR 2:001
  - Establishment, review, modification of child support, medical support orders; 904 KAR 2:400
  - Family alternatives diversion (FAD); 904 KAR 2:500
  - Home Energy Assistance Program; 904 KAR 2:116
  - K-TAP, standards for need and amount; 904 KAR 2:016
  - K-TAP technical requirements; 904 KAR 2:006
  - Kentucky Works supportive services; 904 KAR 2:017
  - Kentucky Works technical requirements; 904 KAR 2:370
  - Relocation Assistance Program; 904 KAR 2:510
  - Transportation services for Kentucky Works; 904 KAR 2:018
  - Welfare to Work Grant Program; 904 KAR 2:490



## SUBJECT INDEX

### SPECIAL INSTRUCTIONAL SERVICES

Exceptional and Handicapped Programs  
Kentucky Special Education Mentor Program; 707 KAR 1:270  
Instructional Programs  
School to careers; 705 KAR 4:240

### STATE POLICE

Sex Offender Registration System  
System; 502 KAR 31:020

### SUBSTANCE ABUSE

(See Mental Health/Mental Retardation Services)

### SURFACE MINING RECLAMATION, ENFORCEMENT

Bond, Insurance Requirements  
General requirements for performance bond and liability insurance; 405 KAR 10:010E  
General Provisions  
Reclamation in lieu of cash payment of civil penalties; 405 KAR 7:097

### SWINE FEEDING OPERATIONS

(See Water)

### TAX APPEALS (BOARD)

Rules of practice and procedure; 802 KAR 1:010

### TAXATION

Ad Valorem Tax, Local Assessment  
Repeal of 103 KAR 7:010 and 020; 103 KAR 7:011  
Selective Excise Tax, Motor Vehicle Usage  
Motor vehicle usage tax valuation; 103 KAR 44:060

### TEACHER SCHOLARSHIP LOAN PROGRAM

(See Higher Education Assistance Authority)

### TELEPHONE SOLICITATION

(See Consumer Protection)

### TOURISM DEVELOPMENT CABINET

Fish and Wildlife Resources  
Fish; 301 KAR Chapter 1  
Game; 301 KAR Chapter 2  
Licensing; 301 KAR Chapter 5  
Water patrol; 301 KAR Chapter 6

### TRANSPORTATION CABINET

Highways  
Mass transportation; 603 KAR Chapter 7  
Right of way; 603 KAR Chapter 4  
Nonpublic School Transportation  
Transportation of nonpublic school students; 600 KAR 5:010  
Professional Engineering and Related Services  
Contracting for professional engineering or related services; 600 KAR 6:070  
Definitions; 600 KAR 6:010  
Pooling of professional engineering or related services; 600 KAR 6:065  
Vehicle Regulation  
Motor carriers; 601 KAR Chapter 1  
Motor vehicle tax; 601 KAR Chapter 9

### TREASURY

Unclaimed Properties  
Administrative hearing, appeals process; 20 KAR 1:070E  
Claims; 20 KAR 1:040E  
Reports to be filed by holders; 20 KAR 1:080E

### UNEMPLOYMENT INSURANCE

(See Employment Services)

### UNIVERSITY OF KENTUCKY

Agricultural Experiment Station; 12 KAR Chapters 1-7

### VEHICLE REGULATION

Motor Carriers  
Administration of taxes imposed in KRS 138.655 through 138.7291; 601 KAR 1:100  
Application for operating authority, registration; 601 KAR 1:040E  
Recordkeeping, audit requirements of taxes; 601 KAR 1:201  
Taxicabs, limousines, disabled persons vehicles; 601 KAR 1:115  
U-drive-it permit application procedures; 601 KAR 1:140  
U-drive-it permit, usage tax reporting, paying; 601 KAR 1:145  
Motor Vehicle Tax  
Apportioned registration; 601 KAR 9:135

### VENTURE CAPITAL

(See Economic Development Cabinet)

### VICTIM AND WITNESS PROTECTION PROGRAM

(See Kentucky Victim and Witness Protection Program)

### VICTIM NOTIFICATION

(See Corrections)

### VOCATIONAL REHABILITATION

Administration  
Carl D. Perkins Comprehensive Rehabilitation Center; 781 KAR 1:050  
Fees for service; 781 KAR 1:070  
Selection, economic test, order; 781 KAR 1:030

### WATER

Quality  
Definitions for 401 KAR Chapter 5; 401 KAR 5:002  
Swine feeding operations, permits; 401 KAR 5:009

### WORKERS' CLAIMS

Claims information, filing with the department; 803 KAR 25:170  
Filing of insurance coverage, notice of policy change, termination; 803 KAR 25:175  
Group self-insurers; 803 KAR 25:026  
Individual self-insurers; 803 KAR 25:021  
Workers' compensation medical fee schedule for physicians; 803 KAR 25:089  
Workers' compensation unfair claims settlement practices; 803 KAR 25:240

### WORKFORCE DEVELOPMENT CABINET

Assistive Technology Loan Corporation; 789 KAR Chapter 1  
Blind, Department for; 782 KAR Chapter 1  
Employment Services  
Unemployment Insurance; 787 KAR Chapter 1  
Vocational Rehabilitation  
Administration; 781 KAR Chapter 1