

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 25, NUMBER 9  
MONDAY, MARCH 1, 1999

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## **MEETING NOTICE**

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on March 9, 1999, at 10:30 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 2095-2098 of this Administrative Register.

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

| Title                                   | Chapter                                | Regulation             |
|---|--|------------------------|
| 806                                     | KAR                                    | 50: 155                |
| Cabinet, Department,<br>Board or Agency | Office, Division,<br>or Major Function | Specific<br>Regulation |

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA – March 9, 1999 at 10:30 a.m. in Room 149, Capitol Annex**

( & E ) - means that the emergency regulation has previously been reviewed  
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University of Kentucky  
Division of Regulatory Services**

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**Commercial Feeds**

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**GENERAL GOVERNMENT CABINET**

**Board of Medical Licensure**

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**Board of Nursing**

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**Board of Podiatry**

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**TOURISM DEVELOPMENT CABINET  
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**ECONOMIC DEVELOPMENT CABINET  
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**New Source Standards**

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**New Source Performance Standards**

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401 KAR 61:001. Definitions and abbreviations of terms used in 401 KAR Chapter 61. (Not Am. After Hear.)

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401 KAR 68:020. Hazard assessment.

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**Division of Forestry**

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**Department for Surface Mining Reclamation and Enforcement**

**General Provisions**

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**Bond and Insurance Requirements**

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**Department of Corrections**

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

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**Department of Criminal Justice Training**

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

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**Department of Highways**

**Division of Professional Services**

**Professional Engineering and Related Services**

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**Department of Vehicle Regulation**

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**Division of Transportation Planning**

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603 KAR 4:055. Scenic highways and byways.

**Mass Transportation**

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**Department of Libraries and Archives**

**Division of Public Records**

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**SCHOOL FACILITIES CONSTRUCTION COMMISSION**

**Procedures**

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**Kentucky Board of Tax Appeals**

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**Division of Occupational Safety and Health Compliance**

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**Workers' Claims**

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**Occupational Safety and Health Review Commission**

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**PUBLIC PROTECTION AND REGULATION CABINET**

**Department of Insurance**

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- 902 KAR 13:055. Emergency medical technician-basic course requirements.
- 902 KAR 13:070. Emergency medical technician-basic instructors.
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- 902 KAR 13:090. Disciplinary actions.
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**Kentucky Board of Family Health Care Providers**

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Department for Community Based Services  
Division of Policy Development**

**Public Assistance**

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- 904 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).
- 904 KAR 2:017. Kentucky Works supportive services.
- 904 KAR 2:116 & E. Home energy assistance program.
- 904 KAR 2:370 & E. Technical requirements for Kentucky Works.
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- 904 KAR 2:510. Relocation Assistance Program.

**Day Care**

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**Office of Inspector General**

- 906 KAR 1:130. Administrative subpoenas guidelines.

**Department for Medicaid Services**

**Medicaid Services**

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- 907 KAR 1:013E. Payments for hospital inpatient services. (Deferred from December)
- 907 KAR 1:019. Pharmacy services. (Amended After Hearing)
- 907 KAR 1:021. Amounts payable for drugs. (Amended After Hearing) (Deferred from February)
- 907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from February)
- 907 KAR 1:755 & E. Preadmission Screening and Resident Review Program. (Public Hearing in January)
- 907 KAR 1:780. Converted dual-licensed hospital-based nursing facility beds.

**Payment and Services**

- 907 KAR 3:005. Physicians' services. (Deferred from February)
- 907 KAR 3:010. Reimbursement for physicians' services. (Public Hearing in January)
- 907 KAR 3:090E. Acquired brain injury services.
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**Kentucky Children's Health Insurance Program**

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**Department for Mental Health and Mental Retardation Services  
Division of Substance Abuse**

**Substance Abuse**

- 908 KAR 1:310. Certification standards and administrative procedures for driving under the influence programs.
- 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 3:025. Notification of discharge, transfer or escape of violent offenders.

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

**K-TAP, Kentucky Works, Welfare to Work, State Supplementation**

- 921 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

**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.

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

FINANCE AND ADMINISTRATION CABINET  
Office of Financial Management and Economic Analysis

February 12, 1999

- (1) Regulation number and title: **200 KAR 21:010**. Procedure for qualification of underwriters and bond counsel for state bond issues.
- (2) The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet intends to promulgate an amendment to the administrative regulation listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 1999 at 2 p.m., at the Capitol Annex, Room 264, 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 March 24, 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: Gordon L. Mullis, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601, Phone (502) 564-2924 Fax (502) 564-7416.
- (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 wish to be informed of the intent of the administrative body to promulgate an administrative regulation governing specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.
- (7) Information related to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the procedure for prequalification of underwriters and bond counsel for state bond issues is KRS 45A.853 and 45A.879.
  - (b) The administrative regulation that the Office of Financial Management and Economic Analysis intends to promulgate will amend 200 KAR 21:010, procedure for prequalification of underwriters and bond counsel for state bond issues. It will change the procedure for prequalification of underwriters and bond counsel to be conducted biennially instead of annually. The following amendments to the regulation are proposed:
    1. Necessity, function, and conformity will be amended to provide that a firm shall not be considered for providing underwriting or bond counsel services to the Office of Financial Management and Economic Analysis prior to the issuance of the request for proposals.
    2. Section 1 will be amended to allow the Office of Financial Management and Economic Analysis to determine in consultation with each bond issuing agency the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies.
    3. Section 2 will be amended to allow the Office of Financial Management and Economic Analysis to require in the request for qualifications for Kentucky comanaging underwriters that the firm has participated to a specified level in the competitive bid process for School Facilities Construction Commission supported debt issues and that the firm can demonstrate a specified level of support for 100% locally funded school bond issues.
    4. Section 3 will be amended to prohibit a firm from participating in the prequalification process for the prequalification period if they fail to meet the deadline for the request for qualifications.
    5. Section 4 will be amended to include that firms will receive written notification of the results of the prequalification process.
  - (c) The necessity and function of the proposed administrative regulation is as follows: 98RS HB 392 changes the procedure for prequalification for underwriters and bond counsel for state bond issues by requiring the request for qualifications process be conducted biennially instead of annually. In order to conduct the prequalification process for FY 2000 and to comply with 98RS HB 392, it is necessary to promulgate this administrative regulation.
  - (d) The benefits expected from the proposed amendment are: The proposed amendment will allow the procedure for prequalification of underwriters and bond counsel for state bond issues to be conducted in a manner consistent with KRS 45A.853 (98RS HB 392).
  - (e) This amended administrative regulation will be implemented as follows: All underwriters and bond counsel firms will be provided the revised procedure for prequalification in the materials which will be distributed for the request for qualifications.

February 12, 1999

- (1) Regulation number and title: **200 KAR 21:030**. Procedure for calculating the preference for Kentucky bond counsel firms for state bond issues.
- (2) The Office of Financial Management and Economic Analysis, Finance and Administration Cabinet intends to promulgate an amendment to the administrative regulation listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 1999 at 3 p.m., at the Capitol Annex, Room 264, 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 March 24, 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: Gordon L. Mullis, Office of Financial Management and Economic Analysis, Finance and Administration Cabinet, Suite 261, Capitol Annex Building, Frankfort, Kentucky 40601, Phone (502) 564-2924 Fax (502) 564-7416.
- (b) On a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or

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

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

(b) Persons who wish to file this request may obtain a request form from the Office of Financial Management and Economic Analysis at the address listed above.

(7) Information related to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the procedure for calculating the preference for Kentucky bond counsel firms for state bond issues is KRS 45A.873 and 45A.879.

(b) The administrative regulation that the Office of Financial Management and Economic Analysis intends to promulgate will amend 200 KAR 21:030, procedure for calculating the preference for Kentucky bond counsel firms for state bond issues. It will change the procedure for calculating the preference for Kentucky bond counsel firms for state bond issues to be conducted biennially instead of annually. The following amendments to the regulation are proposed:

1. Section 1(1) will be amended to allow the Office of Financial Management and Economic Analysis to change the procedure for calculating the preference for Kentucky bond counsel firms for state bond issues to be conducted biennially instead of annually.

2. Section 1(3) will be amended to require the Office of Financial Management and Economic Analysis to compile a list of all bond counsel firms which shall receive preference in the selection process and provide the corresponding calculation or formula for the preference to be given by the Selection Committee.

(c) The necessity and function of the proposed administrative regulation is as follows: 98RS HB 392 changes the procedure for calculating the preference for Kentucky bond counsel firms for state bond issues by requiring the request for qualifications process be conducted biennially instead of annually. In order to comply with 98RS HB 392 it is necessary to promulgate this administrative regulation.

(d) The benefits expected from the proposed amendment are: The proposed amendment will allow the procedure for calculating the preference for Kentucky bond counsel firms for state bond issues to be conducted in a manner consistent with KRS 45A.853 (98RS HB 392).

(e) This amended administrative regulation will be implemented as follows: All bond counsel firms will be provided the revised procedure for prequalification in the materials which will be distributed for the request for qualifications.

### KENTUCKY BOARD OF MEDICAL LICENSURE

February 15, 1999

(1) Regulation number and title: **201 KAR 9:041**. Fee schedule.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, March 31, 1999, at 11 a.m., at the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to March 31, 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: C. Lloyd Vest, II, Esq., Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, or fax (502) 429-9923.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 311.565.

(b) The administrative regulation that the Kentucky Board of Medical Licensure intends to promulgate will amend 201 KAR 9:041 - Fee schedule. It will effect all physicians who are licensed to practice medicine in the Commonwealth of Kentucky, and is necessary for the board's housekeeping purposes.

(c) The necessity and function of the proposed administrative regulation is as follows: Fee increase for initial issuance of regular license from \$225 to \$250. Eliminating fee of \$25 for license application. Fee increase for annual registration or renewal of regular license from \$100 to \$125. Fee increase for reregistration of inactive license from \$150 to \$225.

(d) The benefits expected from administrative regulation are: The board feels that the amendments are necessary for processing annual registration and reregistration of licenses.

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

### KENTUCKY BOARD OF SOCIAL WORK

February 15, 1999

(1) **201 KAR 23:075**. Continuing education.

(2) The Kentucky Board of Social Work 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 March 24, 1999, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 1999, the public hearing will be canceled.

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(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Nancy Black, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602-0456, Telephone No. (502) 564-3296, Telefax No. (502) 564-4818.

(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 Nancy Black at the above address, or by calling (502) 564-3296 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 an administrative regulation relating continuing education is KRS 335.070(3) and 335.130(4).

(b) The administrative regulation that the Kentucky Board of Social Work intends to promulgate will be a new regulation that will not amend an existing regulation. It will detail the minimum requirements for continuing education for social workers licensed under KRS Chapter 335 and the requirements for continuing education providers.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 335.130(4) allows the board to establish by administrative regulation requirements for continuing education for social workers licensed under Kentucky law as a condition of license renewal. This regulation will establish the minimum requirements for continuing education for social workers licensed under KRS Chapter 335 and the requirements for continuing education providers.

(d) The benefit expected from this administrative regulation is that the continuing education requirements will ensure that licensed social workers acquire the information necessary to maintain their professional competence.

(e) This administrative regulation will be implemented as follows: Licensed social workers will be required to comply with this administrative regulation, and the Kentucky Board of Social Work will enforce the administrative regulation.

### BOARD OF LICENSURE FOR MARRIAGE AND FAMILY THERAPISTS

February 15, 1999

(1) **201 KAR 32:010.** Definitions.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the definitions is KRS 335.320 and Chapter 13A.

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will define certain terms included in the above-referenced chapter and subsequent regulations to be promulgated.

(c) The necessity and function of the proposed administrative regulation is to define the terms necessary to implement KRS 335.300 to 335.399.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

February 15, 1999

(1) **201 KAR 32:020.** Equivalent course of study.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

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



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

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

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the equivalent course of study is KRS 335.320, 335.330, and Chapter 13A.

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will define the criteria for the equivalent course of study.

(c) The necessity and function of the proposed administrative regulation is to define a course of study equivalent to a master's degree in marriage and family therapy as provided for in KRS 335.330(3).

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

February 15, 1999

(1) **201 KAR 32:025.** Marriage and family therapist associate.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the establishment of marriage and family therapist associates is KRS 335.320 and 335.332.

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will set forth the fees, and requirements for marriage and family therapists associates.

(c) The necessity and function of the proposed administrative regulation is to establish the requirements for application for marriage and family therapists associates in order to practice and earn the experience required for license application.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

February 15, 1999

(1) **201 KAR 32:030.** Fees.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the fees is KRS 334.330 and 335.320(7).

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will establish licensure

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fees for marriage and family therapists and marriage and family therapist associates.

(c) The necessity and function of the proposed administrative regulation is to establish the fees for licensure and renewal for marriage and family therapists as provided for in KRS 335.330(3). Additional provisions are set forth to establish a waiver of the renewal fee and a fee for marriage and family therapist associates.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

February 15, 1999

(1) **201 KAR 32:041.** Coursework in psychopathology.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the requirement of coursework in psychopathology is KRS 335.330.

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will set forth the requirements for coursework in psychopathology.

(c) The necessity and function of the proposed administrative regulation is to establish the coursework requirements for marriage and family therapists.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation

February 15, 1999

(1) **201 KAR 32:045.** Examination.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the examination for licensure as a marriage and family therapist is KRS 335.330.

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will provide for the board to contract with a testing agency and set forth the times the testing will be given.

(c) The necessity and function of the proposed administrative regulation is to provide the board with the ability to contract with a testing agency to administer the test for licensure as required by statute.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

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(1) **201 KAR 32:050.** Code of ethics.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the code of ethics is KRS 335.320(5), (7).

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will establish a code of ethics for marriage and family therapists and marriage and family therapist associates.

(c) The necessity and function of the proposed administrative regulation is to establish the code of ethics for marriage and family therapists and marriage and family therapist associates as required by KRS 335.320(5).

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

February 15, 1999

(1) **201 KAR 32:060.** Continuing education requirements.

(2) The Kentucky Board of Licensure for Marriage and Family Therapists 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 March 30, 1999 at 10 a.m., EST, at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 30, 1999 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should file their written request with the executive director at the following address: Ms. Nancy Black, Executive Director, Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Phone: (502) 564-3296, Fax: (502) 564-4818.

(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 an administrative body.

(b) Persons who wish to file this request may obtain a request form from Nancy Black at the Division of Occupations and Professions at the address above.

(7) Information relating to the proposed regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing education requirements is KRS 335.320(7) and 335.340(1)(b).

(b) The administrative regulation the Board of Licensure for Marriage and Family Therapists intends to promulgate will delineate the continuing education requirements for marriage and family therapists as a condition of renewal of their license.

(c) The necessity and function of the proposed administrative regulation is to establish the continuing education requirements for marriage and family therapists and prescribe the methods and standards for accreditation of continuing education courses.

(d) The benefit expected from this administrative regulation is increased clarity of the regulations and statutes pertaining to the Board of Licensure for Marriage and Family Therapists.

(e) The regulation will be implemented by the Division of Occupations and Professions. The implementing body will merely adhere to the definitions as outlined in the regulation.

**JUSTICE CABINET  
Department of Corrections**

February 10, 1999

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

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

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

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(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 March 22, 1999, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. Shifts, Posts and Days Off Assignment (CPP 3.7) is being implemented to set forth the criteria to be used for assigning shifts, posts and off days for institutional employees.

2. Acquired Immune Deficiency Syndrome (CPP 13.5) is being deleted as the policies and procedures regarding HIV and AIDS have been integrated into the procedures set forth in CPP 13.10 Serious Infectious Disease.

3. Serious Infectious Disease (CPP 13.10) is being established to replace 501 KAR 6:180 and CPP 13.5 and provide a comprehensive serious infectious disease policy which includes procedures for implementation, training, assessment, precautions to be taken, housing and work assignment, high risk behavior, refusal or interference with care and confidentiality of patient records.

4. Employee Tuberculosis Program (CPP 13.11) is being established to delineate the procedures for education, training and screening of employees at risk of contracting TB.

5. Prerelease Probation (CPP 27-11-02) shall be amended to clarify the policy statement and to exclude from consideration an inmate convicted of a sex crime as defined in KRS 17.500(4).

6. Application For Final Discharge From Parole (CPP 27-25-01) shall be deleted as the policy provides for early final discharge which is no longer an option.

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

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

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

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

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

February 10, 1999

(1) Regulation number and title: **501 KAR 6:090**, Frankfort Career Development Center.

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

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 22, 1999, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:090, as follows:

1. Organization and Assignment of Responsibilities (FCDC 01-09-01) shall be amended to restructure institutional organization and supervisory responsibilities.

2. Fiscal Management and Control (FCDC 02-10-01) shall be amended to reflect grammatical corrections.

3. Offender Records (FCDC 06-02-01) shall be amended to reflect changes in the procedure for the release and maintaining of official inmate records in accordance with the Kentucky Open Records Law.

4. Medical Emergencies and Medical and Psychiatric Transfers (FCDC 13-01-02) shall be amended to reflect grammatical corrections.

5. Informed Consent (FCDC 13-01-03) shall be amended to reflect grammatical corrections.

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6. Inmate Medical Screenings and Health Evaluations (FCDC 13-02-01) shall be amended to reflect grammatical corrections.
  7. Psychiatric and Psychological Services (FCDC 13-03-01) shall be amended to reflect grammatical corrections.
  8. Chronic and Convalescent Care (FCDC 13-06-01) shall be amended to reflect grammatical corrections.
  9. Sick Call and Physicians Weekly Clinic (FCDC 13-08-01) shall be amended to reflect grammatical corrections.
  10. Management of Serious and Infectious Diseases (FCDC 13-09-01) shall be amended to include the procedure for employee exposure regarding Bloodborne Pathogens, TB, and HIV/AIDS.
  11. Health Education: Provision of Special Health Care Needs (FCDC 13-11-01) shall be amended to include the addition of the medical alert system to recognize specific illnesses.
  12. Physicians Referrals (FCDC 13-13-01) shall be amended to reflect the changes in CPP 13.2 regarding physicians responsibilities and second opinions.
  13. Health Records (FCDC 13-14-01) shall be amended to reflect grammatical corrections.
  14. Routine and Emergency Dental Appointments (FCDC 13-15-01) shall be amended to reflect grammatical corrections.
  15. Routine and Emergency Eye Examinations (FCDC 13-16-01) shall be amended to reflect grammatical corrections.
  16. Good Time Credits (FCDC 15-01-01) shall be amended to reflect the changes in CPP 15.3 regarding Meritorious and Educational Good Time from committee recommendations to qualifying standards.
  17. Restoration of Forfeited Good Time (FCDC 15-01-02) shall be amended to reflect grammatical corrections.
  18. Inmate Correspondence (FCDC 16-02-01) shall be amended to reflect grammatical corrections.
  19. Inmate Packages (FCDC 16-04-01) shall be amended to reflect the changes in CPP 16.4 regarding the number of packages inmates are eligible to receive and the deletion of shopping trips.
  20. Security and Operation of the Governmental Services Program (FCDC 19-01-01) shall be amended to reflect grammatical corrections.
- (c) The necessity and function of the proposed administrative regulation is as follows:
1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
  2. This administrative regulation updates operating procedures at the Frankfort Career Development Center to comply with KRS Chapter 13A and to reflect current operating procedures.
- (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
- (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

February 10, 1999

- (1) Regulation number and title: **501 KAR 6:110**, Roederer Correctional Complex.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 22, 1999, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 22, 1999, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Tamela Biggs, Staff Attorney, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
  - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:110, as follows:
    1. Inmate Access to and Communication with Staff (RCC 01-06-01) shall be amended to reflect a name change and other grammatical corrections.
    2. Public Information and News Media Access (RCC 01-08-01) shall be amended to reflect the changes for institutional tours and grammatical corrections.
    3. Cooperation with Outside Bodies; Including Courts, ACA Governmental, Legislative, Executive, and Community Agencies (RCC 01-10-01) shall be amended to reflect grammatical corrections.
    4. Storage and Disposition of Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (RCC 02-02-03) shall be amended to reflect the movement of the evidence locker from the Control Center to the Captain's Office and grammatical corrections.
    5. Purchase Orders (RCC 02-04-01) shall be amended to reflect the utilization of the new KAPS System and grammatical corrections.
    6. Processing of Invoices (RCC 02-04-02) shall be amended to reflect the utilization of the new KAPS System and grammatical corrections.
    7. Property Inventory (RCC 02-06-01) shall be amended to reflect the Finance and Administration Cabinet, the newly established Inventory Officer position, and grammatical corrections.
    8. Search Policy and Disposition of Contraband (RCC 09-06-01) shall be amended to reflect deletions that are delineated in CPP 9.8, and grammatical corrections.
    9. Temporary Holding Cell Guidelines (RCC 10-01-02) shall be amended to reflect grammatical corrections and to delete the attachment.
    10. Bed Areas (RCC 12-01-02) shall be amended to reflect an operational change and other grammatical corrections.
    11. Inmate Rights and Responsibilities (RCC 14-01-01) shall be amended to reflect additional ACA Standards, a change in the scheduled

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sick call and grammatical corrections.

12. Inmate Visiting (RCC 16-01-01) shall be amended to reflect the deletion of two ACA Standards, changes in the visiting procedures, deletion of procedures that are delineated in CPP 9.8 and 16.1, and grammatical corrections.

13. Assessment Unit Operations, Rules and Regulations (RCC 17-05-04) shall be amended to reflect additional responsibilities of the Unit Manager, Assistant Unit Manager and the Classification and Treatment Officer, the renaming of the Controlled Intake Specialist, and grammatical corrections.

14. Job and Program Assignments (RCC 19-01-01) shall be amended to reflect program assignments being incorporated into this policy and grammatical corrections.

15. Education Programs (RCC 20-01-01) shall be amended to reflect grammatical corrections.

16. Vocational Horticulture Program (RCC 20-01-03) shall be amended to reflect a more detailed description of the program and grammatical corrections.

17. Library Services (RCC 21-01-01) shall be amended to reflect grammatical corrections.

18. Recreation and Inmate Activities (RCC 22-01-01) shall be amended to reflect that selection considerations for a program assistant shall be approved by the Classification Committee and other grammatical corrections.

19. Inmate Clubs and Organizations (RCC 22-03-01) shall be amended to include the club coordinator in various other areas of the policy and grammatical corrections.

20. Religious Services (RCC 23-01-01) shall be amended to reflect the change of staffing and planning of religious programs to chaplain's duties and responsibilities and other grammatical corrections.

21. Parole Eligibility Dates (RCC 25-04-02) shall be deleted as this information is delineated in 501 KAR 1:030.

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

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

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

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

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

February 10, 1999

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

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

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

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 22, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. Hours of Work, Inclement Weather, Leave Request, and Sick Time (BCFC 03-07-01) shall be added to reflect an employees hours of work, leave requests and use of sick time.

2. Fire Procedures (BCFC 08-03-01) shall be amended to reflect current operating procedures for the evacuation of all affected inmate areas during a fire.

3. Temporary segregation Holding Area (BCFC 10-01-01) shall be totally revised to reflect current operating procedures and to comply with ACA Standards concerning an inmate placed in the temporary holding area.

4. Food Service Security (BCFC 11-02-01) shall be amended to reflect current operating procedures and the fact that BCFC no longer uses knives in the food service department.

5. Barbershop Services and Equipment Control (BCFC 12-03-02) shall be amended to reflect a more uniform inventory of barber tools.

6. Insect and Vermin Control (BCFC 12-06-01) shall be amended to reflect a change from a private contract pest control company to licensed staff designated to provide pest and vermin control.

7. BCFC Recycling Project (BCFC 12-07-01) shall be added to reflect current operating procedures of the recycling project at BCFC.

8. Organization of Health Services (BCFC 13-01-01) shall be amended to reflect current operating procedures.

9. Sick Call and Physician's Weekly Clinic (BCFC 13-02-01) shall be amended to reflect the current use of a contract physician at BCFC.

10. Inmate Medical Screenings and Health Evaluations (BCFC 13-04-01) shall be amended to reflect current operating procedures and to comply with ACA Standards.

11. Medical Emergencies and Medical or Psychiatric Transfers (BCFC 13-05-01) shall be amended to reflect current procedures in the event of a medical emergency, and where first aid kits, spill clean up kits, and extra protection kits are located at BCFC.

12. Use of Pharmaceutical Products (BCFC 13-14-01) shall be amended to reflect current operating procedures in the receipt, storage and

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dispensing of medication.

13. Parenteral Administration of Medications and Use of Psychotropic Drugs (BCFC 13-15-01) shall be amended to reflect current operating procedures in relation to parenteral administration of medications.

14. Bloodborne Pathogens Exposure Control Plan (BCFC 13-19-01) shall be amended to reflect changes in OSHA guidelines concerning exposure to bodily fluids.

15. Inmate Visiting (BCFC 16-01-01) shall be amended to reflect current operating procedures that prohibit visitors from bringing food into the institution during visits.

16. Inmate Mail Regulations (BCFC 16-03-01) shall be amended to reflect changes in CPP 16.2.

17. Inmate Packages (BCFC 16-03-02) shall be amended to reflect changes in CPP 16.4 and procedures for an inmate who places a quarterly vendor order.

18. Institutional Classification Committee (BCFC 18-01-01) shall be amended to reflect current operating procedures.

19. Recreation and Inmate Activities (BCFC 22-01-01) shall be amended to reflect current operating procedures in the recreation department.

20. Casework Services (BCFC 24-01-02) shall be amended to reflect the current casework schedule at BCFC.

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

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

2. This administrative regulation updates operating procedures at the Bell County Forestry Camp to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

February 10, 1999

(1) Regulation number and title: **501 KAR 6:181**, Repeal of 501 KAR 6:180.

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

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

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 22, 1999, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

(b) The administrative regulation that the Department of Corrections intends to promulgate will establish 501 KAR 6:181, as follows: For the purpose of repealing 501 KAR 6:180 as CPP 13.10 shall incorporate the regulation's requirements, expanding upon these requirements and providing comprehensive serious infectious disease training, assessment and enforcement policies and procedures for institutional personnel.

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

1. KRS 196.035, 197.020, 197.055, and 215.550 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. This administrative regulation is promulgated in order to comply with the accreditation standards of the American Correctional Association.

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

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

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

Department of State Police

January 28, 1999

(1) Regulation number and title: Sexual assault nurse examiner protocol. **502 KAR 12:010**.

(2) The Justice Cabinet has promulgated 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 March 23, 1999 at 11 a.m. at 403 Wapping Street, 2nd Floor Bush Building, 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.



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(b) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to March 23, 1999, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Barbara W. Jones, General Counsel, Justice Cabinet, 403 Wapping Street, 2nd Floor, Bush Building, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-5244.

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

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 Justice Cabinet at the address listed in (5)(a) above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulations governing the sexual assault nurse examiner protocol is KRS 216B.400

(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 proper steps to administer the sexual assault nurse examiner protocol in medical facilities as prescribed in KRS 216B.400.

(c) The necessity and function of the proposed administrative regulation is to set forth definitions and minimal procedures for the preforensic, forensic and postforensic examinations.

(d) The benefits expected from the administrative regulation are to protect the health and safety of a victim and to properly gather forensic evidence to successfully prosecute perpetrators who have committed sexual assaults.

(e) The administrative regulation will be implemented by distributing a copy to the Kentucky Board of Nursing, the Kentucky Nurses Association, the Kentucky Medical Licensure Board, the Kentucky Medical Association and the Kentucky Hospital Association.

### Department of Criminal Justice Training

February 15, 1999

(1) Regulation number and title: **503 KAR 3:020**. Law enforcement training course (other than the law enforcement basic training course) trainee requirements; misconduct; penalties; discipline procedures.

(2) The Justice Cabinet, Department of Criminal Justice Training, 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 March 22, 1999, at 9 a.m., in room 211, Funderburk Building, Richmond, Kentucky 40475-3137.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 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: Stephanie C. Bingham, General Counsel, Department of Criminal Justice Training, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-5897; FAX - (606) 622-2740.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Department of Criminal Justice Training 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 Chapter 13A and 15A.160.

(b) The administrative regulation that the Department of Criminal Justice Training intends to promulgate will amend 501 KAR 3:020, as follows:

1. Establishing criteria for removing unqualified trainees;
2. Updating limitations on gifts from trainees to staff;
3. Updating penalty levels for misconduct;
4. Updating summary action provision;
5. Updating conduct requirements and disciplinary procedures.

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

1. KRS 15A.160 authorizes the Secretary of the Justice Cabinet to promulgate administrative regulations in accordance with KRS Chapter 13A. KRS 15A.070 authorizes the 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.

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

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

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

### Department of Juvenile Justice

February 11, 1999

(1) **505 KAR 1:080**, Kentucky Educational Collaborative for State Agency Children.

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



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(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 24, 1999, at 10 a.m. in the State Board Room on the first floor of the Capital Plaza Tower, 500 Mero 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 agrees, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to March 24, 1999, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following: Keith Horn, Department of Juvenile Justice, Office of General Counsel, 1025 Capital Center Drive, Building Three, Third Floor, Frankfort, Kentucky, 40601, Phone: (502) 573-2738, Fax: (502) 573-4308.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:080, Kentucky Educational Collaborative for State Agency Children, is KRS 158.135, 605.110, and 605.150.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate sets forth policies for complying with KRS 158.135 and 605.110, which require that children maintained in a facility operated or contracted by the Cabinets for Families and Children, Justice, or Health Services shall, so far as possible, receive a common school education.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 605.110 requires that children maintained in a facility operated or contracted by the Cabinets for Families and Children, Justice, or Health Services shall, so far as possible, receive a common school education. This administrative regulation sets forth policies for complying with KRS 605.110, as well as KRS 158.135, in juvenile detention, residential programs, group homes, day treatment, or other programs operated, contracted, or financed through the cabinets. Programs and facilities for foster children, other than therapeutic foster care, are excluded.

(d) The benefits expected from the administrative regulation are the establishment of policies relating to the provision of a common school education to state agency children.

(e) The administrative regulation will be implemented by agreements entered into between KECSAC and local school districts and monitored by the staffs of the involved cabinets.

## KENTUCKY BOARD OF EDUCATION

February 10, 1999

(1) **703 KAR 5:070**, Procedures for inclusion of special populations in the state-required assessment and accountability programs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1999, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.

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

(b) If five persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this March 31, 1999, public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1999, the public hearing will be cancelled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to inclusion of special populations in the state-required assessment and accountability programs is KRS 158.6455 and 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 703 KAR 5:070.

(c) The necessity and function of the proposed administrative regulation is to establish procedures for the inclusion of special student populations in the state-required assessment and accountability programs. KRS 158.6455 provides the Kentucky Board of Education with the authority to promulgate administrative regulations to establish a system of determining successful schools and a system of rewards and assistance for certified staff in schools and districts.

(d) The benefits expected from this administrative regulation are to assist schools in how to include students in special populations (e.g., students with disabilities) in the state-required assessment and accountability programs and to ensure that these standards are enforceable in the contexts of assessment and accountability and issues of ethical practices.

(e) The administrative regulation will be implemented as follows: Copies of the administrative regulation will be made available to local school districts; additionally, training and advice will be available to school districts on how to include students with disabilities, students attending schools classified as A2-A6, students with limited English proficiencies, students receiving instruction in home/hospital (homebound instruction) setting, and students who have temporary medical conditions that necessitate accommodations or modifications for participation in the state-required assessment and accountability programs.

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**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

February 15, 1999

(1) The subject matter of this administrative regulation amendment, **804 KAR 4:210**, Supplemental bar license, is to limit to five (5), the number of supplemental bar licenses a licensee needs to purchase.

(2) The Department of Alcoholic Beverage Control intends to amend an existing administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation amendment has been scheduled for Wednesday, March 24, 1999, at 10 a.m., EDT, in the Hearing Room of the Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, 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 Wednesday, March 24, 1999, at 10 a.m., EDT, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Contact person Rebecca W. Goodman, Kentucky Department of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, (502) 564-4850, Fax (502) 564-1442.

(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 the informed by the administrative body.

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter of the administrative regulation is KRS 241.060.

(b) The administrative regulation that the Department of Alcoholic Beverage Control intends to promulgate will amend an existing administrative regulation. The proposed administrative regulation amendment will allow existing retail alcohol licensees be issued up to a maximum of five (5) supplemental bar liquor licenses upon a showing to the Distilled Spirits Administrator of good cause and need for the supplemental license.

(c) The necessity and function and conformity of the proposed administrative regulation amendment is as follows: Due to the modern business practices and the large interior areas of some licensees, it may be necessary to provide more than one (1) bar within a license premises to effectively serve the patrons at such premises. After a review of the laws of other states in this particular area of ABC regulation, particularly New York, it has been determined that a supplemental bar should be allowed existing licensees, if such licensees can show this board the need for such supplemental bar and upon payment of an additional fee.

(d) The benefits expected from the administrative regulation amendment are: This administrative regulation amendment will provide additional supplemental bar licenses to the holder of a retail drink license where good cause and need is shown for the supplemental license(s).

(e) The administrative regulation amendment will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in the regulation.

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

February 5, 1999

(1) **906 KAR 1:110** - Rural primary-care hospital services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 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 March 31, 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 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 amendment of this administrative regulation is KRS 216.380(11).

(b) The cabinet intends to amend 906 KAR 1:110 to replace the licensure category of rural primary-care hospital with the licensure category of critical access hospital. Other amendments will comply with drafting requirements of KRS Chapter 13A.

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(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with KRS 216.380 in the establishment of licensure requirements for the operation of critical access hospitals.

(d) The benefits expected from these proposed amendments are that they will improve access to health services for rural residents of Kentucky.

(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**

February 15, 1999

(1) **907 KAR 1:031**, Payment for home health 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 March 31, 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 March 31, 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 Member and Provider Services, 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 (VTDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for home health services 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 1:031, Payments for Home Health Services to delete outdated material and more clearly define existing reimbursement policies, to revise the language to comply with the requirements of KRS Chapter 13A, and to incorporate the administrative appeal process for providers subject to cost-based reimbursement as outlined in 907 KAR 1:671.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable for home health agency services and appeal rights for home health service providers.

(d) The benefits expected from administrative regulation are:

1. The revision to the appeal process will make the process consistent with KRS Chapter 13B and 907 KAR 1:671 to ensure that providers are afforded all their due process rights;

2. Outdated material will be eliminated and existing reimbursement policy will be more clearly defined; and

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

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

February 15, 1999

(1) **907 KAR 1:102**, Advanced registered nurse practitioner services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 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 March 31, 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: Patty Patrick, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to advanced registered nurse practitioners are KRS 205.520 and 194A.030.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:102 to combine 907 KAR 1:200, 1:406, 1:408, and 1:476 into 907 KAR 1:102; establish guidelines to require the attending ARNP verify recipient eligibility; make changes due to advanced registered nurse practitioners having prescriptive authority pursuant to KRS 314.011; incorporate policy related to pharmacy services; make formatting changes as a result of KRS 194A.030 and KRS Chapter 13A; update current procedures; incorporate procedure codes, forms and policy presently used by the Early Periodic Screening and Diagnostic Testing (EPSDT) Program for screening services; clarify policy relating to pain management; incorporate new policy related to new coverage of certain injectable prescriptions and implant procedures; establish determinants for limiting the frequency of standard treadmill stress testing; amend policy for coverage of laboratory procedures in the ARNP office; incorporate new policy to include coverage of an evaluation and management service in conjunction with chemotherapy administration; incorporate policy to allow coverage for newborn hospital discharge evaluation when billed to the mother's medical assistance identification #; and make minor clarifications to current policy.

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

(d) The benefits expected from administrative regulation are: Combining the Advanced Registered Nurse Practitioner, Nurse Mid-Wife Services, and Nurse Anesthetist Services Manuals into the Advanced Practice Nurse Services Manual to eliminate duplication of policy and ease of administration. The advanced registered nurse practitioners are able to prescribe medications pursuant to KRS 314.011; therefore, the promulgation of these regulations will permit the reimbursement for these services.

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

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

February 15, 1999

(1) **921 KAR 3:050.** Claims and additional administrative provisions for the 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 March 31, 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 10 calendar days prior to March 31, 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, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Food Stamp Program claims and additional administrative provisions is KRS 194B.050 and EO. 98-731, which reorganized the Cabinet for Families and Children and abolished the Department for Social Insurance and placed its programs under the Department for Community-Based Services.

(b) The administrative regulation that the Department for Community-Based Services intends to promulgate is an amendment to administrative regulation, 921 KAR 3:050. The amended administrative regulation is necessary to implement the Food Stamp claims, collections, and disclosure provisions that were enacted by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which amended 7 USC 2014(e)(2)(C), 2020(e)(8)(D) and 2020. The revisions are as follows:

1. 7 USC 2014(e)(2)(C), requires that earned income deduction shall not be allowed with respect to determining an overissuance due to the failure of a household to report earned income in a timely manner.

2. 7 U.S. 2020(e)(8)(D), requires the state to provide case file addresses, Social Security numbers and, if available, photographs to law enforcement officers to assist them in locating fugitive felons or parole and probation violators.

3. 7 USC 2022, replaces existing overissuance collection rules with provisions requiring the state to collect any over issuance by allotment reduction; withholding of unemployment compensation, by recovering from federal pay or income tax refunds, and by any other means, unless the state demonstrates that all of the means are not cost effective.

- a. Allows benefit reductions for state error claims to the greater of 10% of the monthly allotment or \$10 a month.

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- b. Provides that the state must collect overissued benefits in accordance with state-established requirements for notice, electing a means of payment, and setting a schedule for payment.
- 4. Amendments to conform with language in KRS 194B.050 and EO 98-731 regarding reorganization of the Cabinet for Families and Children, and to make technical changes to comply with KRS Chapter 13A.
- 5. Amendments to replace references to the Aid to Families with Dependent Children (AFDC) with the Kentucky Transitional Assistance Program (K-TAP), Kentucky's TANF Program.
- 6. Amendments to the material incorporated by reference to reflect previous policy changes.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the claims, collections, and disclosure procedures that are used by the cabinet in the administration of the Food Stamp Program.
- (d) The benefits expected from administrative regulation are: The administrative regulation will prevent a loss of federal funds by implementing the requirements mandated by 7 USC 2014(e)(2)(C), 2020(e)(8)(D), and 2022.
- (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.

February 15, 1999

- (1) **922 KAR 2:160**, Child Day Care Assistance Program.
- (2) Cabinet for Families and Children, Department for Community-Based Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1999 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.
- (4)(a) The public hearing will be held if:
  - 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  - 2. A minimum of 5 persons, or one (1) person representing the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to March 31, 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, 3rd Floor East, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the child day care assistance program is KRS 194B.050, 199.892, 199.8994 (1) and (2), and EO 98-731.
  - (b) The administrative regulation that the Department for Community-Based Services intends to promulgate will amend 922 KAR 2:160, Child day care assistance program to include requirements from the Child Care and Development Fund (CCDF) Two-Year Plan for Federal Fiscal Years 2000-2001 and updated statistics received from the fall of 1998 Market Rate Survey of child care providers. As a result of the ongoing extensive public participation process, the cabinet shall amend the regulation to comply with the requirements to be established in the Child Care and Development Fund (CCDF) Two-Year Plan. This plan covers the period of October 1, 1999 - September 30, 2001, and may include:
    - 1. Revisions to the parental copayment amounts not to exceed approximately 10 - 12% of the family income.
    - 2. Updates to the maximum payment rates based on the Market Rate Survey of child care providers conducted in the fall of 1998.
    - 3. An increase to the income eligibility for child day care assistance to the extent that funds are available.
    - 4. Other program amendments as may be included in the plan as a result of legislative committee and other public input regarding the proposed two-year plan.
  - (c) The necessity, function and conformity: KRS 194B.050 and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children and provide uniform administration of child day care funds. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Child Care and Development Fund, the Social Services Block Grant, and Welfare to Work funding for child care services pursuant to 904 KAR 2:017 and 921 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of the Child Day Care Assistance Program.
  - (d) The benefits expected from administrative regulation are: The cabinet or designee shall operate one program for the provision of child care services providing eligible families with simplified access throughout the Commonwealth. The cabinet or designee shall comply with provisions of the Social Services Block Grant, Food Stamp Employment and Training Program and the Child Care Development Block Grant as required or amended in the October 1, 1999 - September 30, 2001 Two-Year Plan.
  - (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  
200 KAR 21:010E

This emergency administrative regulation amends the procedure for prequalification of underwriters and bond counsel for state bond issues. The procedure for prequalification of underwriters and bond counsel will be conducted biennially instead of annually. In order to conduct the prequalification process for FY 2000 and to comply with 98RS HB 392, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be placed by an ordinary administrative regulation. The Notice of Intent for 200 KAR 21:010 was filed with the Regulations Compiler on February 12, 1999.

PAUL E. PATTON, Governor  
JOHN P. MCCARTY, Secretary

FINANCE AND ADMINISTRATION CABINET  
Office of Financial Management and Economic Analysis

200 KAR 21:010E. Procedure for prequalification of underwriters and bond counsel for state bond issues.

RELATES TO: KRS 45A.853

STATUTORY AUTHORITY: KRS 45A.853, 45A.879

EFFECTIVE: February 12, 1999

NECESSITY, FUNCTION, AND CONFORMITY: KRS 45A.853 provides that a firm shall not be considered for providing underwriting or bond counsel services to the Commonwealth unless the Office of Financial Management and Economic Analysis has prequalified the firm prior to the issuance [advised notice] of the request for proposals. KRS 45A.879 authorizes the Office of Financial Management and Economic Analysis to promulgate administrative regulations to carry out these requirements by January 1, 1995. This administrative regulation establishes the procedure for prequalifying underwriting and bond counsel firms.

Section 1. General Requirements for Prequalification of Underwriters and Bond Counsel. (1) The Office of Financial Management and Economic Analysis shall determine [annually], in consultation with each bond issuing agency, the need for issuing requests for proposals for underwriting and bond counsel services for bond issuing agencies [for the following fiscal year].

(2) Based on the determination of need by the Office of Financial Management and Economic Analysis, the office shall draft requests for qualifications for underwriting and bond counsel services for the bond issuing agencies which need those services.

(3) All requests for qualifications shall include at a minimum the following:

(a) A description of the bond issuing agency for which the request for qualifications is being issued;

(b) A requirement that the firm disclose any information which would impair the firm's ability to provide the level and type of services needed by the bond issuing agency;

(c) A requirement that the firm certify, pursuant to a sworn statement, that the firm has complied with campaign finance laws established pursuant to KRS 121.015 to 121.056, 121.150, 121.310, 121.320, 121.330 and 121A.050;

(d) A requirement that the firm certify that it has complied with and is not prohibited by the Executive Branch Code of Ethics, KRS 11A.001 to 11A.990, from entering into a contract with the Commonwealth of Kentucky;

(e) A requirement that the firm certify that it has complied with KRS 45A.485;

(f) A statement that the firm is not prohibited by KRS 45A.863 from entering into a contract with the Commonwealth of Kentucky;

(g) A statement that the Commonwealth shall not be liable for any costs associated with a firm's preparation and submission of a response to a request for qualifications; and

(h) A description of the process by which responses to the request for qualifications shall be evaluated by the Office of Financial Management and Economic Analysis.

Section 2. Request for Qualifications for Underwriter Services. (1) In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for underwriter services may, depending on the nature of the underwriting services required, request the following information:

(a) A description of the history and organization of the firm and its municipal finance department;

(b) If applicable, a summary of the relevant financial advisory experience of the firm;

(c) The audited financial statements of the firm for the previous [two-(2)] fiscal year or for years prior if applicable [years];

(d) A list of the relevant underwriter experience of the firm on negotiated municipal bond transactions of issuers of similar type as that of the state bond issuing agencies;

(e) A list of experience and qualifications of the firm representatives who would work on issues of the bond issuing agency;

(f) If applicable, a list of the relevant comanaging underwriter experience of the firm on negotiated municipal bond transactions;

(g) If applicable, identification of the lead banker or contact person at the firm and description of his or her experience and qualifications;

(h) Identification of the person in the firm who would perform cash flow and debt structuring analyses and a description of his or her experience and qualifications; and

(i) Specific references for the firm and the lead or principal contact person.

(2) If a request for qualifications is for Kentucky comanaging underwriters, the request for qualifications may require the firm to state:

(a) The authority of the firm's office located in the Commonwealth to commit capital to an underwriting, independent of some other office of the firm, and the dollar limit, if any;

(b) The underwriter of the firm whose responsibilities include competitive bond sales in the Commonwealth and a description of his or her experience and qualifications; [The emphasis the firm's office(s) located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth;]

(c) Specific references for the firm and the underwriter in the office(s) located in the Commonwealth; [The underwriter in the office of the firm located in the Commonwealth and a description of his or her experience and qualifications; and]

(d) The firm has participated to a specified level in the competitive bid process for School Facilities Construction Commission supported debt issues; [Specific references for the firm and the underwriter in the office(s) located in the Commonwealth;]

(e) The firm can demonstrate a specified level of support for 100 percent locally funded school bond issues; and

(f) The emphasis the firm's office(s) located in the Commonwealth places on selling the Commonwealth's bonds to retail buyers located in the Commonwealth.

Section 3. Request for Qualifications for Bond Counsel Services. In addition to the requirements set forth in Section 1 of this administrative regulation, a request for qualifications for bond counsel services may request the following information:

(1) A description of the history and organization of the firm and its municipal finance and tax law department;

(2) A statement of the relevant bond counsel experience of the firm in applicable areas of finance as required by the bond issuing agency for which the request for qualifications is being issued;

(3) A statement of the experience and qualifications of the firm's

personnel who would work on bond issues of the bond issuing agency;

(4) Proof that the firm is listed as a "municipal bond attorney" in the most recently published edition of "The Bond Buyer's Municipal Marketplace";

(5) A statement of professional liability insurance coverage showing the limits of the coverage;

(6) A certification as to whether the firm's principal place of business is located in Kentucky as defined by KRS 45A.873(3); and

(7) A statement of specific references for the firm and personnel of the firm who would work on the bond issues of the bond issuing agency.

Section 4. Advertisement and Mailing of Requests for Qualifications. (1) The Office of Financial Management and Economic Analysis shall advertise all requests for qualifications in a financial newspaper or financial publication with national circulation.

(2) Requests for qualifications shall be mailed to all firms which have been prequalified by the Office of Financial Management and Economic Analysis the prior year and to any firm which has requested, in writing, a request for qualifications from the Office of Financial Management and Economic Analysis. It shall be the responsibility of each firm to keep all mailing information current.

(3) Interested firms shall file a written response to the request for qualifications prior to the deadline for filing a written response established in the request for qualifications. A firm which fails to meet the deadline shall be prohibited [barred] from participating in the prequalification process for that qualification period, [one (1) year.]

(4) Firms will receive written notification of the results of the pre-qualification process.

Section 5. Certification of Prequalification. (1) Master lists of prequalified firms for providing underwriter and bond counsel services shall be certified and maintained by the Office of Financial Management and Economic Analysis.

(2) The prequalification process shall be conducted annually.

(3) Only underwriter or bond counsel firms which have been newly incorporated or which have opened a new office in the Commonwealth since the last prequalification shall be eligible to apply to the Office of Financial Management and Economic Analysis for prequalification, independent of the annual prequalification process.

JOHN P. MCCARTY, Secretary

KAREN POWELL, Attorney

APPROVED BY AGENCY: February 11, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Kim Blitch

(1) Type and number of entities affected: Underwriting and bond counsel firms which respond to the Request for Qualifications distributed by the Office of Financial Management and Economic Analysis.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living and employment in Kentucky, in the aggregate, as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of doing business in Kentucky, in the aggregate, as a result of this administrative regulation.

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

1. First year following implementation: There are no compliance, reporting and paperwork requirements for the first year.

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 direct and indirect savings to the promulgating administrative body is the savings realized from conducting the prequalification process biennially instead of annually.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be a decrease in the amount of paperwork to the promulgating administrative body as a result of conducting the prequalification process biennially instead of annually.

(4) Assessment of anticipated effect on state and local revenues: There will be no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No source of revenue to be used for implementation and enforcement of this administrative regulation is necessary.

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

(a) Geographical area in which administrative regulation will be implemented: Statewide. There will be no economic impact as a result of this administrative regulation.

(b) Kentucky: There will be no economic impact as a result of this administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered. This amendment to the administrative regulation is necessary in order to be in compliance with 98RS HB 392.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health or environmental welfare in Kentucky as a result of this administrative regulation.

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

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering is not used because all firms which respond to the Request for Qualifications will be uniformly evaluated.



ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, February 9, 1999)

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 defined by KRS 164.010(7) [the Council on Postsecondary Education established by KRS 164.011].

(3) "Institutions" means [is] a state-supported postsecondary education institution as defined in KRS 164.001(10).

(4) "Program of Studies" means [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 shall be [is] [are] generally granted admission to a community or [and] technical college or [colleges and] community college-type program [programs] at an institution.

(a) [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.

(b) 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:

(a) A community or technical college [colleges] or community college-type program [programs] at an institution [each university] upon completion of the ACT Assessment Test.

1. 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 an adult student.

2. The Kentucky Community and Technical College System [adult students: KCTCS] may substitute the Test of Adult Basic Education (TABE) for an applicant to a technical college; or

(b) A baccalaureate program at a [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 shall include a home school [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] shall [must] meet the same



minimum qualifications for admission as a Kentucky resident [residents] as stated in subsections (1) through (4) [(3)] of this section and at least one (1) of the following conditions in order to be admitted to a state institution [institutions]:

- (a) Graduate in the top fifty (50) percent of their high school class;
  - (b) Achieve a composite score at the 50th percentile or above for all students taking the ACT or the SAT nationally (the ACT is the preferred admission test for Kentucky public institutions, and applicants are encouraged to take the ACT; however, each institution may accept the SAT in lieu of the ACT for resident and nonresident applicants [in an amount not to exceed ten (10) percent of the first-time freshmen admitted to baccalaureate programs]); or
  - (c) Demonstrate [through other accepted measures] the ability to pursue the college academic program without substantial remedial education [aid].
- (6) [(5)] If, under extenuating circumstances, a student is [students are] admitted conditionally without having fulfilled the testing requirement, the student [students] shall [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 1999, [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 shall be [is] eligible for admission to a baccalaureate program [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 shall [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. A substitution shall not [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 may be [is] [are] eligible for admission to a baccalaureate program [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 [(2304)], English II [(2302)], English III [(2303)], and English IV or AP English [(2304) or AP English (2307 or 2308)].
- (b) Except as provided in subparagraphs 1, 2, and 3 of this paragraph, 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 Mathematics 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 nonnative language as well as the culture associated with that language; or

2. Demonstrate linguistic competence and awareness of a nonnative language and culture equivalent to two (2) years of high school language and the culture associated with that language. The council shall adopt a policy by 2003 for assessing nonnative language competence.

(3)(a) Beginning with fall semester 2002 through the academic year 2003-2004, [(2)] a student shall [is [also] required to] take five (5) [seven (7)] electives. Three (3) of the five (5) [of the seven (7)] electives shall [must] be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements.

(b) Beginning with the fall semester 2004, a student shall [is required to] take five (5) electives. Three (3) of five (5) electives shall [must] be courses with academic content that is at least as rigorous as that required in the minimum high school graduation requirements. An elective shall be in an approved area [Electives [and] must be in the approved areas] of study:

1. [(a)] Social studies.

2. [(b)] Science.

3. [(c)] Mathematics.

4. [(d)] English/language arts.

5. [(e)] Arts and humanities.

6. [(f)] Physical education and health. A student shall be [is] limited to one-half (1/2) unit as an elective in physical education and to one-half (1/2) unit in health.

7. [(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.

8. ~~[(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).]~~

9. ~~[(i)] A [(e) In addition,] college-bound student is [students are] encouraged to take, as part of his [their] elective course selection [selections], additional coursework in mathematics, sciences, and [foreign languages,] arts. [Two (2) elective courses in a nonnative language and an elective course that ensures computer literacy are strongly recommended.] [- and computer literacy. Substitutions cannot be made for any course which is identified by a specific program of studies number unless the course in question has been deemed equivalent in content by the Council on Postsecondary Education in consultation with the Department of Education.]~~

(4) ~~[(9)](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) ~~[-] A [given] student's handicapping condition is verified through appropriate documentation;~~

(c) ~~[-] 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) ~~[-] Another course in a closely related area may [can] be substituted for the course that cannot be completed.~~

(6) ~~[(5)] [(2)] A course selection is [Course selections are] tied to the Program of Studies [for Kentucky Schools-Grades K-12"] and the individual course descriptions contained in that document. Adjustments in the minimum academic [educational] preparation for college shall [will] occur as changes are made in the program of studies. For guidance in the selection of a specific course, a counselor may [courses, counselors should] consult the program of studies and Council [on Postsecondary Education] materials on the precollege curriculum.~~

(7) ~~[(6)] [(3)] Each institution shall [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, except as provided in subsection (9) of this section, 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]. The precollege curriculum requirement shall apply to:~~

(a) ~~A first-time freshman pursuing a baccalaureate degree with or without a declared major;~~

(b) ~~A student converting from nondegree status to baccalaureate degree status;~~

(c) ~~A student changing from certificate or associate-degree level to baccalaureate-degree level; and~~

(d) ~~A student who, transferring from another institution, has been admitted to baccalaureate-degree status by the receiving institution. A degree-seeking student shall be assigned a degree-level code.~~

(9) ~~[(8)] The following shall be [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 a technical college, community college or community college-type program in a university [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 shall [will] be accepted by an institution if the [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 frameworks [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) A state-supported institution shall assure that a transferring student receives academic counseling concerning the transfer of credit among institutions. [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 following material is incorporated by reference:

(a) The "Program of Studies for Kentucky Schools, Grades Primary-12", April 28, [published by the KDE in] 1998, Kentucky Department of Education;

(b) [and the] "Core Content for Mathematics Assessment", Version 1.0, 1996, Kentucky Department of Education;

(c) "General Education Transfer Policy", 1995, Council on Postsecondary Education; and

(d) "Baccalaureate Program Transfer Frameworks", 1998-99, Council on Postsecondary Education. [- 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.

COUNCIL ON POSTSECONDARY EDUCATION  
(As Amended at ARRS, February 9, 1999)

13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program.

RELATES TO: KRS 154A.130(4), 156.070, 164.7871, 164.7874, 164.7877, 164.7879, 164.7881, 164.7885, 164.7889 [158.070, 164.020, 164.7911, 164.7927]

STATUTORY AUTHORITY: KRS 164.020(28), 164.7874(1), (3), (7), 164.7877(3), 164.7879(1), (3), 164.7881(4)(a), (6), EO 98-1592 [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: KRS 164.7877(3) requires the council to administer the Commonwealth Merit Scholarship Trust Fund. EO 98-1592 renamed the scholarship as the Kentucky Educational Excellence Scholarship (KEES) Program. KRS 164.7877(3) requires the council to administer the funds appropriated to the trust fund for the program. KRS 164.7874(7) requires the council to develop and implement standards for high school curriculum as they relate to eligibility for participation in the program. KRS 164.7879(3)(c) requires the council to determine the eligibility of a noncertified, nonpublic high school graduate and for a GED recipient for a supplemental award. KRS 164.7874(3) requires the council to establish a table to convert an SAT score to an ACT standard. KRS 164.7881(6) requires the council to establish a five (5) year postsecondary education program standard. KRS 164.7881(4)(a) requires the council to establish overall award levels for the program. This administrative regulation establishes those requirements relating to the Kentucky Educational Excellence Scholarship (KEES) Program. [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;

(a) Administered to a student [students] for entrance to a Kentucky postsecondary education institution; and

(b) [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" is defined [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)].

(7) [(9)] "Eligible student" is defined in KRS 164.7874(10) [1998 Ky. Acts ch. 575, sec. 2(10)].

(8) [(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.]

(9) [(11)] "GED" means a general educational development diploma awarded to a student.

(10) [(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].

(11) [(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).

(12) [(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].]

(13) [(16)] [(15)] "Participating institution" is defined in KRS 164.7874(15) [1998 Ky. Acts ch. 575, sec. 2(15)].

(14) [(17)] [(16)] "SAT" means the Scholastic Assessment Test administered to a Kentucky student [students] seeking admission to a Kentucky postsecondary education institution [institutions].

(15) [(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) 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)(a) Except as provided in paragraph (b) of this subsection, [(3)] an eligible student's grade point average shall be calculated by:

1. [(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]

2. [(b)] Adding the total number of points accumulated for an academic year; and

3. [(c)] Dividing the total number of points accumulated in subparagraph 2 of this paragraph [(b) of this subsection] by the total number of units for the academic year.

(b) [(d) Except that:] For a student taking an advanced placement or international baccalaureate course during the academic year, the grade assigned in paragraph (a)1 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 the [such] manner as the KDE or the KHEAA shall require.

(4) [(5)] For the 1998-1999 and 1999-2000 school years, 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 1999-2000 [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 2000-2001 [1999-2000] for the purposes of this program.

Section 3. Scholarship Curriculum. (1) [In addition to the re-

quirements of Section 5 of this administrative regulation;] A student shall complete the scholarship curriculum established in this section to qualify for the base scholarship award.

(a) Except as provided in paragraph (b) of this subsection, the scholarship curriculum shall consist of the courses and electives required by this paragraph. [be:]

1. For a student enrolled in high school during the 1998-1999 academic year, 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 according to the standards established in subparagraph 4 of this paragraph. [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 according to the standards established in subparagraph 4 of this paragraph. [shall meet the standards enumerated in subparagraph 4b of this paragraph.]

4. The following subject areas and standards shall be applicable [are established] for electives. An elective in:

a. [An elective in] Social studies, science, mathematics, English/language arts, or [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 or [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 or [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. Beginning July 1, 1998, a Kentucky resident enrolled in a Kentucky high school who is eligible for a base scholarship award shall be limited to a maximum of four (4) base scholarship awards. [Base Scholarship Award. (1) Beginning after July 1, 1998, and thereafter, a Kentucky resident enrolled in a Kentucky [public] high school [for 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 GPE 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. Pursuant to KRS 164.7874(3), the [(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<br>V+M | ACT<br>Composite | SAT I<br>V+M | ACT<br>Composite | SAT I<br>V+M | ACT<br>Composite | SAT I<br>V+M | ACT<br>Composite | SAT I<br>V+M | ACT<br>Composite |
|--------------|------------------|--------------|------------------|--------------|------------------|--------------|------------------|--------------|------------------|
| 1600         | 35-36            | 1370         | 31               | 1140         | 25               | 910          | 19               | 680          | 14               |
| 1590         | 35               | 1360         | 31               | 1130         | 25               | 900          | 19               | 670          | 14               |
| 1580         | 35               | 1350         | 30               | 1120         | 24               | 890          | 18               | 660          | 14               |
| 1570         | 35               | 1340         | 30               | 1110         | 24               | 880          | 18               | 650          | 13               |
| 1560         | 35               | 1330         | 30               | 1100         | 24               | 870          | 18               | 640          | 13               |
| 1550         | 34               | 1320         | 30               | 1090         | 24               | 860          | 18               | 630          | 13               |
| 1540         | 34               | 1310         | 29               | 1080         | 23               | 850          | 17               | 620          | 13               |
| 1530         | 34               | 1300         | 29               | 1070         | 23               | 840          | 17               | 610          | 13               |
| 1520         | 34               | 1290         | 29               | 1060         | 23               | 830          | 17               | 600          | 13               |
| 1510         | 34               | 1280         | 29               | 1050         | 22               | 820          | 17               | 590          | 13               |
| 1500         | 33               | 1270         | 28               | 1040         | 22               | 810          | 17               | 580          | 12               |
| 1490         | 33               | 1260         | 28               | 1030         | 22               | 800          | 16               | 570          | 12               |
| 1480         | 33               | 1250         | 28               | 1020         | 22               | 790          | 16               | 560          | 12               |
| 1470         | 33               | 1240         | 28               | 1010         | 21               | 780          | 16               | 550          | 12               |
| 1460         | 33               | 1230         | 27               | 1000         | 21               | 770          | 16               | 540          | 12               |
| 1450         | 32               | 1220         | 27               | 990          | 21               | 760          | 16               | 530          | 12               |
| 1440         | 32               | 1210         | 27               | 980          | 21               | 750          | 15               | 520          | 12               |
| 1430         | 32               | 1200         | 26               | 970          | 20               | 740          | 15               | 510          | 11               |
| 1420         | 32               | 1190         | 26               | 960          | 20               | 730          | 15               | 500          | 11               |
| 1410         | 32               | 1180         | 26               | 950          | 20               | 720          | 15               |              |                  |
| 1400         | 31               | 1170         | 26               | 940          | 20               | 710          | 15               |              |                  |
| 1390         | 31               | 1160         | 25               | 930          | 19               | 700          | 14               |              |                  |
| 1380         | 31               | 1150         | 25               | 920          | 19               | 690          | 14               |              |                  |

This table can be used to relate SAT I V+M scores to ACT Composite scores.

The estimates are based on the test scores of 103,525 students from fourteen (14) universities and two (2) states who took both the ACT and the SAT I between October 1994 and December 1996. Because the ACT and the SAT I have different content, students' actual scores on the ACT could differ significantly from the concordance estimates in the table.

Source: ACT, Inc. Questions about the concordance study may be directed to ACT's Research Division (319/337-1471).

January 1998

~~[(4)(a) For the academic year 1998-99, the amount of a student's supplemental award shall be the amount contained in 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 GPE 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 if [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 KRS 164.7879(3) [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 if [upon satisfying the following

conditions]:

(a) The student is not a convicted felon;

(b) The student's eighteenth (18) birthday occurs on or after January 1, 1999 [during the 1999 calendar year or any year thereafter];

(c) The student [A Kentucky resident] [The student] takes and receives a GED diploma in Kentucky within five (5) years of attaining eighteen (18) years of age;

(d) The student [A Kentucky resident] [The student] takes the ACT or SAT and achieves a minimum score for eligibility as established by KRS 164.7879(3) [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 the student's [such] eligibility.

Section 8. A student who receives a supplemental award as a result of taking and receiving a GED within five (5) years of obtaining eighteen (18) years of age shall have a maximum of five (5) years eligibility beyond the date the GED is received. [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) Has a 2.5 cumulative grade point average or higher at the close of the first academic award period that the award was granted

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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 requested and a detailed listing of the expenditures [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

### DEPARTMENT OF STATE Kentucky Registry of Election Finance (As Amended at ARRS, February 9, 1999)

#### 32 KAR 2:210. Judicial hearing procedures [Three (3) judge panel procedures].

RELATES TO: KRS 121.140(4)

STATUTORY AUTHORITY: KRS 121.120(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 121.140(4) [as amended by the General Assembly in regular session in 1998, effective July 15, 1998] provides for a hearing before one (1) retired or former justice or judge [a three (3) judge panel] in cases in which the Registry of Election Finance and a respondent fail to reach a conciliation agreement. [It is necessary to promulgate] This administrative regulation establishes [to establish] procedural guidelines to be followed in the initiation of those hearings and [;] selection of a justice or judge [judges to sit on the panels, and payment of per diem compensation and expenses of judges].

Section 1. Administrative Pleadings. (1) If [Upon the failure of] the registry and the respondent fail to reach a conciliation agreement, and [submission of] a request for retired or former justices or judges has been submitted [panelists] as required by KRS 121.140(4), the general counsel shall prepare an administrative complaint which shall include the following:

(a) A statement of the allegations contained in the original complaint;

(b) The registry's;

1. Findings of fact and conclusions of law in support of a finding of probable cause; or

2. [the registry's] Notice of noncompliance with reporting requirements pursuant to 32 KAR 2:040(10);

(c) A statement that attempts to negotiate a conciliation agreement have been unsuccessful; and

(d) A statement that conciliation negotiations have been extended for the maximum period allowed by 32 KAR 2:050(3).

(2) The general counsel shall prepare an administrative summons [subpoena] which, along with a copy of the administrative complaint, shall be served upon the respondent either personally or by certified mail, return receipt requested. This notification shall be made in accordance with the schedule established by KRS 121.140(4).

(3) A respondent to an administrative complaint as provided in subsection (1) of this section shall file a written response within [have] twenty (20) days from the date of receipt of the administrative summons [subpoena] and complaint [to file a written response]. The response shall be filed at the offices of the Registry of Election Finance, 140 Walnut Street, Frankfort, Kentucky 40601.

(4) Within thirty (30) days [a reasonable time] of the final selection of one (1) retired or former justice or judge in the manner provided by KRS 121.140 [the three (3) panelists], the general counsel shall forward copies of the administrative complaint to the justice or judge selected [each member of the panel] and shall, thereafter, forward copies of all other pleadings filed up to the dates of the hearing.

(5) One (1) retired or former justice or judge shall be selected for each hearing required under KRS 121.140(4) and shall serve through the completion of the hearing process and until the justice or judge renders a decision. [The executive director shall randomly select a three (3) member panel to serve for a period of three (3) months:

Section 2. Retired or former justice or judge selected to serve on a three (3) judge panel shall receive:

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- (1) \$300 per diem for the performance of his duties; and  
(2) Reimbursement for actual and necessary expenses.]

DONALD L. COX, Chair  
ROSEMARY F. CENTER, General Counsel  
APPROVED BY AGENCY: December 14, 1998  
FILED WITH LRC: December 14, 1998 at 1 p.m.

REVENUE CABINET  
Department of Law  
Division of Tax Policy  
(As Amended at ARRS, February 9, 1999)

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

RELATES TO: KRS 138.450 through 138.470  
STATUTORY AUTHORITY: KRS Chapter 13A, 131.130, 138.460

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 74 enacted by the 1998 Kentucky General Assembly made significant changes in the valuation of motor vehicles for motor vehicle usage tax. KRS 138.460, as amended and effective August 1, 1998, authorizes the Revenue Cabinet to promulgate administrative regulations prescribing documentation necessary to carry out the provisions of HB 74. KRS 131.130(1) authorizes the cabinet to make administrative regulations for the administration of all tax laws. This administrative regulation establishes the form and procedures required for the implementation of House Bill 74 and replaces emergency administrative regulation 103 KAR 44:060E.

Section 1. Definition. (1) "Gift" means the transfer of a motor vehicle from one (1) party to another for no consideration or nominal consideration.

(2) "MSRP" means the manufacturer's suggested retail price.

Section 2. The following special valuation procedures shall be followed [are prescribed]:

(1) For purposes of establishing retail price for used motor vehicles when a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be the average retail value as listed in the appropriate automotive reference manual prescribed in Section 3 of this administrative regulation.

(2) For purposes of establishing retail price for used motor vehicles whose values do not appear in the automotive reference manuals prescribed by the cabinet, and when a notarized affidavit signed by both the buyer and the seller is not available, retail price shall be determined by the cabinet.

(3) ~~For purposes of establishing retail price for motor vehicles previously registered in another state or country by nonresident military personnel who choose to register a vehicle in Kentucky, retail price shall be the average trade-in value from the appropriate primary automotive reference manual prescribed in Section 3 of this administrative regulation.~~

(4) ~~For purposes of establishing retail price for used motor vehicles being registered by a new resident for the first time in Kentucky, the prescribed automotive reference manual(s) shall be the primary reference manual(s) prescribed in Section 3 of this administrative regulation.~~

(5) ~~For purposes of establishing retail price for used vehicles of the current model year for which an average retail value has not been published in one of the reference manuals prescribed by the cabinet, retail price shall be eighty-five (85) percent of the [manufacturer's suggested retail price (MSRP)], including the MSRP of all equipment and accessories, standard and optional, and transportation [destination] charges.~~

Section 3. The following automotive reference manuals shall be followed [are prescribed] for the valuation of the motor vehicles contained therein for motor vehicle usage tax, listed in order of prescribed use:

- (1) Automobiles and light trucks:

- (a) NADA Official Used Car Guide® [(Primary Source)];  
(b) NADA Official Older Used Car Guide [(Primary Source)];  
(c) NADA Classic Collectible and Special Interest Car Appraisal Guide [(Secondary Source)].  
(2) Other trucks: NADA Official Commercial Truck Guide® [(Primary Source)].  
(3) Miscellaneous vehicles:  
(a) NADA Recreational Vehicle Appraisal Guide [(Primary Source)];  
(b) NADA Van/Truck Conversion and Limousine Appraisal Guide [(Primary Source)];  
(c) NADA Motorcycle/Snowmobile/ATV/Personal Watercraft Appraisal Guide [(Primary Source)].  
(4) General use: Automotive Invoice Service New Car Cost Guide [(Primary Source)].

Section 4. (1) ~~If [When]~~ an affidavit of total consideration given is not available and a retail price based on MSRP is prescribed by statute, a copy of the window sticker or other documentation from the manufacturer showing MSRP and listing the base price, all equipment and accessories, standard and optional, and transportation charges shall be provided to the county clerk when a new automobile is presented for registration.

(2) An itemized statement showing the MSRP of any additional equipment and accessories installed by the dealer and not reflected on the window sticker shall also be provided to the county clerk.

(3) ~~If [In the event]~~ the manufacturer's documentation does not include complete MSRP information, the cabinet shall obtain MSRP [such] information from available sources.

(4) ~~If [In the absence of MSRP information on]~~ the manufacturer's invoice to the dealer does not contain MSRP information, the dealer shall provide the county clerk a copy of the manufacturer's invoice and ~~[in addition,]~~ provide an itemized list of all equipment and accessories whether installed by the manufacturer or dealer, plus transportation charges.

(5) Taxable valuation shall then be determined through the use of MSRP information provided in the price reference manual prescribed in Section 3 of this administrative regulation, or other source of MSRP information [available to the cabinet].

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

(a) Revenue Form 71A100, "Affidavit of Total Consideration Given for a Motor Vehicle", October 1998 ~~[edition, is incorporated by reference]~~.

(b) ~~[(2)]~~ Revenue Form 71F001, "Kentucky's Taxation of Motor Vehicles for Motor Vehicle Usage Tax", December 1998 ~~[edition is incorporated by reference]~~.

(2) These documents ~~[(3) This form]~~ may be inspected, copied, or obtained at the Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.

SARAH JANE SCHAAF, Secretary

ALEX W. ROSE, Commissioner

APPROVED BY AGENCY: December 14, 1998

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

GENERAL GOVERNMENT CABINET  
Kentucky State Board of Examiners and  
Registration of Landscape Architects  
(As Amended at ARRS, February 9, 1999)

201 KAR 10:080. Continuing education.

RELATES TO: KRS 323A.100(1), 323A.210(2)(a)

STATUTORY AUTHORITY: KRS 323A.100(1), 323A.210(2)(a),

(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.100(1) requires a landscape architect to complete the approved continuing education contact hours established by an administrative



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regulation promulgated by the board. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to establish a program of continuing education for registrants. This administrative regulation establishes the continuing education requirements for a landscape architect.

Section 1. Definitions. (1) "Annually" or "continuing education year" means a twelve (12) month period from July 1 of a calendar year through June 30 of the following calendar year.

(2) "Board" is defined by KRS 323A.010(1).

(3) "Clock hour" means fifty (50) minutes of actual instruction.

(4) "Continuing education unit" or "CEU" means ten (10) clock hours of continuing education experience approved by the board.

(5) ~~["LARE" means the landscape architectural registration exam;~~

~~{6}]~~ "Self-directed study" means a course of study in which a registrant takes and passes an examination offered by the sponsor after the registrant reviews material, views a video, or listens to an audio tape.

~~{6} {7}]~~ "Sponsor" means an individual, organization, association, institution, or other entity that provides educational activity for the purpose of fulfilling the continuing education requirements of this administrative regulation.

~~{7} {8}]~~ "Tour" means a review or inspection of a landscape architectural element specified in the definition of "practice of landscape architecture" established by KRS 323A.010(3).

Section 2. General Statement. Continuing education obtained by a registrant shall maintain, improve or expand skills and knowledge obtained prior to initial license or develop new and relevant skills and knowledge.

Section 3. Continuing Education Requirements. (1) A registrant shall acquire fifteen (15) clock hours of continuing education annually.

(2) A registrant may be credited for a maximum of seven and one-half (7 1/2) clock hours of continuing education for a tour annually.

(3) A registrant may carry forward a maximum of fifteen (15) clock hours of continuing education to meet the subsequent year's requirements. Tour hours shall not be carried forward into subsequent years.

Section 4. Approval of Continuing Education Programs. (1) The board shall:

(a) Approve a continuing education program that it determines:

1. Is relevant to the practice of landscape architecture; and

2. Furthers the competence of a registrant; and

(b) Determine the number of clock hours allowed.

(2)(a) A sponsor shall obtain the approval of the board at least sixty (60) days prior to the date on which the sponsor intends to conduct a continuing education program that is to be offered, presented, or advertised as meeting the continuing education requirements established for a registrant.

(b) A sponsor shall submit a copy of the continuing education program for which it seeks approval, including a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker.

(c) A sponsor shall not offer, present, or advertise a program as a continuing education program that meets the continuing education requirements for a registrant unless it has obtained the approval of the board.

(3) A registrant who completes an educational program that has not been submitted to the board for approval shall receive continuing education credit if:

(a) The registrant submits to the board a copy of the continuing education program, including a copy of the hand-out materials and agenda and a description of the presenter, teacher, or speaker; and

(b) The board determines that the program meets the requirements established in subsection (1)(a) of this section.

(4) A continuing education credit shall be given for self-directed study if a registrant:

(a) Prior to taking the course, has:

1. Submitted to the board a copy of the course description, including a detailed summary of the course; and

2. Received approval of the course by the board; and

(b) Submitted proof to the board that the registrant has passed the

examination given by the sponsor.

(5) Continuing education credits shall be given for one-half (1/2) the number of hours, not to exceed seven and a half (7 1/2) hours, of a tour if the registrant has:

(a) Submitted to the board:

1. A description of the tour; and

2. Proof that the tour was related to the practice of landscape architecture as defined by KRS 323A.010(3); and

(b) Received approval of the tour by the board.

(6) The number of clock hours for which credit shall be given for a continuing education program shall be the number of clock hours approved by the board.

(7) The conversion of university credits to clock hours shall be:

(a) One (1) university quarter hour of credit shall equal ten (10) clock hours.

(b) One (1) university semester hour of credit shall equal fifteen (15) clock hours.

Section 5. (1) Continuing education activities shall include:

(a) A college or university course;

(b) An activity for which a CEU was approved by the board; and

(c) The portion of a technical meeting, seminar, or other course that was:

1. Related to landscape architectural practice or management;

and

2. Approved by the board.

(2)(a) A landscape architect who teaches a continuing education course shall be credited with the number of clock hours equal to the time spent teaching the course.

(b) Credit shall not be given for repeated instruction of the same course.

(3) A registrant shall obtain the board's approval prior to completing a continuing education activity that has not been accredited by the board.

Section 6. Reporting of Continuing Education Activities. (1) Upon license renewal, a registrant shall report continuing education activities for the continuing education period ending June 30.

(2) The report of continuing education activities shall include:

(a) Name of activity;

(b) Date of activity;

(c) Location of activity; and

(d) Contact hours earned.

(3) The report of continuing education activities shall contain the following affidavit of compliance:

I certify that I attended the above continuing education courses and that the hours attended are correct. By certifying that I attended the above listed courses, I understand that my license to practice Landscape Architecture in the Commonwealth of Kentucky may be revoked if I falsify any of the information or if I did not attend a listed course. I understand that the Kentucky State Board of Examiners and Registration of Landscape Architects has the right to verify my attendance to the above listed courses. I have retained in my files a registration receipt, canceled check or other acceptable verification of my attendance to the above listed course.

(4) The report of continuing education activities shall be made:

(a) On a "Continuing Education Approval Request and Affidavit Form"; or

(b) By a written statement containing the:

1. Information specified by subsection (2) of this section; and

2. Affidavit of compliance established by subsection (3) of this section.

(5) The report of continuing education activities shall be:

(a) Signed by the registrant; and

(b) Affixed with the registrant's seal.

(6) A registrant shall maintain for two (2) continuing education years documentation verifying successful completion of the annual requirement.

Section 7. Verification of Continuing Education Activities. (1) Following each renewal period, the board shall require between five (5) and fifteen (15) percent of the registrants, chosen randomly, to furnish documentation of the completion of the appropriate number of CEU's

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for the previous renewal period, including hours carried forward from the previous year.

(2) Documentation of attendance and participation in a continuing education activity shall be made by:

(a) Submission of an official document, including a:

1. Transcript;
2. Certificate of attendance;
3. Affidavit signed by the instructor; or
4. Receipt for a fee paid to a sponsor; or

(b) If evidence specified in paragraph (a) of this subsection is not issued by a sponsor, a written summary of attendance and participation.

(3) To verify that an activity listed by a registrant qualifies as a continuing education activity, the board shall determine if the activity had the prior approval of the board. If the activity has not been approved by the board, the board shall determine if the activity meets the requirements of Section 4(1) of this administrative regulation for approval as a continuing education activity.

(a) If the activity qualifies as continuing education, the board shall include the number of clock hours earned for that activity in determining if the applicant obtained the required fifteen (15) hours of continuing education.

(b) If the activity does not qualify as continuing education, the board shall deduct the number of clock hours claimed for that activity from the total number of clock hours earned by the registrant. After this calculation, if a registrant does not have the required fifteen (15) hours of continuing education, the board shall send written notification to the registrant that:

1. The registrant did not meet the continuing education requirements because an activity listed on the applicant's form as a continuing education activity did not qualify for continuing education credit; and

2. The board shall suspend his license if the requirements of subsection (4) of this section are not met.

(4) The license of the registrant shall be suspended if the registrant fails to:

(a) Complete the required number of continuing education clock hours within sixty (60) days of the notification from the board; and

(b) Submit to the board a completed and updated "Continuing Education Approval Request and Affidavit Form" within sixty-five (65) days of the notification from the board.

Section 8. Reciprocity. (1) Credit for continuing education earned by a registrant who does not reside in Kentucky shall be granted if:

(a) The registrant:

1. Is registered in another state having continuing education requirements equal to, or more stringent than, the requirements established by the provisions of this administrative regulation; and

2. Has met all requirements for registration in the state in which the registrant resides; and

(b) The other state certifies to the board that:

1. Its continuing education requirements are equal to, or more stringent than, the requirements established in this administrative regulation; and

2. The registrant has met its requirements for the current renewal period.

(2) The number of clock hours earned in a registrant's state of residence shall be credited against the clock hours required by the provisions of this administrative regulation.

(3) If a registrant obtains a license in Kentucky by reciprocity, the registrant shall be exempt from the continuing education requirements established by the provisions of this administrative regulation until the renewal period following licensure in Kentucky.

Section 9. Exempt Registrant. (1) A registrant shall be exempt from the continuing education requirements:

(a) For the period of initial licensure;

(b) During the period of time in which the registrant has an inactive license in accordance with the provisions of Section 10 of this administrative regulation; or

(c) If the board approves a written request for an exemption submitted by the registrant in accordance with the provisions of subsection (2) of this section.

(2) A registrant may request an exemption from the continuing education requirements by submitting written document that the registrant was:

(a) Employed or assigned to duty outside the United States for a period exceeding 120 consecutive days during the calendar year; or

(b) Unable to complete the requirements because of:

1. Physical disability;
2. Personal illness; or
3. Illness of a family member or dependent.

Section 10. Inactive License. (1) A registrant may choose to inactivate his license.

(2) During the period a license is inactive, a registrant shall:

(a) Be exempt from the provisions of this administrative regulation; and

(b) Not practice landscape architecture, or use a title conveying that the registrant is a landscape architect.

Section 11. Reinstatement of Suspended or Inactive License. (1) Prior to reinstatement of a suspended or inactive license, a registrant shall complete the number of CEU's required for the annual renewal of the license times the number of years the license was suspended or inactive.

(2) The number of CEU's required by subsection (1) of this section shall not exceed thirty (30) clock hours.

Section 12. Incorporation by Reference. (1) "Continuing Education Approval Request and Affidavit Form" (Form #CE-1), March 1997 edition, Kentucky State Board of Examiners and Registration of Landscape Architects, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky State Board of Examiners and Registration of Landscape Architects, 160 Democrat Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

HORST SCHACH, President

DIANE FLEMING, Assistant Attorney General

APPROVED BY AGENCY: September 30, 1998

FILED WITH LRC: November 12, 1998 at 2 p.m.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification of Alcohol  
and Drug Counselors  
(As Amended at ARRS, February 9, 1999)**

**201 KAR 35:030. Code of ethics.**

RELATES TO: KRS ~~309.081~~ [309.1315(14)]

STATUTORY AUTHORITY: KRS 309.0813(2) [~~309.1315(1)~~, (14)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for certified alcohol and drug counselors. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) An alcohol and drug counselor shall:

(a) Advance and protect the welfare of the client;

(b) Respect the rights of a person [persons] seeking assistance; and

(c) Make reasonable efforts to ensure that services are used appropriately.

(2) An alcohol and drug counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of:

1. Race;
2. Gender;
3. Religion; or
4. National origin[~~, disability, or sexual orientation~~];

(b) Exploit the trust and dependency of a client;

(c) Engage in a dual relationship with a client, including a social, business, or personal relationship, that may:

1. Impair professional judgment;
2. Incur a risk of exploitation of the client; or
3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(d) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of therapy;

(e) Use the professional relationship with a client to further a personal interest;

(f) Continue a therapeutic relationship unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic service if the counselor is unable or unwilling, for an appropriate reason, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of a therapy session without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of a client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in an investigation or ethical proceeding; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) An alcohol and drug counselor shall respect and guard the confidence of each individual client.

(2) An alcohol and drug counselor shall not disclose a client confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person [or persons];

(c) During the course of a civil, criminal, or disciplinary action arising from the counseling, at which the alcohol and drug counselor is a defendant [If the alcohol and drug counselor is a defendant in a civil, criminal, or disciplinary action arising from the therapy, a confidence may be disclosed only in the course of that action]; or

(d) In accordance with the terms of a written informed consent agreement. [If written informed consent has been obtained, confidential information shall be revealed only in accordance with the terms of the consent agreement.]

(3) An alcohol and drug counselor may use client or clinical material in teaching, writing, and public presentations if:

(a) Written informed consent has been obtained in accordance with subsection (2)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(4) An alcohol and drug counselor shall store or dispose of a client record so as to maintain confidentiality.

Section 3. Publication Credit. An alcohol and drug counselor shall assign credit to all who have contributed to the published material and for the work upon which publication is based. An alcohol and drug counselor shall:

(1) Recognize joint authorship and major contributions of a professional character made by several persons to a common project. The author who has made the principle contribution to a publication shall be identified as the first listed;

(2) Acknowledge in a footnote or introductory statement minor contributions of a professional character, extensive clerical or similar assistance;

(3) Acknowledge, through specific citations, unpublished, as well as published, material that has directly influenced the research or writing.

Section 4. Professional Competence and Integrity. An alcohol and drug counselor shall maintain standards of professional com-

petence and integrity and shall be subject to disciplinary action for:

(1) ~~[(a) Conviction of a felony, or a misdemeanor related to the practice as an alcohol and drug counselor;~~

~~(b) Conviction shall include conviction based on:~~

~~1. A plea of no contest or an "Alford Plea"; or~~

~~2. The suspension or deferral of a sentence;~~

(2) Having been subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of alcohol and drug counseling;

~~[(4) Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of a certificate;]~~

(4) Refusing to comply with an order issued by the board; or

(5) Failing to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to a subpoena [subpoenas] issued by the board.

(6) An alcohol and drug counselor who is aware of conduct by another certified alcohol and drug counselor that violates this code of ethics shall report that conduct to the Kentucky Board of Certification of Alcohol and Drug Counselors.

(7) An alcohol and drug counselor shall comply with all the policies and procedures of the facilities where he is employed. If there is conflict with the policies or procedures of the facility and this code of ethics, the alcohol and drug counselor shall report this conflict to the Kentucky Board of Certification of Alcohol and Drug Counselors.

Section 5. Responsibility to a Student or Supervisee. ~~[(1) An alcohol and drug counselor shall not exploit the trust and dependency of a student or supervisee.~~

(2) An alcohol and drug counselor shall:

(1) Be aware of his influential position with respect to a student or supervisee; and

(2) Avoid exploiting the trust and dependency of a student or supervisee;

(3) Try to avoid a social, business, personal, or other dual relationship that could:

(a) Impair professional judgment; and

(b) Increase the risk of exploitation;

(4) Take appropriate precautions to ensure that judgment is not impaired and to prevent exploitation if a dual relationship cannot be avoided;

(5) Not provide counseling to a:

(a) Student;

(b) Employee; or

(c) Supervisee;

(6) Not engage in sexual intimacy or contact with a:

(a) Student; or

(b) Supervisee;

(7) Not permit a student or supervisee to perform or represent himself as competent to perform a professional service beyond his level of:

(a) Training;

(b) Experience; or

(c) Competence;

(8) Not disclose the confidence of a student or supervisee unless:

(a) Permitted or mandated by law;

(b) It is necessary to prevent a clear and immediate danger to a person;

(c) During the course of a civil, criminal, or disciplinary action arising from the supervision, at which the alcohol and drug counselor is a defendant;

(d) In an educational or training setting, of which there are multiple supervisors or professional colleagues who share responsibility for the training of the supervisee;

(e) In accordance with the terms of a written informed consent agreement, [these persons:

1. An alcohol and drug counselor shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a counselor shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A counselor shall not provide therapy to a student, employee or supervisee.

4. A counselor shall not engage in sexual intimacy or contact with a student or supervisee.

(3) An alcohol and drug counselor shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) An alcohol and drug counselor shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision;

(d) In an educational or training setting if there are multiple supervisors, to a professional colleague who shares responsibility for the training of the supervisee; or

(e) If there is written informed consent previously obtained in writing, information shall be revealed only in accordance with the terms of the consent agreement.]

Section 6. Responsibility to a Research Participant. (1) An alcohol and drug counselor performing research shall be aware of federal and state laws and regulations and professional standards governing the conduct of research.

(2) An alcohol and drug counselor performing research shall:

(a) Be responsible for making a careful examination of ethical acceptability in planning a study;

(b) [studies. To the extent that service to a research participant may be compromised by participation in research, an alcohol and drug counselor, shall] Seek the ethical advice of another qualified professional not directly involved in the investigation, if it is possible that services to a research participant could be compromised; and

(c) [and shall] Observe safeguards to protect the rights of a [research] participant.

(3) An alcohol and drug counselor requesting a participant's involvement in research shall:

(a) Inform him of all aspects of the research that might reasonably affect [be expected to influence] his willingness to participate; and

(b) [-An alcohol and drug counselor shall] Be sensitive to the possibility of diminished consent if the [when a] participant:

1. Is also receiving clinical services;

2. Has an impairment which limits understanding or communication; or

3. [when a participants] Is a child.

(4) An alcohol and drug counselor performing research shall respect a participant's freedom to decline participation in or to withdraw from a research study at any time. [This obligation requires special thought and consideration when an alcohol and drug counselor or other member of the research team are in a position of authority or influence over a participant.]

(5) An alcohol and drug counselor shall avoid a dual relationship with research participants.

(6) Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. The following shall be explained to the participant before obtaining written, informed consent:

(a) A risk that another person, including a family member, could obtain access to the information; and

(b) The plan to be used to protect confidentiality. [When

there is a risk that others, including a family member, may obtain access to such information, this risk, together with the plan for protecting confidentiality, is to be explained as part of the procedure for obtaining written informed consent.]

Section 7. Financial Arrangements. [(4)] An alcohol and drug counselor shall:

(1) [make financial arrangements with a client, third-party payor, or supervisee that are reasonably understandable and conform to accepted professional practice.

(2) An alcohol and drug counselor shall:

(a) Not offer or accept payment for a referral;

(b) Not charge an excessive fee for service;

(2) [(e)] Disclose his fees to a client and [or] supervisee at the beginning of service; [or]

(3) Make financial arrangements with a patient, third-party payor, or supervisee that:

(a) Are reasonably understandable; and

(b) Conform to accepted professional practices;

(4) Not offer or accept payment for a referral;

(5) [(d)] Represent facts truthfully to a client, third-party payor, or supervisee regarding services rendered.

Section 8. Advertising. (1) An alcohol and drug counselor shall:

(a) [(4)] Accurately represent education, training, and experience relevant to the practice of professional alcohol and drug counseling;

(b) [(2)] Not use professional identification that [-including a business card, office sign, letterhead, or telephone or association directory listing if it] includes a statement or claim that is false, fraudulent, misleading, or deceptive, including the following:

1. A business card;

2. An office sign;

3. Letterhead;

4. Telephone or association directory listing.

(2) [(3)] A statement shall be considered false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) [Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or [is] likely to create an unjustified expectation;

(c) Deletes a material fact or information.

Section 9. Environment. An alcohol and drug counselor shall provide a safe, functional environment in which to offer alcohol and drug counseling services. This shall include [includes] the following:

(1) Allowance for privacy and confidentiality; and

(2) Compliance with any other health and safety requirement according to local, state, and federal agencies.

Section 10. Documentation. An alcohol and drug counselor shall accurately document activity with a client in a timely manner.

Section 11. Interprofessional Relationships. An alcohol and drug counselor shall treat a colleague with respect, courtesy and fairness and shall afford the same professional courtesy to other professionals.

(1) An alcohol and drug counselor shall not offer professional service to a client in counseling with another professional except with the knowledge of the other professional or after the termination of the client's relationship with the other professional.

(2) An alcohol and drug counselor shall cooperate with a duly constituted professional ethics committee [committees] and promptly supply necessary information unless constrained by the demands of confidentiality.

MICHAEL D. VANCE, Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: September 11, 1998

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

GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification of  
Alcohol and Drug Counselors  
(As Amended at ARRS, February 9, 1999)

201 KAR 35:040. Continuing education requirements.

RELATES TO: KRS 309.085(1)(b)

STATUTORY AUTHORITY: KRS 309.0813(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.085(1)(b) authorizes the board to promulgate an administrative regulation requiring certified alcohol and drug counselors to complete continuing education requirements as a condition of renewal of their certification. This administrative regulation establishes [delineates] the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. ~~[As used in this administrative regulation, unless the context otherwise requires:]~~ (1) "Academic courses offered by an accredited postsecondary institution" means a course beyond the undergraduate level, that is:

(a) An alcohol and drug counseling course, designated by title or content ~~[- beyond the undergraduate level];~~ or

(b) An academic course, relevant to alcohol and drug counseling ~~[- beyond the undergraduate level].~~

(2) "Approved" means recognized by the Kentucky Board of Certification of Certified Alcohol and Drug Counselors.

(3) "Continuing education hour" means fifty (50) clock minutes of participating in a continuing educational experience [experiences].

(4) "Program" means an organized learning experience:

(a) Planned and evaluated to meet behavioral objectives; and

(b) Presented in one (1) session or in a series.

(5) "Provider" means an organization approved by the Kentucky Board of Certification for Certified Alcohol and Drug Counselors for providing continuing education programs.

(6) "Relevant" means having content applicable to the practice of alcohol and drug counseling in accordance with the requirements of Section 4(2) of this administrative regulation. ~~[as determined by the board.]~~

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of sixty (60) continuing education hours shall be accrued by each person holding certification during the three (3) year certification period for renewal with the following exceptions:

(a) A person holding certification whose renewal date is before January 1, 2000 shall receive twenty (20) hours of continuing education for that renewal only;

(b) A person holding certification whose renewal date is after January 1, 2000 and before January 1, 2001 shall receive forty (40) hours of continuing education for that renewal only.

(2) All hours shall be in or related to the field of alcohol and drug counseling.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a certified alcohol and drug counselor. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. A program provided by any of the following providers shall be deemed to be relevant to the practice of alcohol and drug counseling and shall be approved without further review by the board:

(a) The National Association of Alcohol and Drug Abuse Counselors (NAADC);

(b) The American Counseling Association (ACA);

(c) The National Board for Certified Counselors (NBCC);

(d) The International Certification and Reciprocity Consortium (ICRC);

(e) The Kentucky Department of Mental Health, Division of Substance Abuse;

(f) The Jefferson Alcohol and Drug Abuse Center (JADAC)

Training Institute;

(g) The Kentucky School of Alcohol and Drug Studies; and

(2) An academic course, as defined ~~[(h) Academic courses as set forth]~~ in Section 1(1) ~~[(4)]~~ of this administrative regulation shall not require board review or approval. A general education course, elective or designated to meet undergraduate degree requirements, shall not be acceptable for continuing education credit. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equaling [equals] fifteen (15) continuing education hours.

(3) [(2)] Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it complies with the requirements of Section 4(2) of this administrative regulation [is relevant]:

(a) A program, including a home study course and in-service training provided by an organization or education institution not listed in subsection (1) of this section ~~[another organization; educational institution, or other service provider approved by the board];~~

(b) A program or academic course presented by the certificate holder. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction. Credit shall not be issued for repeated instruction of the same course;

(c) A relevant publication in a professionally recognized or juried publication. Continuing education hours shall be granted for relevant publications as follows:

1. Five (5) continuing education hours for each published abstract or book review;

2. Ten (10) continuing education hours for each published article;

3. Twenty (20) continuing education hours for each book chapter or monograph; and

4. Forty (40) continuing education hours for each published book.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) An applicant ~~[Any entity]~~ seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 5 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the board determines the activity ~~[being presented]:~~

(a) Is an organized program of learning;

(b) Pertains to subject matter relating to alcohol and drug counseling ~~[matters which integrally relate to the practice of art therapy];~~

(c) Enhances the professional competence of the licensee by:

1. Refreshing his knowledge and skills; or

2. Educating on a new topic or subject; ~~[Contributes to the professional competency of the licensee; and]~~

(d) Is conducted by a competent instructor, as documented by appropriate academic training, professional licensures or certification, or professionally-recognized experience. ~~[individuals who have educational training or experience acceptable to the board.]~~

Section 5. Procedures for Approval of Continuing Education Programs. (1) A course that has not been preapproved by the board may be used for continuing education if approval is secured from the board.

(2) The following information shall be submitted for board review of a program:

(a) A published course or seminar description;

(b) The name and qualifications of the instructor;

(c) A copy of the program agenda indicating hours of education, coffee and lunch breaks;

(d) Number of continuing education hours requested;

(e) Official certificate of completion or college transcript from the sponsoring agency or college; and

(f) Application for continuing education credits approval.

Section 6. Responsibilities and Reporting Requirements of Certificate Holders. (1) During the certification renewal period, the board shall require up to fifteen (15) percent of all certificate holders to furnish documentation of the completion of the appropriate number of continuing education hours. Verification of continuing education hours shall not otherwise be reported to the board.

(2) A certificate holder shall:

(a) Be responsible for obtaining required continuing education hours;

(b) Identify his own continuing education needs and seek activities that meets those needs;

(c) Seek ways to integrate new knowledge, skills and activities;

(d) Select approved activities by which to earn continuing education hours;

(e) Submit to the board, if applicable, a request for approval for continuing education activities not approved as required in Section 3(2) of this administrative regulation;

(f) Document attendance, participation in, and successful completion of continuing education activity for a period of two (2) years from the date of the renewal; and

(g) Maintain records of continuing education hours.

(3) The following items may be used to document continuing education activity:

(a) Transcript;

(b) Certificate;

(c) Affidavit signed by the instructor;

(d) Receipt for the fee paid to the sponsor; or

(e) Written summary of experiences that are not formally or officially documented otherwise.

(4) Comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and shall result in:

(a) Refusal to renew certification;

(b) Suspension of certification; or

(c) Revocation of certification.

Section 7. Carry-over of Continuing Education Hours, Prohibited. Continuing education hours earned in excess of those required under Section 2 of this administrative regulation shall not be carried over into the immediately following certification renewal period.

Section 8. Board to Approve Continuing Education Hours; Appeal of Denial. (1) If an application for approval of continuing education hours is denied, ~~[in whole or part]~~ the person holding certification shall have the right to appeal the board's decision.

(2) An appeal shall be:

(a) In writing;

(b) Received by the board within thirty (30) days after the date of the decision denying approval of continuing education hours; and

(c) Conducted in accordance with KRS Chapter 13B.

Section 9. Waiver or Extensions of Continuing Education. (1) On application, the board may grant a waiver of the continuing education requirements or an extension of time within which to fulfill the requirements in the following cases:

(a) Medical disability of the certificate holder;

(b) Illness of the certificate holder or an immediate family member;

(c) Death or serious injury of an immediate family member.

(2) A written request for waiver or extension of time involving medical disability or illness shall be:

(a) Submitted by the person holding certification; and

(b) Accompanied by a verifying document signed by a licensed physician.

(3) A waiver of or extension of time within which to fulfill the minimum continuing education requirements shall not exceed one (1) year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding certification shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement ~~[or reactivation]~~ of certification shall:

(a) Submit evidence of receiving sixty (60) hours of continuing education within the three (3) year period immediately preceding the date that reinstatement is requested; or

(b) Obtain sixty (60) hours of continuing education within six (6) months of reinstatement of certification. Failure to obtain sixty (60) hours within six (6) months shall result in termination of certification. ~~[on which the request for reinstatement or reactivation is submitted to the board.]~~

(2) ~~[If the person does not have the continuing education hours required in subsection (1) of this section, the board shall reinstate the certification and the person shall obtain sixty (60) hours of continuing education within six (6) months of the date on which certification is reinstated. Failure to provide documentation of the required continuing education within the required six (6) months shall result in termination of the certification.]~~

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

**Section 11. Incorporation by Reference.** (1) "Application for Continuing Education Approval", (1998 Edition), Board of Certification of Alcohol and Drug Counselors, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky Board of Certification of Alcohol and Drug Counselors, Berry Hill Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MICHAEL D. VANCE, Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: September 11, 1998

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

**TOURISM DEVELOPMENT CABINET**  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 9, 1999)

**301 KAR 2:049. ~~[Seasons for furbearers and]~~ Small game and furbearer hunting on public ~~[specified]~~ areas.**

RELATES TO: KRS 150.010, 150.025(1) ~~[150.015, 150.021, 150.170, 150.175, 150.300, 150.340, 150.360, 150.365], 150.370(1), 150.399, 150.400, 150.410, 150.620, 150.990]~~

STATUTORY AUTHORITY: KRS 150.025(1), 150.620 ~~[150.015, 150.021, 150.170, 150.175]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to set seasons, limits and other requirements for hunting, and to make these requirements apply statewide or to a limited area; KRS 150.620 authorizes the department to regulate the lands it has acquired for public recreation. This administrative regulation is necessary to specify exceptions on wildlife management areas to statewide small game and furbearer hunting regulations. [This amendment is necessary to open the spring squirrel season at Land Between the Lakes.]

Section 1. The [All] provisions of 301 KAR 2:251 shall apply on a wildlife management area unless specified otherwise by this administrative regulation.

Section 2. On a wildlife management area ~~[areas]~~ owned or managed by the department:

(1) A person shall wear hunter orange as specified in Section 12 of 301 KAR 2:172 when a firearm is [During periods when firearms are] allowed for deer hunting.

(2) The hunter orange requirement in subsection (1) of this section shall not apply to a person hunting:

(a) Waterfowl; or

(b) Raccoon or opossum at night. [persons shall wear hunter orange garments of a solid unbroken pattern as outer coverings on at

least the head, chest and back:

(a) Mesh-weave openings in the hunter-orange garment shall not exceed one-fourth (1/4) inch by any measurement. Garments may display a small section of another color provided the section does not significantly obscure the hunter-orange color of the garment.

(b) Camouflage pattern hunter-orange garments worn without additional solid hunter-orange on the head, back and chest shall not meet the requirements of this section.

(c) Waterfowl hunters shall be exempt from the hunter-orange requirements.]

(3) [(2) During dates] When deer hunting with a breech-loading firearm [firearms] is allowed, a person [persons] shall not:

(a) Hunt small game or furbearers;

(b) Trap; or

(c) Allow an unleashed dog [dogs].

(4) A person [(3) Persons] may hunt small game or a furbearer during the modern gun deer season on a wildlife management area [areas] where gun deer hunting is not permitted during the modern gun deer season.

(5) [(4)] Unless specified otherwise in Section 3 of this administrative regulation, a person [persons] shall not allow a dog [their dogs] to be unleashed from March 1 until the third Saturday in August, except an unleashed dog shall be permitted:

(a) At a department-authorized field trial [Persons participating in department-authorized] field trials [may use unleashed dogs]; or

(b) By a squirrel hunter during an open [Squirrel hunters may use unleashed dogs during the June 1 through June 14] spring squirrel season.

[(5) Persons may hunt squirrels from June 1 through June 14. This season shall be open on Land Between the Lakes.

(6) Persons shall not hunt on portions of wildlife management areas designated by signs as closed to hunting:

(7) Persons shall not enter portions of wildlife management areas designated by signs as closed to public access:]

Section 3. Exceptions on Specific Wildlife Management Areas. (1) Barren River Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) On the Peninsula Unit, including Narrows, Goose and Grass Islands, a person shall not:

1. Hunt with a breech-loading firearm;

2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine; or

3. Hunt small game with shot larger than number two (#2).

(2) Beaver Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper [Trappers] shall complete a harvest survey [form obtained from the area manager].

(3) Big South Fork National River and Recreation Area, McCreary County.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(4) Cane Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper [Trappers] shall complete a harvest survey [form obtained from the area manager].

(5) Central Kentucky Wildlife Management Area.

(a) [This area shall be] Closed to small game and furbearer hunting except squirrels.

(b) A person [Persons] shall not allow a dog [their dogs] to be unleashed [from]:

1. April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation; or [:

1. Persons participating in department-authorized field trials may use unleashed dogs:

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season:]

2. [(e)] At other times of the year, except on a Tuesday, Thursday, Saturday, Sunday, or during an authorized field trial. [unleashed dogs are permitted only on Tuesdays, Thursdays, Saturdays, Sundays, or during permitted field trials.]

(c) [(d)] A trapper [Trappers] shall obtain prior written permission from the area manager.

(d) [(e)] A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(6) Clay Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(7) Curtis Gates Lloyd/Mullins Wildlife and Recreation Area.

(a) Quail and rabbit: closed after December 31.

(b) A person [Persons] shall not allow a dog [their dogs] to be unleashed from April 1 until the third Saturday in August, except as provided in Section 2(5) of this administrative regulation. [:

1. Persons participating in department-authorized field trials may use unleashed dogs:

2. Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season:]

(c) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(8) Daviess County Wildlife Management Area. Closed to hunting and trapping for small game and furbearers.

(9) Dewey Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(10) Fishtrap Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(11) Fleming Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(12) Grayson Lake Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: October 1 through December 31.

(c) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at a designated check station.

(13) Green River Lake Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) Grouse: closed to hunting and trapping.

(c) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at a designated check station.

(14) Higginson-Henry Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(15) Kleber Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer [Hunters and dog trainers] shall check in and out daily at the designated check station.

(16) Lake Cumberland Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(17) Mill Creek Wildlife Management Area, including private inholdings.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearer: December 5 through December 31. A trapper [Trappers] shall complete a harvest survey.

(18) Nolin Lake [Reservoir] Wildlife Management Area. Quail and rabbit: closed after December 31.

(19) Paintsville Lake Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(20) Peal Wildlife Management Area.

(a) Furbearer hunting: twenty (20) day season beginning the day after the modern gun deer season.



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(b) Furbearer trapping: December 1 through 10, water sets only. Trappers shall be selected by drawing conducted by the area manager.

(c) Quail and rabbit: closed after December 31.

(21) Pennyryle Forest Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(22) Pioneer Weapons Wildlife Management Area. A person shall not:

(a) Hunt with a [~~Hunters shall not use~~] breech-loading firearm [firearms].

(b) Except as authorized by the department, [~~Persons except authorized personnel shall not~~] carry a breech-loading firearm [firearms] with ammunition in the chamber or magazine; or

(c) [~~Persons shall not~~] Hunt small game with shot larger than number two (#2).

(23) Redbird Wildlife Management Area.

(a) Grouse: October 1 through December 31.

(b) Quail and rabbit: closed after December 31.

(c) Furbearers: closed after December 31.

(24) Robinson Forest Wildlife Management Area. Hunting is permitted under the requirements of 301 KAR 4:200.

(25) Taylorsville Lake Wildlife Management Area.

(a) The area east of Van Buren Boat Ramp shall be [is] closed to public access the day after the deer quota hunt through March 15.

(b) Quail and rabbit: closed after December 31.

(c) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at a designated check station.

(26) Tradewater Wildlife Management Area. Grouse: December 1 through December 31; daily limit, two (2).

(27) West Kentucky Wildlife Management Area, McCracken County.

(a) A person [~~Persons~~] shall not hunt on a tract [tracts] designated by numbers followed by the letter "A".

(b) Quail and rabbit:

1. [On] Tracts 2, 3, 6 and 7: closed after December 31.

2. [On] Tracts 1, 4 and 5: January 1 through 10, unless maximum acceptable harvest levels have been reached prior to January 10 as determined from hunter use data.

(3) If a tract is closed before January 10, a sign [Signs] announcing closure shall be posted at the hunter check station at least twenty-four (24) hours prior to the closure.

(c) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at the designated check station.

(d) A person shall not:

1. Use a rifle [~~Small game or furbearer hunters shall not use rifles~~] or ball or slug ammunition;

2. Allow an unleashed dog except as provided in Section 2(5) of this administrative regulation; or

3. Operate a vehicle on Tract 6 from February 1 through April 16.

[~~(e) Persons shall not allow their dogs to be unleashed from April 1 until the third Saturday in August, except:~~

1. ~~Persons participating in department authorized field trials may use unleashed dogs.~~

2. ~~Squirrel hunters may use unleashed dogs during the June 1 through June 14 spring squirrel season.~~

[~~(f) Vehicular traffic on Tract 6 is prohibited February 1 through April 16.~~]

(28) Westvaco Public Hunting Areas. A person [~~Persons~~] hunting on a Westvaco Public Hunting Area [Areas] shall possess a valid Westvaco Hunting Permit.

(29) White City Wildlife Management Area. Quail and rabbit: closed after December 31.

(30) Yatesville Wildlife Management Area. A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at a designated check station.

(31) Yellowbank Wildlife Management Area.

(a) Quail and rabbit: closed after December 31.

(b) A hunter or dog trainer [~~Hunters and dog trainers~~] shall check in and out daily at the designated check station.

DOUGLAS SCOTT PORTER, Assistant Attorney General  
C. THOMAS BENNETT, Commissioner  
ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, February 9, 1999)**

**301 KAR 2:140. Requirements for wild turkey hunting.**

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170(3), 150.175(4), 150.305, 150.360, 150.365, 150.390(1), 150.990(11); 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget Final Budget Memorandum, FB 94-96, page 537]

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620[, 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget Final Budget Memorandum, FB 94-96, page 537]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. The function of this administrative regulation is to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state.

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

Section 2. A person shall not take a wild turkey [wild turkeys]:

(1) Except on the dates and during the times specified in:

(a) 301 KAR 2:142;

(b) 301 KAR 2:144; or

(c) 301 KAR 2:111.

(2) By means other than those specified in this administrative regulation.

Section 3. Unless exempted by KRS 150.170(3), a person hunting a wild turkey [wild turkeys] shall possess a:

(1) Spring turkey hunting permit during the spring season.

(2) Fall turkey archery hunting permit during the fall archery season.

(3) Fall turkey gun hunting permit during the fall gun season.

Section 4. (1) An adult shall accompany and maintain control of a person under sixteen (16) years of age turkey hunting with a firearm.

(2) After taking a wild turkey, and before moving the carcass, a person shall:

(a) Cut, punch, or mark with ink or indelible pencil the number and month on the carcass tag portion of the turkey permit corresponding to the current date.

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

(c) Have the turkey checked at a check station or by an authorized employee of the department:

1. On the same day it was taken during the spring or fall gun season;

2. By 9 a.m. on the day after it was taken during the fall archery season.

(d) Fill out a game check card and return it to the person checking the turkey.

(e) Keep the hunter's portion of the game check card in possession until the turkey is processed.

(f) Attach to a turkey taken to a taxidermist:

1. The taxidermy portion of the game check card;

2. A Ft. Campbell game check card; or

3. A Land Between the Lakes game check card.

(g) Check the turkey before transporting them out of Kentucky.

(3) A person taking a turkey on a wildlife management area shall



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follow the tagging and checking requirements in 301 KAR 2:142 or 301 KAR 2:111.

(4)(a) A person exempt from turkey permit requirements by KRS 150.170(3) shall:

1. [(a)] Write his name, address, the date when, and the county where, the turkey was taken on a card; and

2. [(b)] Attach the card to the carcass when he removes the turkey from the property where it was taken.

(b) A person turkey hunting with a senior/disabled license as authorized by KRS 150.175(1)([a]a) and 301 KAR 3:022 shall:

1. Before hunting, write his name and address on cards corresponding to the number of turkeys he is allowed to take during the appropriate season;

2. Immediately after taking a turkey and before moving the carcass, write the date the turkey was taken on the card; and

3. Attach the tag to a turkey while it is being transported by vehicle or is out of the hunter's possession.

Section 5. Firearms and Archery Equipment. A person hunting wild turkey shall not use or carry:

(1) A rifle or handgun.

(2) A shotgun larger than ten (10) gauge or smaller than twenty (20) gauge.

(3) Shot larger than number four (4).

(4) Shotgun slugs.

(5) A firearm during archery-only seasons.

(6) A crossbow, except on the Pioneer Weapons Area.

(7) Barbed broadheads.

(8) Broadheads smaller than seven-eighths (7/8) inch wide.

(9) Arrows with chemical treatments or attachments containing chemicals.

Section 6. Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

(a) While bait is present; or

(b) For thirty (30) days after the bait has been removed.

(2) A person may hunt wild turkey on an area where grain, feed or other substance exists as the result of:

(a) Bona fide agricultural practice; or

(b) Manipulating a crop for a wildlife management purpose.

(3) A field shall be considered baited if grain, feed or other substance grown on the field is removed and later returned to the field.

Section 7. Turkey Hunting Restrictions. (1) A person hunting wild turkeys:

(a) May use a hand or mouth-operated call;

(b) Shall not:

1. Use a dog;

2. Hunt from a boat;

3. Use an electronic call;

4. Use a live decoy; or

5. Take a roosting turkey.

(2) A person shall not mimic the sound of a turkey:

(a) From March 1 until the opening of the spring season;

(b) In an area open to hunting if turkeys are reasonably expected to occur.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 4, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, February 9, 1999)**

**301 KAR 2:142. Spring wild turkey hunting.**

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "Quota hunt" means a hunt whose participants register in advance and are selected by a random drawing.

(2) "Youth hunt" means a hunt open to a person at least ten (10) years old but who has not reached his 16th birthday by the day of the hunt.

Section 2. A person may take a **wild turkey** [wild-turkeys]:

(1) For twenty-one (21) consecutive days beginning on the Monday closest to April 15;

(2) Using firearms or archery equipment as specified in Section 5 of 301 KAR 2:140;

(3) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 3. A person shall not take more than:

(1) One (1) male turkey or turkey with a visible beard per day; or

(2) Two (2) male turkeys or turkeys with visible beards during the spring season.

Section 4. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to wildlife management areas.

(2) A person shall not hunt a **wild turkey** [wild-turkeys] during the spring on the areas listed in this section except on the dates specified in this administrative regulation.

(3) A **turkey** [Turkeys] listed as a **bonus bird** [bonus-birds] shall not:

(a) Count against statewide limits.

(b) Require a carcass tag portion of the turkey permit be attached to the carcass.

(4) Ballard Wildlife Management Area.

(a) Season. Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) An **applicant** [Applicants] for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(5) **Barren River Wildlife Management Area. On the peninsula unit, including Narrows, Goose and Grass Islands, a person:**

**(a) Shall not:**

**1. Hunt turkey with a breech-loading firearm;**

**2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine;**

**(b) May hunt turkey with a crossbow.**

**(6) Fort Campbell Wildlife Management Area.**

(a) Season. The last Saturday in March through the second Sunday in May.

(b) A **turkey** [Turkeys] taken on Fort Campbell shall be a **bonus bird** [bonus-birds].

(c) A person shall:

1. Obtain a post combination hunting-fishing permit before hunting.

2. Attach a Fort Campbell game check card to **the turkey** [turkeys] before leaving the post.

**(7) [(6)] Fort Knox Wildlife Management Area.**

(a) Seasons. The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas.

2. Not take more than one (1) turkey during the spring season.

(c) A **turkey** [Turkeys] taken on Fort Knox shall be a **bonus bird**

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[bonus-birds].

(8) [(7)] Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons. Quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunt [hunts] shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting a wild turkey [wild-turkeys]:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(9) [(8)] Green River Wildlife Management Area.

(a) This area shall be open during the spring season.

(b) Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(c) An applicant for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(d) Shooting hours for the youth hunt shall be one-half (1/2) hour before sunrise until noon.

(e) A person participating in the youth hunt shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(10) [(9)] Higginson-Henry Wildlife Management Area. During the spring season a person:

(a) Shall not use or possess a firearm [firearms] while turkey hunting.

(b) Shall check in and check out daily.

(11) [(10)] Land Between the Lakes.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April.

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May.

(b) A person shall:

1. Check in and out.

2. Hunt in assigned areas.

3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. Affix a Land Between the Lakes game check card and the carcass tag portion of the state turkey permit to the carcass.

5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(12) [(11)] Pioneer Weapons Wildlife Management Area. During the spring season a person:

(a) Shall not use a breech-loading shotgun.

(b) May use a crossbow with a working safety device.

(13) [(12)] Reelfoot National Wildlife Refuge.

(a) Season. Quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) A person shall:

1. Not take more than one (1) turkey.

2. Obtain written permission from the area manager before hunting.

(14) [(13)] The main block of Robinson Forest shall be closed to turkey hunting.

(15) [(14)] Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(16) [(15)] West Kentucky Wildlife Management Area shall be closed to spring turkey hunting except for a quota youth hunt the Saturday and Sunday before the Monday closest to April 15.

(a) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(b) Shooting hours are one-half (1/2) hour before sunrise until noon.

(c) A person hunting a wild turkey [wild-turkeys] shall:

1. Check in and out daily; and

2. Not take more than one (1) turkey.

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

TOURISM DEVELOPMENT CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 9, 1999)

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for fall gun and archery turkey seasons.

Section 1. A person may take a wild turkey [wild-turkeys]:

(1) From the third Saturday in September through December 31, except during the modern gun deer season:

(a) Using archery equipment as specified in Section 5 of 301 KAR 2:140; and

(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(2) Beginning in 1998, for five (5) consecutive days beginning on the Wednesday closest to December 1:

(a) Using a firearm [firearms] as specified in Section 5 of 301 KAR 2:140; and

(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

Section 2. Except as specified by 301 KAR 2:111, a person shall not take more than:

(1) One (1) wild turkey per day;

(2) Two (2) wild turkeys of either sex during the fall archery season; and

(3) One (1) wild turkey of either sex during the fall gun season.

Section 3. A person shall not hunt a wild turkey [wild-turkeys] during the fall gun season except in Adair, Anderson, Allen, Barren, Boone, Bracken, Bullitt, Butler, Caldwell, Carroll, Christian, Crittenden, Cumberland, Edmonson, Franklin, Gallatin, Grant, Grayson, Green, Hardin, Harrison, Hart, Henry, Hopkins, Larue, Logan, Marion, Mason, Metcalfe, Muhlenburg, Nelson, Ohio, Owen, Pendleton, Robertson, Shelby, Spencer, Taylor, Todd, Trimble, Warren or Washington counties.

Section 4. On a wildlife management area owned, operated or under license to the department, a person:

(1) Shall not hunt wild turkey:

(a) During the fall gun turkey season unless:

1. The wildlife management area lies partially or complete within a county listed in Section 3 of this administrative regulation; and

2. A firearm deer season is not open on the area. [:

(b) On a day when a firearm is allowed for deer hunting.];

(b) [(c)] During the fall turkey gun or archery season on:

1. Ballard Wildlife Management Area;

2. Grayson Lake Wildlife Management Area;

3. The main block of Robinson Forest; or

4. Swan Lake Wildlife Management Area; or

5. West Kentucky Wildlife Management Area].

(2) May archery turkey hunt during the modern gun deer season if deer hunting with:

(a) A firearm is prohibited; and

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(b) Archery equipment is permitted on the area during the modern gun deer season.

(3) Shall check in and out daily at the Higginson-Henry Wildlife Management Area.

**(4) May use a crossbow during the fall archery turkey season on the Pioneer Weapons Area.**

**(5) On the Peninsula Unit, including Narrows, Goose, and Grass Islands of Barren River Wildlife Management Area, a person:**

**(a) Shall not:**

**1. Hunt during the fall gun season with a breech-loading firearm; or**

**2. Except as authorized by the department, carry a breech-loading firearm with ammunition in the chamber or magazine.**

**(b) May use a crossbow during the fall archery season.**

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

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**TOURISM DEVELOPMENT CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 9, 1999)**

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

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

STATUTORY AUTHORITY: KRS 150.025(1), 150.600(1), 50 CFR Parts 20, 21

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

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

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

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

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

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

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

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

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

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

2. Two (2) wood ducks.

3. One (1) black duck.

4. Two (2) redheads.

5. One (1) pintail [Three (3) pintails].

6. One (1) canvasback.

(b) Fifteen (15) coots.

(c) Five (5) mergansers, which shall not include more than one (1) hooded merganser.

(3) [(d)] The possession limits shall be double the daily limit.

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

(a) January 20 in the Ballard Reporting Area;

(b) January 31 in the remainder of the state.]

(2) Snow goose [and Ross' goose] season dates: Thanksgiving Day[-

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

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

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

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

(a) The last day of hunting shall be:

1. February 14 in Fulton County; and

2. January 24 in the Ballard Reporting Area.

(b) The season shall not open until:

1. December 27 in the Pennyroyal-Coalfield Goose Zone;

2. January 9 in the West-Central Kentucky Goose Zone;

3. January 22 in the Northeast Kentucky Goose Zone.

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

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

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

(c) Western Goose Zone: December 6 through:

1. January 20 in the Ballard Reporting Area;

2. February 15 in the portion of Fulton County in the Western Goose Zone;

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

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

(4) A person shall not goose hunt in:

(a) Breathitt, Knott, and Perry counties.

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

(c) McCreary County east of US 27.

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

(e) Martin County.

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

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

1. Daily limits:

(a) Two (2) Canada geese;

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

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

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

(6) The possession limit shall be double the daily limit, except that there shall not be a [be no] possession limit on snow geese.

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

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

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

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

(a) Snow geese and Ross' geese: November 25 [24] through March 10;

(b) Other waterfowl: November 5 through January 31.

(2) Daily limit: three (3) waterfowl.

(3) Possession limit: six (6) waterfowl.

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

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

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

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

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

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

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

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

DOUGLAS SCOTT PORTER, Assistant Attorney General  
C. THOMAS BENNETT, Commissioner  
ANN R. LATTA, Secretary  
MIKE BOATWRIGHT, Chairman

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**TOURISM DEVELOPMENT CABINET  
Department of Fish and Wildlife Resources  
(As Amended at ARRS, February 9, 1999)**

**301 KAR 2:222. Waterfowl hunting requirements.**

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

STATUTORY AUTHORITY: KRS 150.025(1)(a), (b), 150.340(1), (2), (3), 150.600(1), 50 CFR Parts 20, 21

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

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

(a) A concealing enclosure.

(b) A pit.

(c) A boat.

(2) "Party" means:

(a) A person hunting alone; or

(b) From two (2) to four (4) persons who share a blind.

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

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

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

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

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing shot:

(a) Made of lead;

(b) Not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Larger than size "T."

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

2:224:

(1) A waterfowl hunter shall:

(a) Hunt from a blind unless hunting in flooded, standing timber.

(b) Not hunt from or establish a blind:

1. Within 100 yards of another blind; or

2. Within fifty (50) yards of a property line.

(c) Not possess more than one (1) shotgun while in a blind.

(2) More than five (5) persons shall not occupy a blind.

(3) The requirements of subsection (1) of this section shall not apply after Canada goose season closes.

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

(a) A waterfowl hunter shall not establish or hunt from:

1. A permanent blind.

2. A blind within 200 yards of:

a. Another blind; or

b. A waterfowl refuge.

(b) A person shall not hunt in a designated recreation area or access point.

(c) More than four (4) persons shall not occupy a blind.

(d) A hunter shall remove decoys and personal effects from the wildlife management area daily, except that a hunter drawn for a multiday hunt may leave decoys in place for the duration of his hunt.

(2) A person wishing to establish a permanent blind on Barkley Lake, Barren River Lake, Buckhorn Lake, Green River Lake, Nolin River Lake, Paintsville Lake, Rough River Lake or Taylorsville Lake Wildlife Management Areas:

(a) Shall first obtain a permit from the U. S. Army Corps of Engineers.

(b) May designate one (1) other person as a partner.

(c) Shall participate in a drawing for a blind permit on the Barkley, Barren, Green, Paintsville, or Taylorsville areas.

(d) Shall present a valid hunting license at the time of the drawing.

(e) Shall not hold more than one (1) permit per area.

(3) The holder of a blind permit shall:

(a) Construct his blind before November 20 or forfeit the permit.

(b) Not lock a blind.

(c) Unless an extension of time is granted, remove his blind within thirty (30) days of the close of waterfowl season or be ineligible for a permit the following year.

(4) A blind not occupied by the permit holder one (1) [one-half {1/2}] hour before sunrise shall be available to another hunter on a first-come, first-serve basis.

(5) A blind restriction specified in this section shall not apply to a falconer if [when] a gun or archery season is not open.

Section 5. On a wildlife management area:

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

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

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

(2) A person shall not:

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

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

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

(3) Wildlife management areas in Ballard County.

(a) A person shall not:

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

2. Hunt past 12 noon.

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

(c) At Ballard Wildlife Management Area:

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

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

- a. December 16 [9] through January 17; or
- b. Until the Ballard Reporting Area Canada goose quota is reached.
3. [2:] The goose season shall be:
  - a. December 16 [9] through January 24 [20]; or
  - b. Until the Ballard Reporting Area Canada goose quota is reached.
4. [3:] A waterfowl hunter shall not hunt on a Monday, Tuesday, [Sunday, Monday,] Christmas Day, or New Year's Day.
5. [4:] A waterfowl hunter shall:
  - a. Apply in advance in accordance with Section 6 of this administrative regulation;
  - b. Case his gun while using department-supplied transportation to and from a blind; and
  - c. ~~Be accompanied by an adult if under eighteen (18) years old; and~~
  - d. Not hunt waterfowl on the Ohio River from fifty (50) yards upstream from Dam 53 to fifty (50) yards downstream from the southern border of the Ballard Wildlife Management Area from October 15 through March 15.
- (d) At Barlow Bottoms Wildlife Management Area, including the Lower Bottoms, Peal and Swan Lake units:
  1. A person shall:
    - a. Not hunt on a Monday or Tuesday; and
    - b. Check in and out daily at the designated check station during Canada goose season.
  2. A department blind assignment shall be made in accordance with Section 6 of this administrative regulation.
  3. ~~[At least one (1) person in a blind shall be eighteen (18) years old or older.~~
  4. A blind shall be made offered to another hunter on a first-come, first-served basis, if the original assignee has not checked in by 5 a.m.
  4. [5:] A person shall not, on Lower Bottoms unit ~~[Public Waterfowl Hunting Area]:~~
    - a. Hunt waterfowl except from a permanent department blind;
    - b. Be on the area after 1 p.m. during a waterfowl season, except as authorized by the department; and
    - c. Hunt waterfowl except from a blind assigned by the department during Canada goose season.
  5. On the (e) Peal unit [Public Hunt Lakes]:
    - a. [1:] More than seven (7) parties shall not hunt at the same time on Buck Lake or Flat Lake;
    - b. [2:] More than four (4) parties shall not hunt at the same time on Fish Lake;
    - c. [3:] More than three (3) parties shall not hunt at the same time on First Lake or Second Lake;
  6. [4:] On the Swan Lake Unit, a person shall not hunt duck, coot, merganser, or goose ~~[geese]~~ other than a Canada goose ~~[Canadian geese]~~ except from a blind assigned by the department and unless:
    - a. The season for these species is open; and
    - b. The season for Canada goose ~~[Canadian geese]~~ is also open.
  - (4) Barkley Lake Wildlife Management Area.
    - (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
    - (b) A person shall establish a permanent blind within ten (10) yards of his assigned and numbered blind marker within:
      1. An area bounded by the mouth of Donaldson Creek, the east side of the Cumberland River Channel and the boat ramp at Linton.
      2. An area bounded by the Pryor's Creek Light, the west side of the Cumberland River Channel, Land Between the Lake Road 204 and river mile 73.5.
    - (c) The following refuge areas are closed to the public:
      1. From November 1 through February 15 within an area west of the main river channel between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light);
        - a. Including the row of islands on the west side of the main river channel; and
        - b. Not including Taylor Bay and Jake Fork Bay.
      2. From November 1 through March 15 within Honker Bay and Fulton Bay as marked by buoys and signs.
    - (d) From October 15 through March 15, a person shall not hunt:
      1. Within 200 yards of; or
      2. Within the area defined by the levee between river mile 68.4

and river mile 70.4.

- (5) Barren River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (6) Buckhorn Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (7) Cane Creek Wildlife Management Area shall be closed to goose hunting.
- (8) Central Kentucky Wildlife Management Area. A person shall not hunt waterfowl from October 15 through January 15.
- (9) Cumberland Lake Wildlife Management Area. The following sections shall be closed to the public from October 15 through March 15:
  - (a) Wesley Bend, the area bounded by Fishing Creek, Beech Grove Road and Fishing Creek Road.
  - (b) Yellowhole, the area bounded by Fishing Creek Road and Hickory Nut Road.
- (10) Cyprus-AMEX Wildlife Management Area shall be closed to waterfowl hunting.
- (11) Grayson Lake Wildlife Management Area. A person shall not hunt waterfowl:
  - (a) Within the no wake zone at the dam site marina;
  - (b) From the shore of Camp Webb;
  - (c) From the shore of the state park; or
  - (d) On Deer Creek Fork of Grayson Lake.
- (12) Green River Lake Wildlife Management Area.
  - (a) A permanent blind may be used as specified in Section 4 of this administrative regulation.
  - (b) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
- (13) Kaler Bottoms Wildlife Management Area. Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
- (14) Land Between the Lakes.
  - (a) The following portions shall be closed to the public from November 1 through March 15:
    1. Long Creek Pond.
    2. The eastern one-third (1/3) of Smith Bay.
    3. The eastern two-thirds (2/3) of Duncan Bay.
  - (b) The following portions shall be closed to waterfowl hunting:
    1. The Environmental Education Center.
    2. Energy Lake.
  - (c) A person shall possess an annual Land Between the Lakes Hunting Permit when hunting waterfowl:
    1. Inland from the water's edge of Kentucky Lake or Barkley Lake; or
    2. From a boat over a flooded portion of Land Between the Lakes when the lake level is above elevation 359.
  - (d) A person shall not hunt waterfowl on inland areas during a quota deer hunt.
  - (e) A person shall not establish or use a permanent blind:
    1. On an inland area ~~[areas]~~; or
    2. Along the Kentucky Lake shoreline of Land Between the Lakes.
  - (f) A waterfowl hunter shall remove decoys and personal effects daily.
- (15) Nolin River Lake Wildlife Management Area. A permanent blind may be used as specified in Section 4 of this administrative regulation.
- (16) Obion Creek Wildlife Management Area. Shooting hours are one-half (1/2) hour before sunrise until 2 p.m.
- (17) Ohio River Waterfowl Refuge.
  - (a) A person shall not hunt from October 15 through March 15 on the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a powerline crossing at approximately river mile 911.5.
  - (b) Stewart Island shall be closed to the public from October 15 through March 15, except for quota deer hunting.
- (18) Peabody Wildlife Management Area.
  - (a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.
  - (b) The following portions, as posted by signs, are closed to the public from October 15 through March 15:
    1. Gibraltar Mine, as bounded by Rockport Road, the Western Kentucky Parkway, Pond Creek and the P&M Haul Road.
    2. Sinclair Mine, as bounded by railroad tracks, the haul road and

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posted signs.

3. Homestead, as bounded by the haul road and the Green River.

(19) Pioneer Weapons Wildlife Management Area. A waterfowl hunter:

(a) May use a breech-loading shotgun along the shoreline of Cave Run Lake.

(b) Shall not use a breech-loading firearm elsewhere on the area.

(20) The main block of Robinson Forest Wildlife Management Area shall be closed to waterfowl hunting.

(21) Sloughs Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) On the Grassy-Pond Powell's Lake Unit, a waterfowl hunter:

1. Shall use a permanent blind ~~[one (1) of the permanent blinds]~~ provided by the department.

2. Shall remove decoys and personal effects from a blind or the vicinity of a blind daily.

(c) On the Jenny Hole-Highlands Creek Unit, a waterfowl hunter:

1. Shall not establish or hunt from a blind closer than 200 yards from another hunting party.

2. Shall remove decoys and personal effects from blinds or the vicinity of blinds daily.

(d) If the Ohio River reaches a level that requires boat access, a waterfowl hunter:

1. May hunt from a boat without regard to department blinds.

2. Shall not hunt closer than 200 yards from another boat.

(e) A waterfowl hunter on the Crenshaw and Duncan Tracts of the Sauerheber Unit:

1. Shall hunt from the blind assigned by the department through a drawing as stipulated in Section 6 of this administrative regulation.

2. May occupy a blind not claimed by the permittee one (1) hour before sunrise ~~[by the opening of shooting hours]~~.

3. Shall not have more than fifteen (15) shotgun shells in one (1) day ~~[in his possession]~~.

4. Shall be accompanied by an adult if under eighteen (18) years of age.

(f) The Crenshaw and Duncan tracts shall be closed to hunting except waterfowl from October 15 through March 15.

(g) The remainder of the Sauerheber Unit shall be closed to the public from October 15 through March 15.

(22) Taylorsville Lake Wildlife Management Area.

(a) A permanent blind may be used as specified in Section 4 of this administrative regulation.

(b) The portion east of Van Buren Boat Ramp as marked by a sign shall be closed to the public from November 1 ~~[the Monday following the scheduled quota deer hunt]~~ through the last day of February, except for quota deer hunting.

(23) Westvaco Wildlife Management Area.

(a) Shooting hours shall be one-half (1/2) hour before sunrise until 2 p.m.

(b) The portion south of the Westvaco Road as posted by a sign shall be closed to the public from November 1 through March 15.

(c) A person shall obtain a Westvaco Permit before hunting.

(24) White City Wildlife Management Area. Shooting hours shall be from one-half (1/2) hour before sunrise until 2 p.m.

(25) Yellowbank Wildlife Management Area. The area designated by a sign and painted boundary marker shall be closed to the public from October 15 through March 15.

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

(a) Apply on a form provided by the department.

(b) Submit a ~~[the]~~ completed application form before the deadline date on the form.

(2) A form which is ~~[are]~~ not completed according to the instructions on the form shall be disqualified from the drawing.

(3) A person shall not apply more than one (1) time for each hunt.

(4) Each hunter drawn may bring up to three (3) additional hunters.

Section 7. Incorporation by Reference. (1) The following material ~~[is [forms are]]~~ incorporated by reference:

(a) "Sloughs Wildlife Management Area Waterfowl Hunting Application", (August, 1997 edition), Department of Fish and Wildlife Resources;

(b) "Ballard Wildlife Management Area Goose Hunt Application", (August, 1997 edition), Department of Fish and Wildlife Resources; and

(c) "Application for Lower Bottoms/Swan Lake Waterfowl Blind Drawings in Ballard County", (August, 1997 edition), Department of Fish and Wildlife Resources.

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

DOUGLAS SCOTT PORTER, Assistant Attorney General

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: August 21, 1998

FILED WITH LRC: December 15, 1998 at 9 a.m.

TRANSPORTATION CABINET

Department of Vehicle Regulation

Division of Motor Carriers

(As Amended at ARRS, February 9, 1999)

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291.

RELATES TO: KRS 138.655 through 138.7291, 186.650, ~~[281.725]~~; 49 CFR Part 390.21, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 138.725~~(1)~~, 281.600, 49 USC Chapter 317

NECESSITY, FUNCTION, AND CONFORMITY: In accordance with 49 USC 317.05 and KRS 138.227, Kentucky is ~~[requires that each state be]~~ in conformance with the provisions of the International Fuel Tax Agreement (IFTA) ~~[by September 30, 1996]~~. If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes which are subject to the provisions of IFTA are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through 138.7291. ~~[House Bill 322 passed by the 1996 Regular Session of the General Assembly amended portions of KRS 138.655 through 138.7291 clearly establishing that the tax set forth in KRS 138.660(1) which was in direct conflict with the federal mandate] was repealed and that the motor fuel use taxes imposed by KRS 138.660(1) and (2) were to be applicable to two (2) axle motor vehicles with a gross weight or registered gross weight above 26,000 pounds. The General Assembly did not address the myriad provisions of IFTA relating to application for license, payment of motor fuel taxes, bond requirements, record retention, auditing of the motor carriers, appeal procedure, and other administrative provisions. Attorney General Opinion OAG 95-33 regarding the IFTA federal mandate opined that a state law that is not in conformity with IFTA is preempted on an interstate basis.]~~ This administrative regulation is necessary to set forth the administrative procedures for the implementation of the International Fuel Tax Agreement in Kentucky, to note the differences between the requirements of IFTA and Kentucky state law, to clearly establish, where applicable, when the provisions of IFTA preempt state law, and to provide for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA "Procedures Manual."

(5) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(6) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to an intrastate motor carrier [carriers] subject to the taxes imposed by KRS 138.660(1) and (2).

(7) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to a motor carrier [carriers] subject to the tax imposed by KRS 138.660(3).

(8) "Motor carrier" means as defined in KRS 138.655(5).

(9) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(10)(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, when the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not include the following:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(11) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(12) "Recreational vehicle" means a ~~[motor vehicle such as a] motor home, a pickup truck with an attached camper, [and] a bus [motor homes, pickup trucks with attached campers, and buses] or similar motor vehicle if [when] used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.~~

(13) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association ~~[Agreement are incorporated by reference in Section 15 of this administrative regulation. The provisions of these documents]~~, except where specifically otherwise identified in this administrative regulation regarding the administration for KIT licensees, shall govern the administration of Kentucky's collection of the taxes imposed by KRS 138.660(1) and (2):

(1) Articles of agreement as revised July 1998 [1996];

(2) Procedures Manual as revised July 1998 [1996]; and

(3) Audit Procedures Manual as revised July 1998 [1996].

Section 3. Fuel Tax License. (1)(a) A [Each] motor carrier which operates a qualified motor vehicle in interstate commerce and which has Kentucky as the base jurisdiction for the operation of its qualified motor vehicles shall each year apply to the Division of Motor Carriers for an IFTA license or its renewal.

(b) A motor carrier which operates exclusively in intrastate commerce may apply for an IFTA license.

(c) Application for the IFTA license shall be on form TC 95-203, "Application for Motor Fuel Tax Licensing for IFTA Carriers" as revised February 1996 ~~[which is incorporated by reference in Section 15 of this administrative regulation]~~.

(2)(a) A [Each] motor carrier which operates all of its qualified

motor vehicles exclusively in intrastate commerce and which does not apply for an IFTA license pursuant to subsection (1) of this section shall apply each year for a KIT license or its renewal.

(b) Application for the KIT license shall be on form TC 95-200a, "Application for Kentucky Intrastate Tax License" as revised January 1996 ~~[which is incorporated by reference in Section 15 of this administrative regulation]~~.

(3)(a) A [Each] fuel tax license issued shall expire on December 31 of the year in which the license was issued.

(b) The Transportation Cabinet shall begin accepting renewal applications on November 1 of each year.

(4)(a) The original or a legibly reproduced copy of a fuel tax license issued by the Kentucky Transportation Cabinet or an IFTA license issued by another jurisdiction shall be carried in each qualified motor vehicle when operating on any public highway of Kentucky.

(b) An IFTA license issued by Kentucky authorizes a qualified motor vehicle for motor fuel tax purposes to be operated in any IFTA jurisdiction.

(5)(a) The Transportation Cabinet shall issue two (2) decals per qualified motor vehicle to a [each] holder of a fuel tax license.

(b) Unless the qualified motor vehicle is being operated on a trip permit pursuant to KRS 138.665 and Section 10 of this administrative regulation, a fuel tax decal issued by the Transportation Cabinet or a decal issued by another IFTA jurisdiction denoting proof of issuance of an IFTA license shall be displayed on the lower rear exterior portion of both sides of the cab of each qualified motor vehicle. The decal shall be located so as to be totally visible and the view of the decal shall not be obstructed by any part of the truck.

(c) A decal [The decals] shall not be transferred between qualified motor vehicles.

(d) A new decal [New decals] shall be issued each calendar year.

(6) Each fuel tax licensee which does not have a U.S. Department of Transportation motor carrier identification number or an Interstate Commerce Commission motor carrier identification number shall apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition ~~[which is incorporated by reference in Section 15 of this administrative regulation]~~.

(a) The intrastate motor carrier identification number assigned to a KIT licensee shall be displayed on each qualified motor vehicle the KIT licensee [it] operates in the same manner as required pursuant to 49 CFR Part 390.21 except the KIT identification number shall ~~[not]~~ be preceded by the letters "USDOT" and ~~[but rather]~~ followed by the letters "KY".

(b) A [All] fuel tax licensee [licensees] shall display on each of its qualified motor vehicle in accordance with the provisions of 49 CFR part 390.21 the name of and location of the motor carrier.

(7)(a) Each fuel tax licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations shall be conducted in the name in which the fuel tax license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) A licensee [All licensees] shall use the name utilized in the application for the license in all documents relating to its operation [their operations]. Both this name and the fuel tax license number shall be used in correspondence with the Transportation Cabinet.

Section 4. KYU License. (1) A [Each] motor carrier subject to the tax imposed by KRS 138.660(3) shall apply for a KYU license prior to operating on the highways of Kentucky a motor vehicle subject to the tax imposed by KRS 138.660(3).

(2) Application for the KYU license shall be on form TC 95-200, "Application for Kentucky Highway Use License" as revised June 1995 ~~[which is incorporated by reference in Section 15 of this administrative regulation]~~.

(3) [Every original applicant for a KYU license shall at the time of the application file a bond with the Transportation Cabinet in accordance with the provisions of Section 6 of this administrative regulation:

(4))(a) A [Each] KYU licensee shall assign a unique number to each individual motor vehicle subject to the tax in KRS 138.660(3).

(b) The unique vehicle identification number shall:

1. Be displayed on the front of the vehicle readily legible in day-



light hours from a distance of 100 feet when the vehicle is not in motion;

**2. Be in sharp contrast to the background of the vehicle; and**

**3. Not be placed higher than the bottom of the windshield or lower than the bottom of the front bumper.**

(c) This number shall be in sharp color contrast to the background of the vehicle.

(d) This number shall not be placed higher than the bottom of the windshield or lower than the bottom of the front bumper.

(4) ~~A~~ ~~(5) Each~~ KYU licensee shall either:

(a) File a form TC 95-9, "Request for Validation of Motor Carrier Control Number", June 1996 edition with the Transportation Cabinet; or

(b) Display the KYU number on each motor vehicle subject to the tax imposed by KRS 138.660(3) it operates in the same manner as required pursuant to 49 CFR Part 390.21.

(5) ~~(6)~~(a) ~~A~~ ~~Each~~ KYU licensee shall immediately report any change in the principal business address, legal status, or business name to the Transportation Cabinet.

(b) All motor carrier operations subject to KRS 138.660(3) shall be conducted in the name in which the KYU license is issued or the duly assumed business name of the licensee, as it appears on the license.

(c) ~~A KYU licensee~~ ~~All KYU licensees~~ shall use the name utilized in the application for the license in all documents relating to ~~its~~ ~~their~~ operations. Both this name and the KYU license number shall be used in correspondence with the Transportation Cabinet.

(6) ~~(7)~~(a) ~~A~~ ~~Each~~ KYU licensee shall register each of its vehicles subject to the tax imposed by KRS 138.660(3) with the Transportation Cabinet. The registration shall be reported on form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", June 1996 edition. ~~[This form is incorporated by reference in Section 15 of this administrative regulation.]~~

(b) If the licensee sells, leases, or buys a vehicle subject to the tax imposed by KRS 138.660(3), the KYU licensee shall immediately file a copy of the Form TC 95-38 with the Transportation Cabinet showing the addition to or deletion from its fleet.

Section 5. Leasing of Motor Vehicles. The following shall apply in the case of lessor, lessee, independent contractors, and household goods agents:

(1) A lessor that is regularly engaged in the business of leasing or renting a motor vehicle without driver to a licensee or other lessee ~~[motor vehicles without drivers for compensation to licensees or other lessees]~~ may be deemed to be the licensee. The lessor shall ~~[may]~~ be issued a license if an application has been:

(a) Properly filed; and

(b) Approved pursuant to the provisions of Sections 3 and ~~[or]~~ 4 of this administrative regulation.

(2) If a motor carrier used independent contractors under leases of thirty (30) days or more, the lessor and lessee shall have the option of designating which party is to report and pay the fuel use tax imposed by KRS 138.660(1) and (2) and the fuel taxes imposed by other jurisdictions.

(3) If the lessee assumes responsibility for reporting and paying motor fuel taxes pursuant to subsection (2) of this section, the base jurisdiction for IFTA purposes shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor.

(4) If a motor carrier rented a motor vehicle for a period of less than thirty (30) days from a lessor described in subsection (1) of this section, ~~[regularly engaged in the business of leasing, or renting motor vehicles without drivers, for compensation to licensees;]~~ the lessor shall pay the fuel use taxes unless both of the following conditions are met:

(a) The lessor has a written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and

(b) The lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

(5) If the motor carrier uses independent contractors under leases of thirty (30) days or less, the trip lessor shall report and pay all fuel taxes.

(6) If the motor carrier is a household goods carrier using inde-

pendent contractors, agents, or service representatives, under intermittent leases, the party liable for all motor fuel taxes shall be:

(a) The lessee if ~~[when]~~ the qualified motor vehicle is being operated under the lessee's jurisdictional operating authority. The base jurisdiction for purposes of IFTA shall be the base jurisdiction of the lessee, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes by the lessor or lessee; or ~~[-]~~

(b) The lessor who is the independent contractor, agent, or service representative if ~~[when]~~ the qualified motor vehicle is being operated under the lessor's jurisdictional operating authority. The base jurisdiction for purpose of IFTA shall be the base jurisdiction of the lessor, regardless of the jurisdiction in which the qualified motor vehicle is registered for vehicle registration purposes.

(7) The lease shall be made available by either the lessee or the lessor upon request of the Transportation Cabinet.

Section 6. Bonding Requirements. (1) ~~[The bond required by KRS 138.670 shall be applicable to the taxpayers subject to KRS 138.660(3).]~~

(2) ~~The~~ Transportation Cabinet shall ~~[not]~~ require the bond for the payment of the taxes imposed by KRS 138.660 if ~~[(1) and (2) unless]~~ the licensee meets one (1) of the following criteria:

(a) The licensee has failed to timely file a report required by Section 7 of this administrative regulation for three (3) quarters of sixteen (16) consecutive quarters;

(b) The licensee has failed to remit all of the tax due for a taxable quarter;

(c) An audit of the licensee indicates recordkeeping or other administrative problem; or

(d) The licensee has had his KYU, KIT, or IFTA license ~~[or the license required by KRS 138.665]~~ revoked, suspended, or canceled.

(2) ~~[(3) If a bond is required pursuant to subsection (2) of this section, the total amount of the bond shall be equivalent to twice the estimated average tax liability for the reporting period or as required by KRS 138.670, whichever is greater.]~~

(4) ~~A~~ licensee required to post a bond pursuant to this section may deposit with the Transportation Cabinet one (1) of the following:

(a) A surety bond;

(b) Bonds or other obligations of the United States, Canada, or the Commonwealth of Kentucky made payable to the Commonwealth of Kentucky;

(c) Automatically renewable time certificates of deposit issued by a bank doing business in the Commonwealth of Kentucky and insured by the Federal Deposit Insurance Corporation, made in the name of licensee, payable to the Commonwealth of Kentucky and containing the provision that interest earned shall be payable to the licensee but that the certificates can only be canceled by written authorization from the Transportation Cabinet;

(d) Investment certificates or share accounts issued by a savings and loan association doing business in the Commonwealth of Kentucky and insured by the Federal Savings and Loan Insurance Corporation. Evidence of the insured account, either certificate or passbook, shall be delivered to the Transportation Cabinet with a properly executed assignment form whereby the funds on deposit are assigned and made payable to the Commonwealth of Kentucky; or

(e) A cash bond submitted in the form of a cashier's check, money order, or other certified funds which are payable to the Commonwealth of Kentucky.

(3) ~~[(5)]~~ The licensee shall be the principal obligor and the Commonwealth of Kentucky shall be the obligee.

(4) ~~[(6)]~~(a) Proof of the bond required pursuant to subsection (1) of this section, may be filed on form TC 95-201, "Kentucky Highway Use Bond", June 1998 ~~[1995]~~ edition ~~[which is incorporated by reference in Section 15 of this administrative regulation].~~

~~[(b) Proof of the bond required pursuant to subsection (2) of this section, may be filed on form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition which is incorporated by reference in Section 15 of this administrative regulation.]~~

Section 7. Tax Payment and Reporting. (1) The Transportation Cabinet shall by the last day of each quarterly reporting period mail the appropriate tax report form to each fuel tax licensee.

(a) Kentucky-based IFTA licensees shall be mailed form "IFTA Quarterly Fuel Tax Report" IFTA 100, November 1994 edition [which is incorporated by reference in Section 15 of this administrative regulation].

(b) KIT licensees shall be mailed form "Highway Quarterly Tax Return", Form TC 95-101a, January 1996 edition [which is incorporated by reference in Section 15 of this administrative regulation].

(c) Except as provided in subsection (3) of this section, each licensee shall comply with KRS 138.685.

(d) Even if a fuel tax licensee had no operations during the reporting quarter, the licensee shall file the tax reporting form.

(2)(a) The Transportation Cabinet shall send [to each] at the beginning of each calendar year to each KYU licensee all of the KRS 138.660(3) quarterly tax report forms "Kentucky Weight Distance Tax Form", Form TC 95-101, May 1996 edition due for that calendar year. [This form is incorporated by reference in Section 15 of this administrative regulation.]

(b) A KYU licensee [licensees] shall comply with the provisions of KRS 138.685.

(3)(a) When filing a motor fuel tax report, an IFTA licensee shall apply the overpayment generated in one (1) jurisdiction to the motor fuel taxes owed to another jurisdiction, remitting the net amount owed to the Transportation Cabinet.

(b) IFTA licenses shall present one (1) check to the Transportation Cabinet to pay the motor fuel taxes due pursuant to KRS 138.660(1) and (2) as well as the motor fuel taxes due all other IFTA jurisdictions.

(c) If a fuel tax licensee has been required to file a bond pursuant to Section 6[(2)] of this administrative regulation, the check to pay the motor fuel taxes due shall be certified.

(d) The requirement for a certified check for KYU licensees **shall be** [is] waived pursuant to KRS 138.665 unless the motor carrier is notified by the Transportation Cabinet to the contrary. The cabinet may require a certified check from a motor carrier **if** [when] the motor carrier:

1. Pursuant to Section 6 of this administrative regulation is required to post a bond for its fuel taxes;

2. Has not established a record of consistent and continued compliance with KRS 138.655 through 138.7291; or

3. Is operating on the highways of Kentucky without a KYU license.

(4) **A computer-generated tax return shall not be used in lieu of Transportation Cabinet forms unless the licensee receives advance written approval of the format** [returns can be used in lieu of the forms sent out by the Transportation Cabinet only if the licensee receives advance written approval of its format] from the Transportation Cabinet, Division of Motor Carriers.

Section 8. Tax Recordkeeping. Each fuel tax licensee or KYU licensee shall maintain records as set forth in 601 KAR 1:201. [(+) Each fuel tax licensee shall maintain a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain at least the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person from whom purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel as set forth in subsection (15) of this section.

(2) Except as set forth in subsection (14) of this section, each fuel tax licensee shall maintain detailed distance records which show operations on an individual vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use; and

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

dition in which the qualified motor vehicle is operated.

(3) In order for a fuel tax licensee to obtain credit for tax-paid fuel purchases, a receipt or invoice, a credit card receipt or automated vendor-generated invoice or transaction listing shall be maintained by the fuel tax licensee. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person from whom purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. (In the case of a lessee/lessor agreement, receipts are acceptable in either name, provided the records firmly indicate the legal connection to the reporting party.)

(4) A fuel tax licensee may only apply for credit in the case of withdrawals from licensee-owned, tax-paid bulk fuel storage if the following detailed records are kept:

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number of the motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) Fuel tax licensees shall account separately for tax-paid fuel purchased as storage or bulk from fuel purchased over the road.

(b) Copies of all delivery tickets and receipts for storage or bulk fuel shall be retained by the licensee.

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in qualified motor vehicles from other uses.

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing.

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number, since only vehicles identified with the fuel tax licensee's operation may be reported for mileage or fuel consumption.

(6) Separate totals shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;

(c) Kerosene;

(d) Gasohol;

(e) Liquid petroleum gas; and

(f) Compressed natural gas.

(7) Each fuel tax licensee shall retain the information required by subsections (1) through (6) of this section for a period of four (4) years from the date of filing the tax report based on these records.

(8) Each KYU licensee shall maintain the following records on the operation within Kentucky of each motor vehicle which is subject to the tax imposed by KRS 138.660(3):

(a) Type of motor vehicle;

(b) Declared gross weight of the motor vehicle;

(c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (14) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs which shall include the following:

1. Beginning and ending odometer readings of each trip;

2. Each route driven;

3. Beginning and ending date of each trip;

4. Trip origin and destination;

5. Total trip miles;

(e) Bills of lading; and

(f) Off-highway mileage which includes periodical logs showing entering and leaving of public highways; and

(g) Manual or computer-generated mileage recaps for Kentucky.

(9)(a) Each KYU licensee shall retain the information required by

subsection (8) of this section for a period of five (5) years from the date of filing the tax report based on these records:

(b) If the records required to be maintained in subsection (8) of this section are insufficient for the auditor to complete an audit, incomplete, or unavailable, the auditor may examine any other records of the motor carrier which might assist in establishing the tax liability of the motor carrier.

(10) Both the lessor and lessee involved in the short- or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and any supplemental agreements, to allow determination at any time of the entity responsible for reporting or payment of the taxes.

(11) Records may be retained on microfilm, microfiche, or other computerized or condensed record storage system if the system has been preapproved by the Transportation Cabinet's Division of Audit Review.

(12) Failure to provide records required for the purpose of an audit shall extend the limitations set forth in subsections (7) or (9) of this section until the records are provided.

(13) If a motor carrier chooses to use on-board computer recording devices in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and motor carrier responsibility shall be as set forth in Section III.A.5. of the IFTA "Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

(14)(a) A fuel tax licensee who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (2) of this section.

(b) A KYU licensee who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (8)(d) of this section.

(15) A fuel tax licensee applying for a refund pursuant to Section 12(5) of this administrative regulation shall in addition to the other requirements of this section maintain the following records:

(a) Proof of power take-off exemption percentage including how the percentage was calculated;

(b) Listing of bulk fuel storage which includes:

1. Location of bulk fuel storage;
2. Capacity of bulk fuel storage; and
3. Whether tanks are designated for "on" or "non" highway use;

(c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable;

(d) Equipment listing for each motor vehicle on which the refund is being requested including:

1. Vehicle type;
2. Use of power take-off;
3. Vehicle unit number;
4. Vehicle identification number; and
5. Type of fuel used in each vehicle.

Section 9. Auditing. (1)(a) The audit of the fuel tax licensees shall be performed in accordance with the provisions of the "IFTA Audit Procedures Manual" which is incorporated by reference in Section 15 of this administrative regulation.

(b) The audit of KRS 138.660(3) tax records shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;
2. Odometer correctness;
3. Reports of each trip which adequately identifies the truck, trip mileage, and route driven;
4. Weight reports;
5. Continuity of trips;
6. Off-highway mileage;
7. Seasonal variations in the motor carrier's business;
8. Electronic data processing; and
9. Sampling of representative months of operation.

(2) The Transportation Cabinet shall audit at least fifteen (15)

percent of the IFTA licensees with a Kentucky base jurisdiction during a five (5) year period.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the motor carrier in writing advising of the approximate date that the audit is to be conducted and the time period the audit will cover.

(4) If it is determined that the fuel tax licensee's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the fuel tax licensee shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(5) The auditor shall conduct and document a preaudit conference with the motor carrier outlining the motor carrier's operation, audit procedures, records to be examined, sample period, and sampling procedures. The motor carrier and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(6) The auditor shall conduct and document a close-out conference with the motor carrier outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(7) The Transportation Cabinet shall furnish the motor carrier a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the motor carrier.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(9) The motor carrier shall within forty-five (45) days of the date of the audit supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Audit Review.

(10) The motor carrier may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet any portion of the audit.

(11) If the motor carrier does not protest pursuant to subsection (9) or (10) of this section, the audit or the audit supplemental tax statement shall be final on the beginning of the 46th day.

(12)(a) If a motor carrier protests pursuant to subsection (9) or (10) of this section the protest shall include a supporting statement and documents which identify the specific adjustments requested or the portions of the audit being protested and setting forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the motor carrier shall be notified of the change and the amended audit or amended audit supplemental tax statement shall become final.

(c) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final audit or final audit supplemental tax statement.

(13) If the motor carrier so desires, he may, within thirty (30) days of the date of the final audit or final audit supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

(14)(a) In the case of a fuel tax audit of an IFTA licensee, the licensee may request any other jurisdiction to audit Kentucky's audit findings.

(b) Each jurisdiction to whom a request is made may elect to accept or deny the request.

(c) Each jurisdiction electing to audit the licensee's records shall audit only for its own portion of the licensee's operations. The licensee shall make its records available at the office of the jurisdiction, at a place designated by the jurisdiction, or pay per diem and travel expenses associated with conducting an audit at the licensee's place of business.]

Section 9. [10:] Assessment. (1)(a) If a fuel tax licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the fuel tax liability of the licensee for each jurisdiction.

(b) If a KYU licensee fails, neglects, or refuses to file a tax report when due, the Transportation Cabinet shall, on the basis of the best information available to the cabinet, determine the tax liability of the licensee relating to KRS 138.660(3).

(c) If a motor carrier fails, neglects, or refuses to obtain either a fuel tax license or a KYU license, the Transportation Cabinet may, on the basis of the best information available to the cabinet, determine the KRS 138.660(1) and (2) or (3) tax liability of the motor carrier for Kentucky.

(2) The motor carrier shall be notified of additional tax assessments by mail. Payment, including interest from the original due date, in the absence of protest, shall [must] be made within forty-five (45) days from the date of the notice of tax due. [If an examination of a motor carrier's tax returns indicate that additional tax is owed or if the Transportation Cabinet determines a tax liability pursuant to subsection (1), (2) or (3) of this section, the Transportation Cabinet shall mail the motor carrier a supplemental tax statement.]

(3) A written protest may be filed by the motor carrier, or other persons representing the motor carrier, and shall [must] include a supporting statement and documents which identify the specific adjustments requested or the portions of the assessment being protested and setting forth the reasons the protest is being made (KRS 131.110(1)). The protest shall be filed with the Transportation Cabinet, Division of Audit Review within forty-five (45) days from the date of the notice of tax due.

(4) If an IFTA license motor carrier elects to exercise the right under Section 1450.200 of the IFTA Articles of Agreement for Further Requests for Appeal, the cabinet shall consider this a protest of the assessment by the taxpayer, and place the taxpayer into protest status.

(5) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the IFTA Articles of Agreement to reaudit the motor carrier, the cabinet shall consider this a protest of the assessment by the taxpayer.

(6) If the supporting statements and documentation are not sufficient to change the assessment results, the motor carrier may request an information gathering or protest conference with the Division of Audit Review.

(7) Within a reasonable period after the information gathering or protest conference is held, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(8) If the motor carrier does not request a conference, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(9) Within thirty (30) days from the date of the final ruling by the cabinet, a written protest may be filed by the taxpayer, or other persons representing the taxpayer, with the Kentucky Board of Tax Appeals (KRS 131.110).

(3) The motor carrier shall within forty-five (45) days of the date of the supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Motor Carriers:

(4) If the motor carrier does not protest pursuant to subsection (3) of this section, the supplemental tax statement shall be final at the beginning of the 46th day:

(5)(a) If a motor carrier protests pursuant to subsection (3) of this section, the protest shall include a supporting statement which identifies the specific adjustments requested and setting forth the reasons the protest is being made:

(b) If the supporting statement is sufficient to cause the Transportation Cabinet to change the supplemental tax statement, the motor carrier shall be notified of the change and the amended supplemental tax statement shall become final:

(c) If the supporting statement is not sufficient to cause the Transportation Cabinet to change the supplemental tax statement exactly as

requested by the motor carrier in its protest, the motor carrier shall be notified to attend an information gathering/protest conference with the Division of Motor Carriers. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party:

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final supplemental tax statement:

(6) If the motor carrier so desires, he may, within thirty (30) days of the date of the final supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.]

Section 10. [11:] Trip Permits. (1) A motor carrier who does not have a required license may operate on Kentucky's highways pursuant to a temporary trip permit issued pursuant to KRS 138.665.

(2) Application for a temporary trip permit shall [may] be made by applying to the Division of Motor Carriers. The application may be made in person, in writing, or by telephone or facsimile communication.

(a) The address for written requests is P.O. Box 2007, Frankfort, Kentucky 40602;

(b) The location for in person requests is Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky;

(c) The telephone number of the Division of Motor Carriers is (502) 564-4540;

(d) The telephone number for the facsimile machine in the Division of Motor Carriers is (502) 564-4138.

(3) The application for a temporary trip permit shall contain the following information:

(a) The name and address of the applicant;

(b) The year, make, and serial (vehicle identification) number of the motor vehicle for which the application is being made; and

(c) The combined gross weight of the motor vehicle.

Section 11. [12:] Fuel Tax Refunds or Credits. (1) A fuel tax licensee shall be allowed to carry forward a motor fuel tax credit for eight (8) quarters.

(2) A refund request from a fuel tax licensee shall be presented in writing and detail the reason for the requested refund.

(3)(a) A full credit shall be allowed IFTA and KIT licensees for tax-paid fuel purchases placed in a qualified motor vehicle.

(b) Any excess of fuel tax paid over tax liability in any member jurisdiction shall be credited in full to tax liability in other member jurisdictions or to the IFTA licensee's account ledger, as appropriate.

(4)(a) A motor fuel tax refund [refunds] to an IFTA licensee [licensees] shall not be made unless the [only if [when] all] motor fuel tax liability, including an audit assessment [assessments], has been satisfied for [to] all member jurisdictions.

(b) If a fuel tax licensee's refund request is determined to be properly due, the refund shall be paid within ninety (90) days after receipt of a request for payment from a fuel tax licensee.

(5)(a) A fuel tax licensee may apply within two (2) quarters to the Transportation Cabinet for refund of the fuel tax imposed by KRS 138.660(1) or (2) if [when] the fuel:

1. Was consumed on the public highways; [and]

2. Was from the same tank that was [is] permanently attached to the power unit of the qualified motor vehicle;

3. Served [and serves] to power the operation of the qualified motor vehicle on the highways; and

4. [if [when] the fuel] Was used for:

a. A mixer;

b. Pumps;

c. A load lift;

d. A refrigeration unit; or

e. Similar power take-off equipment. [power take-off equipment such as mixers, pumps, load lifts, and refrigeration units.]

(b) The application for the refund of fuel defined in paragraph (a) of this subsection shall be made on form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition to substantiate the nonhighway use of the fuel. [This form is incorporated by reference in Section 15 of this administrative regulation.]

Section 12. [13:] Tax Penalties and Interest. (1) The penalty for the late payment of the tax imposed by KRS 138.660(3) shall be as set forth in KRS 138.715.

(2) The penalty for the late payment of motor fuel tax imposed by KRS 138.660(1) and (2) or an IFTA jurisdiction shall be ten (10) percent of the tax due or fifty (50) dollars whichever is greater.

(3) The interest on the late payment of any of the taxes administered pursuant to this administrative regulation shall be as set forth in KRS 138.715.

(4) The taxes, penalties, and interest identified in KRS 138.675 shall also include the motor fuel taxes, penalties, and interest owed to other IFTA jurisdictions.

(5) The penalties and interest due for the overpayment of a refund shall begin [being] accruing fifteen (15) days after the motor carrier is notified of the overpayment.

Section 13. [14:] License Cancellation, Refusal, and Reinstatement. (1) If a motor carrier fails to comply with the provisions of KRS 138.655 through 138.7291, or this administrative regulation, the fuel tax license or KYU license may be canceled in accordance with the provisions of KRS 138.675.

(2) **A license shall not be issued and shall be cancelled for the following reasons:** [Reasons for cancellation of or refusal to issue a license shall include, but not be limited to the following:]

- (a) Improper use of license or decal;
- (b) Failure to file a tax return when due;
- (c) Failure to pay all of the taxes owed;
- (d) Failure to produce records after written request for the records;
- (e) Failure to maintain records in the required manner; [or]
- (f) Notification from another IFTA jurisdiction of motor fuel tax violations in that jurisdiction; or

(g) **A similar action or inaction by the licensee.**

(3) A motor carrier shall be notified of the pending license cancellation or license refusal and offered the opportunity for an administrative hearing pursuant to Section 14 of this administrative regulation.

(4) If a license is canceled by the Transportation Cabinet, the motor carrier shall immediately return the license.

(5) If a motor carrier desires to have a canceled license reinstated, the carrier shall meet the following criteria:

- (a) Prove to the Transportation Cabinet that sufficient records are being and will be maintained to file accurate tax reports;
- (b) Submit quarterly tax reports for all missed reporting periods;
- (c) Pay all taxes, penalties, and interest owed;
- (d) Provide a bond pursuant to Section 6 of this administrative regulation; and
- (e) Provide evidence of liability insurance, operating authority, and other items of KRS Chapter 281 applicable to the motor carrier.

Section 14. [15:] Appeal Procedure. (1) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to KRS 138.655 through 138.7295 shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

Section 15. [16:] Incorporation by Reference. (1) **The following material is incorporated by reference:**

- (a) **"International Fuel Tax Agreement", (July 1998 edition), International Fuel Tax Association;**
- (b) **Form TC 95-9, "Request for Validation of Motor Carrier Control Number", (August 1996 edition), Transportation Cabinet;**
- (c) **Form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", (October 1996 edition), Transportation Cabinet;**
- (d) **Form TC 95-201, "Kentucky Highway Use Bond", (June 1995 edition), Transportation Cabinet;**
- (e) **Form TC 95-1, "Kentucky Trucking Application", (October 1998 edition), Transportation Cabinet;**
- (f) **Form TC 95-205, "Kentucky Fuel Users Bond", (June 1996 edition), Transportation Cabinet;**
- (g) **Form "IFTA Quarterly Fuel Tax Report" IFTA 100, (August 1998 edition), Transportation Cabinet;**

(h) **Form TC 95-101a, "Highway Quarterly Tax Return", (September 1996 edition), Transportation Cabinet;**

(i) **Form TC 95-101, "Kentucky Weight Distance Tax", (May 1996 edition), Transportation Cabinet; and**

(j) **Form TC 95-214, "Fuel Tax Refund for Power Takeoff", (June 1996 edition), Transportation Cabinet.**

**(2) This material may be inspected, copied, or obtained at the Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [The following documents are incorporated by reference in this administrative regulation:**

- (1) IFTA "Articles of Agreement," July 1998 [1996] edition;
- (2) IFTA "Procedures Manual," July 1998 [1996] edition;
- (3) IFTA "Audit Procedures Manual," July 1998 [1996] edition;
- (4) [Transportation Cabinet Form, "Application for Motor Fuel Tax Licensing for IFTA Carriers," TC 95-203, February 1996 edition;
- (5) Transportation Cabinet Form "Application for Kentucky Intra-state Tax License", TC 95-200a, January 1996 edition;
- (6) Transportation Cabinet Form TC 92-150, "Application for Intra-state Carrier Identification Number", March 1996 edition;
- (7) Transportation Cabinet Form TC 95-200, "Application for Kentucky Highway Use License," June 1995 edition;
- (8) Transportation Cabinet Form TC 95-9, "Request for Validation of Motor Carrier Control Number," August [June] 1996 edition;
- (5) [(9)] Transportation Cabinet Form TC 95-38, "Application for the Registration of Taxable Vehicles in Kentucky", October [June] 1996 edition;
- (6) [(10)] Transportation Cabinet Form TC 95-201, "Kentucky Highway Use Bond", June 1995 edition;
- (7) Transportation Cabinet Form TC 95-1, "Kentucky Trucking Application", October 1998 edition;
- (8) [(11)] Transportation Cabinet Form TC 95-205, "Kentucky Fuel Users Bond", June 1996 edition;
- (9) [(12)] Transportation Cabinet Form "IFTA Quarterly Fuel Tax Report" IFTA 100, August 1998 [November 1994] edition;
- (10) [(13)] Transportation Cabinet Form "Highway Quarterly Tax Return", Form TC 95-101a, September [January] 1996 edition;
- (11) [(14)] Transportation Cabinet Form "Kentucky Weight Distance Tax", Form TC 95-101, May 1996 edition; and
- (12) [(15)] Transportation Cabinet Form TC 95-214, "Fuel Tax Refund for Power Takeoff", June 1996 edition.]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

PATRICIA K. FOLEY, Deputy General Counsel

APPROVED BY AGENCY: November 17, 1998

FILED WITH LRC: November 18, 1998 at 11 a.m.

**TRANSPORTATION CABINET  
Department of Fiscal Management  
Division of Audit Review  
(As Amended at ARRS, February 9, 1999)**

**601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291.**

RELATES TO: KRS 138.655 through 138.7291, 186.650, 49 CFR Part 390.21, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 138.725(1), 281.600, 49 USC Chapter 317

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to 49 USC 317.05 and KRS 138.227, Kentucky is required to conform to [in accordance with 49 USC 317.05 and KRS 138.227, Kentucky is in conformance with] the provisions of the International Fuel Tax Agreement (IFTA). [If a motor carrier operates in interstate commerce, the motor fuel taxes imposed by Kentucky statutes, which are subject to the provisions of IFTA, are KRS 138.660(1) and (2). If the motor carrier operates exclusively in intrastate commerce, the taxes imposed by KRS 138.660(1) and (2) are not subject to the requirements of IFTA. The tax imposed by KRS 138.660(3) is not subject to the IFTA federal mandate. All three (3) of these taxes are administered under the provisions of KRS 138.655 through

138.7291.] This administrative regulation sets forth the recordkeeping and audit requirements of IFTA and KRS 138.655 through 138.7291 and provides for uniformity in the interstate and intrastate administration of KRS 138.660(1) and (2) so as not to violate the interstate commerce clause of the United States Constitution.

Section 1. Definitions. (1) "Base jurisdiction" means the member jurisdiction where qualified motor vehicles are based for vehicle registration purposes and:

(a) Where the operational control and operational records of the fuel tax licensee's qualified motor vehicles are maintained or can be made available; and

(b) Where some travel is accrued by qualified motor vehicles within the fleet.

(2) "Fuel tax license" means either an IFTA license or a KIT license.

(3) "IFTA" means the International Fuel Tax Agreement.

(4) "IRP" means the International Registration Plan.

(5) "IFTA license" means a motor fuel tax license issued in accordance with the IFTA "Procedures Manual."

(6) "Jurisdiction" means a state of the United States, the District of Columbia, or a province or territory of Canada.

(7) "KIT license" means the Kentucky intrastate tax license issued by the Kentucky Transportation Cabinet to intrastate motor carriers subject to the taxes imposed by KRS 138.660(1) and (2).

(8) "KYU license" means the Kentucky Highway Use License issued by the Kentucky Transportation Cabinet to motor carriers subject to the tax imposed by KRS 138.660(3).

(9) "Motor carrier" means as defined in KRS 138.655(5).

(10) "Over-the-road fuel" means fuel purchased from a retail distributor and placed directly into a qualified motor vehicle.

(11)(a) "Qualified motor vehicle" means a motor vehicle operated by a motor carrier that is used, designed, or maintained for the transportation of persons or property and that meets at least one (1) of the following criteria:

1. A single vehicle having two (2) axles and a gross vehicle weight or a registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms;

2. A single vehicle having three (3) or more axles, regardless of weight; or

3. A vehicle used in combination, when the weight of the combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight or registered gross vehicle weight.

(b) A qualified motor vehicle shall not include the following:

1. A recreational vehicle;

2. A motor vehicle registered pursuant to KRS 186.050(4) or under another jurisdiction's law as a farm vehicle; or

3. A motor vehicle used to transport persons for hire.

(12) "Quarterly reporting period" means a period of time consistent with the calendar quarterly periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

(13) "Recreational vehicle" means a ~~motor vehicle such as~~ motor home [homes], pickup truck [trucks] with an attached camper [campers], a bus or similar motor vehicle if [and buses when] used exclusively for personal pleasure by an individual and which is not used in connection with any business endeavor.

(14) "Tax-paid fuel" means motor fuel purchased either in bulk or over-the-road by a motor carrier on which the motor fuel taxes imposed by a jurisdiction are paid at the time of purchase.

(15) "Taxpayer" means a Motor Carrier operating upon the roads of the Commonwealth subject to those taxes in KRS 138.660.

Section 2. Governing IFTA Documents. The following IFTA documents prepared and adopted by the membership of the International Fuel Tax Association shall govern Kentucky's recordkeeping requirements and audit provisions of the taxes imposed by KRS 138.660(1) and (2):

(1) Articles of Agreement as revised July 1998;

(2) Procedures Manual as revised July 1998; and

(3) Audit Procedures Manual as revised July 1998.

Section 3. Tax Recordkeeping. (1) Each taxpayer shall maintain

a complete record of all motor fuel purchased, received, or used in the conduct of its business. The fuel records shall contain at least the following information:

(a) The date of each receipt of fuel;

(b) The name and address of the person from whom purchased or received;

(c) The name of the purchaser of the fuel;

(d) The number of gallons of fuel received;

(e) The type of fuel;

(f) The vehicle or equipment into which the fuel was placed; and

(g) If applicable, complete records on power takeoff use of motor fuel as set forth in subsection (15) of this section.

(2) Except as set forth in subsection (14) of this section, each taxpayer shall maintain detailed distance records that show operations on an individual-vehicle basis. The distance records for each qualified motor vehicle shall contain at least the following information:

(a) Both taxable and nontaxable usage of fuel;

(b) Distance traveled for taxable and nontaxable use; and

(c) Beginning and ending date of each trip;

(d) Trip origination and destination;

(e) Route traveled on trip;

(f) Trip beginning and ending odometer readings;

(g) Total mileage of each trip; and

(h) Distance recaps for each qualified motor vehicle for each jurisdiction in which the qualified motor vehicle is operated.

(3) In order for a taxpayer to obtain credit for a tax-paid fuel purchase [tax-paid-fuel-purchases] a receipt or invoice, a credit card receipt or automated vendor-generated invoice or transaction listing shall be maintained by the taxpayer. An acceptable receipt or invoice for tax-paid fuel purchased shall not have been altered or indicate erasures and shall contain at least the following information:

(a) The date of purchase of fuel;

(b) The name and address of the person from whom purchased;

(c) The number of gallons purchased;

(d) The type of fuel;

(e) The price per gallon of the fuel purchased or the total amount of the sale;

(f) Unit number of the motor vehicle into which the motor fuel was placed; and

(g) Purchaser's name. (In the case of a lease [lessee/lessor] agreement, receipts are acceptable in either name, provided the records firmly indicate the legal connection to the reporting party.)

(4) A taxpayer shall not apply for credit for withdrawal from licensee-owned, tax-paid bulk fuel storage unless the following detailed records are kept: [may only apply for credit in the case of withdrawals from licensee-owned, tax-paid bulk fuel storage if the following detailed records are kept:]

(a) Date of withdrawal;

(b) Number of gallons withdrawn;

(c) Fuel type;

(d) Unit number of the motor vehicle or equipment into which the fuel was placed; and

(e) Purchase and quarterly beginning and ending inventory records to substantiate that tax was paid on the bulk purchase.

(5)(a) A taxpayer shall account separately for tax-paid fuel purchased as storage or bulk from fuel purchased over the road;

(b) The licensee shall retain a copy of each delivery ticket and receipt for storage or bulk fuel;

(c) Bulk fuel inventory reconciliations shall be maintained. Records shall be maintained to distinguish fuel placed in a qualified motor vehicle [vehicles] from other uses;

(d) Each tax-paid purchase shall be supported by a receipt, invoice, credit card receipt or automated vendor-generated invoice or transaction listing; and

(e) Over-the-road fuel receipts shall identify the vehicle by the registration plate number or unit number, because only a vehicle [vehicles] identified with the fuel tax licensee's operation may be reported or mileage or fuel consumption.

(6) A separate total [Separate-totals] shall be compiled for each of the following fuel types used by a fuel tax licensee:

(a) Gasoline;

(b) Diesel;



- (c) Kerosene;
- (d) Gasohol;
- (e) Liquid petroleum gas;
- (f) Compressed natural gas; and
- (g) Other.

(7) Each taxpayer shall retain the information required by subsections (1) through (6) of this section for a period of four (4) years from the date of filing the tax report based on these records, except when a "Consent of Extension of Statutory Limitation of Time for Assessment" has been filed with the Division of Audit Review to extend the four (4) year statutory period limitation.

(8) Each taxpayer subject to a KYU license shall maintain the following records on operations within Kentucky of each motor vehicle that is subject to the tax imposed by KRS 138.660(3):

- (a) Type of motor vehicle;
- (b) Declared gross weight of the motor vehicle;
- (c) Weigh bills showing the actual weight of the loaded motor vehicle;

(d) Except as provided in subsection (14) of this section, mileage operated by unit number in Kentucky as reported on trip sheets and driver logs that shall include the following:

- 1. Beginning and ending odometer readings of each trip;
- 2. Each route driven;
- 3. Beginning and ending date of each trip;
- 4. Trip origin and destination;
- 5. Total trip miles;
- (e) Bills of lading; and

(f) Off-highway mileage which includes periodical logs showing entering and leaving of public highways; and

(g) Manual or computer-generated mileage recaps for Kentucky.

(9)(a) Each taxpayer subject to a KYU license shall retain the information required by subsection (8) of this section for a period of five (5) years from the date of filing the tax report based on these records, except when a "Consent of Extension of Statutory Limitation of Time for Assessment" has been filed for the Division of Audit Review to extend the five (5) year statutory period limitation.

(b) If the records required to be maintained in subsection (8) of this section are insufficient, incomplete, or unavailable for the auditor to complete an audit, the auditor may examine any other records of the taxpayer which might assist in establishing the tax liability of the taxpayer.

(10) Both the lessor and lessee involved in the short or long-term lease of motor vehicles shall maintain sufficient records, including copies of the leases and any supplemental agreements, to allow determination at any time of the entity responsible for reporting or payment of the taxes.

(11) Records may be retained on microfilm, microfiche, or other computerized or condensed record storage system if the system has been preapproved by the Transportation Cabinet's Division of Audit Review.

(12) If a taxpayer chooses to use an on-board electronic data recording system in lieu of or in addition to trip reports for tax reporting, the devices, recordkeeping, data collection, reporting and taxpayer responsibility shall comply with [be as set forth in] Section P600 of the IFTA Procedures Manual.

(13)(a) A taxpayer subject to an IFTA or KIT license who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (2) of this section.

(b) A taxpayer subject to a KYU license who operates exclusively in intrastate commerce and for which all of the mileage traveled is taxable may choose to maintain quarterly odometer readings on an individual motor vehicle basis rather than the more detailed records set forth in subsection (8)(d) of this section.

(14) A taxpayer subject to an IFTA or a KIT license applying for a refund pursuant to Section 11 of 601 KAR 1:200 shall, in addition to the other requirements of this section, maintain the following records:

- (a) Proof of power-take-off exemption percentage including how the percentage was calculated;
- (b) Listing of bulk fuel storage which includes:
  - 1. Location of bulk fuel storage;

2. Capacity of bulk fuel storage; and

3. Whether tanks are designated for "on" or "non" highway use;

(c) Kentucky Revenue Cabinet Motor Fuels Tax Refund Permit Number and Kentucky Revenue Cabinet Sales and Use Tax Number, if applicable;

(d) Equipment listing for each motor vehicle on which the refund is being requested including:

- 1. Vehicle type;
- 2. Use of power-take-off;
- 3. Vehicle unit number;
- 4. Vehicle identification number; and
- 5. Type of fuel used in each vehicle.

Section 4. Auditing. (1) For an audit [all audits], the taxpayer shall have available the following information if requested by the auditor:

(a) Records of all motor fuel purchased, received or used as identified in Section 3(1) of this administrative regulation;

(b) Detailed distance records that show operations on an individual vehicle basis as identified in Section 3(2) of this administrative regulation;

(c) For credit for tax-paid fuel purchases the records as identified in Section 3(3) of this administrative regulation;

(d) For credit for tax-paid bulk fuel storage the records as identified in Section 3(4) of this administrative regulation;

(e) Copies of Kentucky income tax returns for the periods under audit;

(f) Copies of IFTA or KIT returns, KYU returns, and IRP returns that represents Kentucky operations, or the documentation of another responsibility party for the payment of the related taxes.

(g) General ledger relating to each period under audit; and

(h) The related books of original entry.

(2)(a) The fuel tax audit of a taxpayer subject to an IFTA or a KIT license shall be performed in accordance with the provisions of the "IFTA Audit Procedures Manual" which is incorporated by reference in Section 5 of this administrative regulation.

(b) An audit of a taxpayer subject to a KYU license shall be performed by verifying the following:

1. The combined license weight of each motor vehicle operated by the motor carrier;

2. Odometer correctness;

3. Reports of each trip that adequately identifies the truck, trip mileage, and route driven;

4. Weight reports;

5. Continuity of trips;

6. Off-highway mileage;

7. Seasonal variations in the motor carrier's business;

8. Electronic data processing; and

9. Sampling of representative months of operation.

(3) At least thirty (30) days prior to conducting a routine audit, the Transportation Cabinet shall contact the taxpayer in writing advising of the approximate date that the audit is to be conducted and the time period the audit will cover.

(4) The auditor shall conduct and document a preaudit conference with the taxpayer (or designated representative) outlining the carrier's operation, the audit procedures, the records to be examined, the sample period, and the sampling procedures. The taxpayer and auditor shall determine at the preaudit conference who shall have [has] the responsibility for the final acceptance of audit findings and who shall [should] be involved in the closeout conference.

(5) The auditor shall conduct and document a close-out conference with the taxpayer (or designated representative) outlining preliminary findings to include proposed assessment, recommendations resulting from the review of the records and internal control, rights of appeal, and to whom the audit report should be addressed.

(6) The Transportation Cabinet shall furnish the taxpayer a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the taxpayer.

(7) A taxpayer [Taxpayers] shall be notified of additional tax assessments by mail. Payment, including interest from the original due date, in the absence of protest, shall [must] be made within forty-five (45) days from the date of the notice of tax due.

(8) A penalty [Penalties] assessed under KRS 138.715 shall



[will] be applied to audit assessments based upon the percentage of the underpayment of the tax liability prior to the deduction of fuel tax purchase credits (if applicable) by the licensee.

Section 5. Protest of Assessments. (1) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, and shall [must] include a supporting statement and documents which identify the specific adjustments requested or the portions of the audit being protested and setting forth the reasons the protest is being made (KRS 131.110 (1)). The protest shall be filed with the Transportation Cabinet, Division of Audit Review within forty-five (45) days from the date of the notice of tax due.

(2) If an IFTA licensee taxpayer elects to exercise the right under Section 1450.200 of the IFTA Articles of Agreement for Further Requests for Appeal, the cabinet shall consider this a protest of the assessment by the taxpayer, and place the taxpayer into protest status.

(3) If an IFTA member jurisdiction elects to exercise the right under Section 1360.100 of the IFTA Articles of Agreement to reaudit the taxpayer, the cabinet shall consider this a protest of the assessment by the taxpayer.

(4) If the supporting statements and documentation are not sufficient to change the assessment results, the taxpayer may request an information gathering or protest conference with the Division of Audit Review.

(5) Within a reasonable period after the information gathering or protest conference is held, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(6) If the taxpayer does not request a conference, the cabinet shall issue a final ruling to the taxpayer, stating the final assessment results and detailing the procedures for an appeal to the Kentucky Board of Tax Appeals (KRS 131.110).

(7) Within thirty (30) days from the date of the final ruling by the cabinet, a written protest may be filed by the taxpayer, or other persons representing the taxpayer, with the Kentucky Board of Tax Appeals (KRS 131.110).

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "International Fuel Tax Agreement", (July 1998 edition), International Fuel Tax Association;

(b) Form TC 95-214, "Fuel Tax Refund for Power Takeoff", (June 1996 edition), Transportation Cabinet.

(2) This material may be inspected, copied, or obtained at the Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [The International Fuel Tax Agreement which includes the following documents are incorporated by reference in this administrative regulation:

(a) IFTA "Articles of Agreement", July 1998 edition;

(b) IFTA "Procedures Manual", July 1998 edition;

(c) IFTA "Audit Procedures Manual", July 1998 edition; and

(d) Transportation Cabinet Form TC 95-214 "Fuel Tax Refund for Power Takeoff", June, 1996 edition.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Division of Audit Review.]

JAMES C. CODELL, III, Secretary

PATRICIA K. FOLEY, Deputy General Counsel

APPROVED BY AGENCY: November 18, 1998

FILED WITH LRC: November 18, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Division of School and Community Nutrition  
(As Amended at ARRS, February 9, 1999)

702 KAR 6:100, Appeal procedures for school and community nutrition programs.

RELATES TO: KRS 156.070(5), 156.160(1)(f), 7 CFR 210.18(q), 215.11, 220.13(f)(2), 225.13, 226.6(k), 42 USC 1761, 1766(e), 1772

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(5)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070(5) requires the Board of Education to promulgate administrative regulations governing the operation of programs within the Department of Education. This administrative regulation establishes the appeals procedure for a sponsor of a federal nutrition program. [This administrative regulation is promulgated pursuant to the Kentucky Board of Education's statutory mandate to develop and adopt administrative regulations governing the operation of programs within the Department of Education. This administrative regulation is needed to establish appeals procedures for sponsors of the various federal nutrition programs.]

Section 1. Actions Which May be Appealed. (1) A school food authority that sponsors the National School Lunch Program, the Special Milk Program or the School Breakfast Program may appeal the following adverse actions:

(a) Denial of all or part of a claim for reimbursement arising from administrative or follow-up review activity; or

(b) Withholding payment arising from administrative or follow-up review activity.

(2) A sponsor of the Child and Adult Care Food Program, including an independent center or sponsoring organization on behalf of a facility under its jurisdiction, may appeal the following adverse actions:

(a) Denial of an institution's application for participation;

(b) Denial of an application submitted by a sponsoring organization on behalf of a facility or site;

(c) Termination of participation on an institution or facility or site;

(d) Suspension of an institution's agreement;

(e) Denial of an institution's application for start-up payments;

(f) Denial of an advance payment;

(g) Denial of all or part of a claim for reimbursement except for a late claim [late claims];

(h) Demand for the remittance of an overpayment; or

(i) Any other action of the Department of Education affecting the participation of an institution in the program or the institution's claim for reimbursement.

(3) A program sponsor or a food service management company (FSMC) participating in the Summer Food Service Program for Children may appeal the following adverse actions:

(a) Denial of an application for participation;

(b) Denial of a sponsor's request for an advance payment;

(c) Denial of a sponsor's claim for reimbursement, except for a late claim [late claims] under 7 CFR 225.9(d)(5);

(d) Refusal of a state agency to forward to the Division of School and Community Nutrition an exception request for payment of a late claim or a request for an upward adjustment to a claim;

(e) A claim against a sponsor for remittance of a claim;

(f) Termination of the sponsor or a site;

(g) Denial of a sponsor's application for a site; or

(h) Denial of a food service management company's application for a registration or the revocation of a food service management company's registration.

Section 2. (1) Appeal Procedures.

(a) A program sponsor aggrieved by an adverse action of the Division of School and Community Nutrition (the "division") may appeal the action by filing a timely request for a review. The request shall be filed with the Director, Division of School and Community Nutrition, Department of Education, 1024 Capital Center Drive,

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Frankfort, Kentucky, 40601.

(b) The request shall be in writing and shall state the name and address of the program sponsor and the name and title of the person who signed the request.

(c) The request shall be postmarked or received by the division prior to midnight of the fifteenth calendar day (tenth working day in the case of the Summer Food Service Program) after receipt of the notice of adverse action. If the 15th day (tenth working day in the case of the Summer Food Service Program) falls on a Saturday, Sunday, or federal legal holiday, the request shall be timely if it is postmarked or received the next day which is not a Saturday, Sunday, or federal legal holiday.

(d) A program sponsor which has filed an appeal and request for review may examine and copy the information in the division files upon which the adverse action was based.

**(e) During the review process, a program sponsor shall:**

**1. Represent itself; or**

**2. Be represented by legal counsel.** [A program sponsor may represent itself during the review process, be represented by legal counsel, or be represented by another person.]

(2)(a) A request for appeal shall clearly identify the adverse action being appealed, the basis of the appeal, and the relief or remedy sought. It shall also include the date of the letter or other written communication from the division notifying the program sponsor of the proposed adverse action, and the name and title of the division official who signed the letter or communication. If a hearing before a hearing officer is desired, that shall be clearly stated.

(b) An appellant program sponsor may submit written information in support of its position at the time it files its appeal and request for review with a hearing officer. It may also submit additional written information to the designated hearing officer up to thirty (30) calendar days after receipt of the division notice of adverse action.

(3)(a) The division shall forward any request for appeal to the Director, Division of Administrative Hearings, Office of the Attorney General. The request for appeal shall be accompanied by a copy of the notice of adverse action sent by the Division of School and Community Nutrition.

(b) The administrative hearing procedures of KRS Chapter 13B shall apply. Pursuant to 7 CFR 210.18(q)(9), 220.13(f)(2), 225.13(b)(12) and 226.6(k)(10), the decision of the hearing officer shall be the final administrative determination.

(c) In case of a denial of an application to participate in the program, the determination of the hearing officer shall either sustain the denial or shall direct that the appellant be approved for limited or full participation.

(d) In case of a denial of all or part of a claim for reimbursement, start-up payment, advance payment, or demand for refund of any overpayment, the determination of the hearing officer shall either sustain the action under appeal or specify the amount of the claim for reimbursement, start-up payment, advance payment, or refund of overpayment to be paid.

(e) In the case of the termination of an appellant's participation in the program, the determination of the hearing officer shall either sustain the termination or shall direct that the appellant be permitted to continue participation in the program.

WILMER S. CODY, Commissioner of Education  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of Learning Programs Development  
(As Amended at ARRS, February 9, 1999)

704 KAR 3:480. Early reading incentive grants.

RELATES TO: KRS 158.070(7), 158.792, 158.794 [1998-Ky. Acts ch. 580]

STATUTORY AUTHORITY: KRS 156.070(4), 158.792(3) [1998-Ky. Acts ch. 580]

NECESSITY, FUNCTION, and CONFORMITY: KRS 156.160 authorizes the Kentucky Board of Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance. KRS 158.792(3) requires the board to promulgate administrative regulations to establish an application process and the criteria for funding grants from the Early Reading Incentive Grant Program, established in KRS 158.792. This administrative regulation establishes the application process and selection criteria. [1998-Ky. Acts ch. 580 establishes the Early Reading Incentive Grant Program and requires that administrative regulations be promulgated to establish the grant application process and selection criteria. This administrative regulation implements that state board duty.]

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

(a) Is based on reliable, replicable research;

(b) Includes a balance of instructional strategies that support the attainment of reading and phonics skills contained in 704 KAR 3:303, The Kentucky Program of Studies; and

(c) Includes skills that lead to reading success.

(2) "Qualified student" means a student [one] who:

(a) Is enrolled in public school;

(b) Is in the primary program as defined under KRS 158.031 [158.030]; and

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

Section 2. Purpose of Program. A grant provided through the Early Reading Incentive Grant Program shall:

(1) [may] Be used to supplement a school's program, individually or in partnership with another entity; and

(2) [other entities. However, a grant shall] Not be used to supplant funding for existing instructional activities.

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

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

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

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

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

(6) A grant application shall indicate the fiscal agent as a local board of education or other entity eligible to enter into a memorandum of agreement to receive state education funds. The fiscal agent for the Kentucky Schools for the Blind or Deaf shall be the Kentucky Department of Education.

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

(8) To be eligible for funding, an application shall:

(a) Include the contents required by KRS 158.792(3)(a) through (f); [in 1998-Ky. Acts ch. 580, Section 1(3)(a)-(f)] and

(b) Specify the matching funds that will be allocated to directly support the implementation of the model, as required by KRS 158.792(4).

(9) A grant application shall be subject to approval by the principal and superintendent to ensure that the grant application includes adequate resources to implement the model. The use of categorical funds for matching funds shall be subject to approval by the local board of education.

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

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

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

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

(13) After consideration of the criteria established in subsection (12) [(9)] of this section, geographic distribution may be considered.

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

(15) An application shall be reviewed as follows:

(a) A panel shall review the application and make a recommendation to the Early Reading Incentive Grant Steering Committee. The panel shall include:

1. Persons knowledgeable of 704 KAR 3:303, the Kentucky Program of Studies, and early reading instruction; and

2. At least one (1) person who is currently teaching primary students.

(b) Upon receipt of the panel's recommendation, the Early Reading Incentive Grant Steering Committee shall make the final recommendation to the Department of Education. [Review of applications shall be conducted by a panel which includes persons knowledgeable of 704 KAR 3:303, The Kentucky Program of Studies, and early reading instruction, and at least one (1) person who is currently teaching primary students.]

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

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

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

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

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

(5) Prior to submitting each annual report to the Interim Joint Committee on Education as required by KRS 158.792(6) [1998-Ky. Acts ch. 580, Section 1(6) of this administrative regulation], the Department of Education shall, in consultation with the Early Reading Incentive Grant Steering Committee, report to the Kentucky Board of Education regarding grant activities and the use of grant funds.

WILMER S. CODY, Commissioner of Education  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: December 14, 1998

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## EDUCATION, ARTS, AND HUMANITIES CABINET

### Education Professional Standards Board

(As Amended at ARRS, February 9, 1999)

#### 704 KAR 20:015. Rank I classification.

RELATES TO: KRS 157.390, 161.010, 161.095

STATUTORY AUTHORITY: KRS 156.070, 157.390, 161.028, 161.030, 161.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.390(1) and (2) requires the State Board of Education to promulgate an administrative regulation to determine the salary rank of a certified teacher and to determine the equivalent qualification for the salary rank. 704 KAR 3:470, promulgated by the State Board of Education, gives authority to the Education Professional Standards Board to establish the standards and procedures for the classification of teachers in rank for purposes of the state teacher salary schedule. KRS 161.095 requires the Education Professional Standards Board to establish procedures for a teacher to maintain his certificate by successfully completing meaningful continuing education. This administrative regulation establishes the requirements [defines approved graduate work] for the Rank I classification and [defines] equivalent programs for the Rank I classification.

Section 1. The preparation program for a Rank I classification shall require the completion of the following:

(1) Completion of the requirements for a Rank II classification as established in 704 KAR 20:021; and

(2) The completion of one (1) of the plans described in this subsection:

(a) Plan I. Thirty (30) semester hours of approved graduate level credit or approved equivalent;

(b) Plan II. Sixty (60) semester hours of approved graduate level credit or approved equivalent including a master's degree;

(c) Plan III. National Board Certification; or

(d) Plan IV. Equivalent continuing education with evidence of continuous progress as required by Section 5 of this administrative regulation.

Section 2. The Plan I and II equivalent preparation shall be approved by the Education Professional Standards Board on the basis of the following criteria:

(1) Approved equivalent credit shall be offered in the form of a teacher institute designed for the purpose of upgrading classroom teaching personnel in a teaching specialty;

(2) A teacher institute shall be offered by an institution that is approved by the Education Professional Standards Board for offering a Rank I program. A teacher education institution shall make application to the Education Professional Standards Board for the advanced approval of a teacher institute;

(3) Operation of a teacher institute shall meet the standards for accreditation of a teacher preparation program;

(4) Equivalency credit toward a Rank I classification shall be earned by professional personnel who have already attained a Rank II classification;

(5) Equivalency credit toward a Rank I classification shall be limited to a maximum of fifteen (15) semester hours of the requirements for Rank I. Equivalency credit shall be the amount of contact time required for graduate credit at the teacher education institution; and

(6) Approved equivalency credit shall be an integrated part of an individualized Rank I program as planned with a graduate curriculum adviser. Approved equivalency credit earned through an approved teacher institute may be applied for teacher certification purposes as established [described] in 704 KAR 20:030.

Section 3. The appropriate official designated by the teacher education institution shall certify to the Education Professional Standards Board when the curriculum requirements have been completed for the Rank I program at the institution.

Section 4. Of the thirty (30) semester hour program, at least fifteen (15) semester hours shall be taken at the college making the recommendation. The remaining fifteen (15) semester hours credit shall be

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taken at:

- (1) The same institution; or
- (2) Upon approval of the college adviser, another institution.

Section 5. The Plan IV equivalent continuing education program shall be approved by the Division of Certification on the basis of the following criteria:

(1) An individualized professional development plan shall be designed by the teacher. The plan shall focus on the teacher's needs with consideration given to how the needs relate to the school transformation plan;

(2) The plan shall include goals related to continuing growth on each of the nine (9) experienced teacher standards established in 704 KAR 20:021 and may be developed in collaboration with a team of colleagues whom the teacher chooses; -

(3) The plan shall be submitted for review to a three (3) member state review team;

(4) The teacher shall participate in a professional development experience that will assist in the accomplishment of the goals established. A professional development experience shall include a combination of graduate college credit, individual research, field-experience, and professional development activities or workshops. A professional development experience chosen shall be listed within the professional development plan;

(5) A professional development experience may be:

(a) A part of the approved school professional development plan; or

(b) An experience specifically needed by the individual teacher;

(6) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that the teacher has demonstrated continuing growth on each of the experienced teacher standards; and

(7) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including videotape, research, data, or instructional logs; and

(b) To the state team at least one (1) year in advance of the expiration date of the certificate.

Section 6. (1) The state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that the professional development plan was accomplished and that growth on each of the experienced teacher standards was evident;

(d) Recommend the teacher for Rank I classification and certificate renewal to the Education Professional Standards Board **prior to the expiration date of the certificate**; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 7. An assessment fee of \$1200 shall be assessed to a teacher who chooses to follow the Plan IV option for advancement in rank classification and certificate renewal. The fee shall be used to pay the expenses related to the administration of the continuing education option, including the cost of the review and scoring of portfolios.

**Section 8. A teacher who chooses to follow the Plan IV option for advancement in rank classification shall be required to attend a program orientation meeting at his [or her] own expense prior to applying for this program.**

**Section 9. A teacher who chooses to follow the Plan IV continu-**

**ing education program shall:**

**(1) Submit the application and professional development plan to the Division of Certification between July 15 and August 15 of the year the continuing education is to begin; and**

**(2) Submit a portfolio to the Division of Certification between April 15 and May 15 of the year the work is submitted for evaluation for the rank change.**

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Office of Legal Services

APPROVED BY AGENCY: November 20, 1998

FILED WITH LRC: November 25, 1998 at 3 p.m.

### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended at ARRS, February 9, 1999)

#### **704 KAR 20:022. Continuing education alternative to planned fifth-year program.**

RELATES TO: KRS 157.390(1)(a), 161.095

STATUTORY AUTHORITY: KRS 161.028(1)(a), 161.030(1), 161.095

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.095 requires the Education Professional Standards Board, with the advice of the State Board of Education, to promulgate an administrative regulation establishing procedures for a teacher to maintain a certificate by successfully completing meaningful continuing education. KRS 161.028 and 161.030 vest authority for the issuance and renewal of certification for all school personnel in the Education Professional Standards Board. This administrative regulation establishes the procedures for a continuing education alternative to the planned fifth-year program for certificate renewal.

Section 1. Procedures for the first and second renewal of a teaching certificate shall require completion of:

(1) The continuing education alternative established in this administrative regulation; or

(2) A planned fifth-year program established in 704 KAR 20:021.

Section 2. The continuing education alternative to the planned fifth-year program for certificate renewal of a teaching certificate shall require completion of the following procedures:

(1) An individual professional development plan shall be designed by the teacher. The plan shall:

(a) Focus on the teacher needs with consideration given to how the needs relate to the school transformation plan;

(b) Include goals related to each of the nine (9) experienced teacher standards as established in 704 KAR 20:021;

(c) Be developed in collaboration with a team of colleagues chosen by the teacher; and

(d) Be submitted for review by a three (3) member state team.

(2) The teacher shall participate in a professional development experience that will assist in the accomplishment of the established goals. A professional development experience shall include a combination of graduate college credit, individual research, field-experience, or professional development activities. The experience shall be identified in the professional development plan.

(3) The professional development experience may be:

(a) A part of an approved school professional development plan; or

(b) An experience specifically needed by the teacher.

(4) The evidence of accomplishment of the goals identified in the plan, including the impact upon student learning, shall be documented and presented for review and scoring by a state team. The documentation shall provide evidence that all experienced teacher standards have been met.

(5) The evidence shall be presented:

(a) In a portfolio using a variety of mediums including videotape, research, data, **or [and]** instructional logs; and

(b) To the state team at least one (1) year in advance of the expiration date of the certificate.

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Section 3. (1) The three (3) member state team used to review and score the continuing education portfolio shall be selected by the Education Professional Standards Board from a pool of educators representing teachers, principals, central office instructional personnel, higher education faculty, professional organization representatives, and the Department of Education staff.

(2) The state team shall:

(a) Review and provide feedback to the teacher regarding the quality of the plan, including the planned professional development experiences;

(b) Use the experienced teacher standards and indicators to review and score the portfolios;

(c) Provide timely feedback to the teacher regarding additional evidence that may be needed to show that goals were accomplished and that all experienced teacher standards were met;

(d) Recommend the teacher for certificate renewal to the Education Professional Standards Board prior to the expiration date of the certificate; and

(e) Be trained to score the portfolios in a consistent and reliable manner.

Section 4. (1) A teacher following the continuing education alternative to the fifth-year program for certificate renewal shall complete the program by the end of the second certificate renewal period.

(2) For the first renewal, the teacher shall show evidence of the development of a professional development plan and evidence of meeting a minimum of four (4) experienced teacher standards.

(3) The continuing education alternative to the fifth-year program shall be completed by the end of the first certificate renewal period.

Section 5. An assessment fee of \$1200 shall be charged to a teacher following the continuing education alternative for certificate renewal. This fee shall be used to pay expenses related to administration of the continuing education alternative program including the cost of scoring portfolios and training for the state scoring team members.

Section 6. A teacher who chooses to follow the continuing education alternative for certificate renewal and rank change shall [be required to] attend a program orientation meeting at his [or her] own expense prior to applying for this program.

Section 7. A teacher who chooses to follow the continuing education alternative for certificate renewal and rank change shall:

(1) Submit the application and professional development plan to the Division of Certification between July 15 and August 15 of the year the continuing education is to begin; and

(2) Submit portfolio to the Division of Certification between April 15 and May 15 of the year the work is submitted for evaluation for the rank change.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Office of Legal Services

APPROVED BY AGENCY: November 20, 1998

FILED WITH LRC: November 25, 1998 at 3 p.m.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Division of Exceptional Children Services

(As Amended at ARRS, February 9, 1999)

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

RELATES TO: KRS 157.197, 157.224[1998 Ky. Acts ch. 519]

STATUTORY AUTHORITY: KRS 156.029(7), 156.070(4), 157.197(1) [156.160, 157.220, 157.260, 1998 Ky. Acts ch. 519]

NECESSITY, CONFORMITY, AND FUNCTION: KRS 157.197(3) [1998 Ky. Acts ch. 519, sec. 3,] requires the Kentucky Board of Education to promulgate an administrative regulation to establish the criteria for the Kentucky Special Education Mentor Program. This administrative regulation establishes that criteria.

~~[The criteria are established in this administrative regulation.]~~

Section 1. Definitions. "Special education mentor" means an individual with exceptional expertise, experience, and certification in special education administration or teaching granted the authority described in KRS 157.197 [1998 Ky. Acts ch. 519].

Section 2. ~~(1) [Assignment of Special Education Mentors.]~~ The Kentucky Department of Education shall assign a special education mentor to:

~~(a) Assist a:~~

~~1. Local school district in remedying district-wide deficiencies; or~~

~~2. Specific school in remedying school-specific deficiencies; and~~

~~(b) [and to] Obtain voluntary compliance with applicable federal and state laws and regulations before imposing sanctions under [established in] 707 KAR 1:015.~~

~~(2) The assignment shall be completed upon verification by the Division of Exceptional Children Services of compliance with the applicable federal and state laws and regulations. [The special education mentor may be assigned to a school or schools if the deficiencies are school-specific. This assignment shall be completed when the Division of Exceptional Children Services verifies compliance.]~~

Section 3. Special Education Mentor Criteria. (1) An individual wishing to become a special education mentor shall submit a letter of request and curriculum vitae to the Special Education Mentor Selection Committee. An eligible individual shall be certified in an area of special education.

(2) A Special Education Mentor Selection Committee appointed by the Commissioner of Education shall be involved in development of the selection process for the special education mentors and review of the applicants. The Director, Division of Exceptional Children Services, shall serve as committee chairperson. Members of the Special Education Mentor Selection Committee shall serve for a period of three (3) years and shall include:

(a) One (1) representative of the State Advisory Panel for Exceptional Children;

(b) One (1) superintendent and one (1) principal representing the Kentucky Association of School Administrators;

(c) One (1) special education teacher and one (1) regular education teacher representing the Kentucky Education Association;

(d) One (1) special education administrator representing the Council of Special Education Administrators;

(e) Two (2) parents from Kentucky's parent project funded under the Individuals with Disabilities in Education Act (IDEA), 20 USC Sections 1400-1487; and

(f) One (1) representative from a parent advocacy organization.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.

### LABOR CABINET

Department of Workers' Claims

(As Amended at ARRS, February 9, 1999)

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 requires [provides that] the Commissioner of the Department of Workers' Claims to [shall] promulgate administrative regulations necessary to implement [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 an individual employer who self-insures [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 an [any] employer subject to KRS Chapter 342 [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 including [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, or [and] preparation of another required self-insurance report [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 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.

Section 2. Certification. A [No] person, party, or employer shall not act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the commissioner. A certification [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) An [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. A subsidiary which is [Any subsidiaries ~~for contractors~~ which are] to be covered under the application, or who is [are] already self-insured shall [are to] be identified with the [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 shall [must] be received by the commissioner five (5) days prior to certification of self-insurance;

(d) A copy [Copies] of the proposed surety deposit or letter of credit instrument [instruments] required by Section 5 of this administrative regulation. The surety shall [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) An [Any] individual or service organization [which will be] responsible for administration or [and] adjustment of a workers' com-

pensation claim shall [claims must] provide satisfactory evidence to the commissioner as to the organization's [their] qualifications to administer and adjust a workers' compensation claim; and [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, a function [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 shall [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 each claim that results [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 each claim [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 shall [must] have assets in excess of all liabilities of at least \$3,000,000. Variance from this requirement may be granted to a [those] currently certified individual self-insurer who has [self-insurers who have] demonstrated excellent claims paying capability and over-all financial stability.

(3) Approval shall be granted [only] if the commissioner:

(a) Finds the applicant has complied with all sections of this administrative regulation; and

(b) 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 an individual self-insurer [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, a security which is [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 a wholly-owned subsidiary [subsidiaries] may submit one (1) joint application to the commissioner, if [provided] the parent corporation has sufficient assets to qualify for a self-insurance certificate for both itself and the subsidiary [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) days 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 shall be [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 shall [will] be called for payment of a claim [claims only] after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security shall [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) If [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) An [All] individual self-insured employer [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; and

(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) If there is [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 an [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 shall [will] be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during a [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) If [Should] the commissioner receives [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:

1. Contravention of its submitted application; or

2. [is] In material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor [is] no longer has the [of such] financial stability [as] to assure its ability [be] to meet its obligations for the payment of workers' compensation benefits; or

(c) The insurer has failed or refused to provide access to the books and documents relating to the self-insurance activities of the entity.

(3) If [In the event] the commissioner [suspends or] revokes an [any] individual self-insurer's certification, the commissioner shall no- tify 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 the [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 a [any] hearing or appeal, the commissioner [appeal or request for hearing,] may utilize the surety deposit provided by the individual self-insurer to make a payment [any payments] of workers' compensation benefits which is [are] currently due for which a payment is [payments are] not being made by the individual self-insurer or its service organization. [The application for hearing shall briefly state the grounds on which the individual self-insurer is relying and the basis for relief to be sought at the hearing. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, setting the date, time and place for the hearing, and specify the matters to be considered.

(c) Any party to the hearing shall have the right to appear in person or by counsel; to be present during the giving of all evidence; to have a reasonable opportunity to inspect all documentary and other evidence; to examine and cross-examine witnesses; to present evidence in support of his interest and to have subpoenas issued by the



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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) A [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 the [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. An individual self-insured [self-insureds] shall comply with the contractual requirements with a service organization [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, Monday through Friday, 8 a.m. to 4:30 p.m.

[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.

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance  
(As Amended at ARRS, February 9, 1999)

806 KAR 17:170. Genetic testing.

RELATES TO: KRS 304.12-085(2), (3), (4), 304.17A-200(1)(f), 304.17A-220(3)(a)2, 304.17A-230(3)

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner of Insurance to promulgate administrative regulations required to implement KRS Chapter 304. This administrative regulation establishes definitions for genetic information, genetic services, and genetic test, [necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. In order to enforce the provisions of KRS 17A-200(1)(f), 304.17A-220(3)(a)2, 304.17A-230(3), 304.12-085(2), (3), and (4), it is necessary for the Commissioner of Insurance to define "genetic test," "genetic information," and "genetic services." This administrative regulation establishes the definitions for those terms.]

Section 1. Definitions. (1) "Genetic information" means information derived from a genetic test.

(2) "Genetic services" mean medical services employed to gather genetic information.

(3) "Genetic test" means a laboratory test of human DNA or RNA used to identify the presence or absence of inherited alterations in the DNA or RNA which cause predisposition to disease or illness.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: November 18, 1998

FILED WITH LRC: November 25, 1998 at 1 p.m.

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance  
(As Amended at ARRS, February 9, 1999)

806 KAR 17:190. Guaranteed Acceptance Program requirements.

RELATES TO: KRS 304.17A-210(5)(b), 304.17A-420, 304.17A-430 [1998 Ky. Acts ch. 496, secs. 3, 17, 18]

STATUTORY AUTHORITY: KRS 304.2-110, 304.17A-210(5)(b), 304.17A-430 [1998 Ky. Acts ch. 496, secs. 3(5)(b), 18]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the commissioner to promulgate administrative regulations to implement the Insurance Code. KRS 304.17A-210(5)(b) requires the commissioner to promulgate administrative regulations establishing equitable enrollment limits for new market insurers for the first twelve (12) months and a remaining portion of the calendar year after expiration of a twelve (12) month period. This administrative regulation establishes the limits and requirements of a new market insurer. [1998 Ky. Acts ch. 496, sec. 3(5)(b) requires the Commissioner of Insurance to establish equitable enrollment limits for new market insurers for the first twelve (12) months, and any remaining portion of the calendar year after the expiration of a twelve (12) month period. 1998 Ky. Acts ch. 496, sec. 18 permits a GAP-participating insurer to use the alternative underwriting mechanism; and requires the commissioner to approve or disapprove the alternative underwriting mechanism criteria submitted by the insurer. KRS 304.2-110 authorizes the commissioner to make administrative regulations to effect any provision of the code.]

Section 1. Definitions. (1) "Alternative underwriting mechanism" or "AUM" is defined in KRS 304.17A-430(3).

(2) "Commissioner" is defined in KRS 304.1-050.

(3) "GAP health benefit plan" means a health benefit plan issued to an individual with a high-cost condition or to an indi-

vidual meeting the AUM criteria.

(4) "GAP participant" means a GAP qualified individual defined in KRS 304.17A-005(15) who has been issued a GAP health benefit plan.

(5) "GAP participating insurer" is defined by KRS 304.17A-005(12).

(6) "GAP qualified individual" is defined by KRS 304.17A-005(15).

(7) "Guaranteed Acceptance Program" or "GAP" is defined in KRS 304.17A-005(14).

(8) "High-cost condition" is defined by KRS 304.17A-005(19).

(9) "Mandatory GAP participating insurer" means a health insurer in Kentucky that has twenty-five (25) percent or more of the market share and is required to be a GAP participating insurer.

(10) "New market insurer" means an insurer that enters the individual health market as a voluntary GAP participating insurer in Kentucky on or after July 1, 1998.

(11) "New market period" means a period extending twelve (12) months from the date a new market insurer enters the individual health insurance market in Kentucky, and includes the remainder of the calendar year after the twelve (12) month period expires.

(12) "Voluntary GAP participating insurer" means a health insurer that has less than twenty-five (25) percent of the market share and elects to be a GAP participating insurer. ["AUM" means alternative underwriting mechanism:

(2) The definition of "alternative underwriting mechanism" shall be governed by 1998 Ky. Acts ch. 496, sec. 18(3).

(3) The definition of "commissioner" shall be governed by KRS 304.1-050.

(4) "GAP" means the Guaranteed Acceptance Program.

(5) The definition of "Guaranteed Acceptance Program" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(14).

(6) "GAP health benefit plan" means a health benefit plan issued to an individual with a high-cost condition or to an individual meeting the AUM criteria:

(7) "GAP participant" means a GAP qualified individual defined in 1998 Ky. Acts ch. 496, sec. 1(15) who has been issued a GAP health benefit plan.

(8) The definition of "GAP participating insurer" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(12).

(9) The definition of "GAP qualified individual" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(15).

(10) The definition of "high-cost condition" shall be governed by 1998 Ky. Acts ch. 496, sec. 1(19).

(11) "Mandatory GAP participating insurer" means a health insurer in Kentucky that has twenty-five (25) percent or more of the market share and is required to be a GAP participating insurer.

(12) "Voluntary GAP participating insurer" means a health insurer that has less than twenty-five (25) percent of the market share and elects to be a GAP participating insurer.

(13) "New market insurer" means an insurer that enters the individual health market as a voluntary GAP participating insurer in Kentucky on or after July 1, 1998.

(14) "New market period" means a period extending twelve (12) months from the date a new market insurer enters the individual health insurance market in Kentucky, and includes the remainder of the calendar year after the twelve (12) month period expires.]

Section 2. GAP Participating Insurer Requirements. A GAP insurer shall notify the commissioner of the effective date for GAP participation in writing with the following information:

(1) Name of the GAP health benefit plan;

(2) Product type of the health benefit plan;

(3) Geographic service area of the GAP health benefit plan;

(4) Cost containment features required in KRS 304.17A-450 [1998 Ky. Acts ch. 496, sec. 20]; and

(5) Any modification made to an existing health benefit plan to qualify it as a GAP health benefit plan.

Section 3. Enrollment Limits for a GAP Participating Insurer. (1)

For the first three (3) months that a new market insurer enters the individual market, the insurer may not enroll any individuals in GAP.

(2) At the end of the first three (3) months that a new market insurer enters the individual market, the new market insurer shall have a GAP enrollment limit of one-half (1/2) of one (1) percent of its quarterly enrollment of the individual market projected until the end of the new market period.

(3) If, in the second three (3) month period after the new market insurer enters the individual market, the new market insurer meets the enrollment limit required in subsection (2) of this section, the new market insurer shall be deemed to have met its GAP enrollment limit requirement until the end of the new market period.

(4) If the insurer does not meet the GAP enrollment limit required in subsection (2) of this section in the subsequent quarter, the insurer shall use its quarterly enrollment at the time to project a new GAP enrollment limit in accordance with subsection (2) of this section.

(5) When the new market period has elapsed, the insurer shall be subject to the GAP enrollment limit of one-half (1/2) of one (1) percent of its total enrollment in the individual market as of the preceding December 31.

(6) A mandatory GAP participating insurer shall not have a [have no] limit on the number of individual GAP health benefit plans.

Section 4. Issuance of a GAP Health Benefit Plan. A GAP participating insurer shall, within two (2) months from the effective date of the insurer's GAP participation implementation date, identify an individual for GAP health benefit plan coverage in accordance with KRS 304.17A-430(1)(b) [1998 Ky. Acts ch. 496, sec. 18(1)(b)].

Section 5. AUM Criteria. (1) A GAP participating insurer electing to use AUM shall submit to the commissioner for review and approval written documentation of its underwriting guideline criteria for AUM.

(2) If underwriting documentation does not exist, other documentation which supports underwriting AUM may be submitted to the commissioner for review and approval.

(3) After approval of an insurer's underwriting guideline criteria for AUM, the insurer shall resubmit its underwriting guideline criteria for AUM by December 1 of each year for approval for the subsequent year.

(4) Any change to the underwriting guideline criteria for AUM submitted for a subsequent calendar year shall require:

(a) Justification for the change; and

(b) Documentation of the insurer's underwriting criteria.

(5) Upon receipt of approval by the commissioner, a GAP participating insurer shall implement its underwriting guideline criteria for AUM.

(6) A GAP participating insurer shall use the same standards for AUM as for other high-cost conditions as established in KRS 304.17A-430(1) and (2) [1998 Ky. Acts ch. 496, sec. 18(2)].

(7) If an individual was issued a policy by an insurer in the individual market between July 15, 1995, and July 1, 1998, to be reimbursed from the GAP fund, the insurer shall demonstrate that the insured, at the time of issuance of the policy:

(a) Was diagnosed with a condition on the list of high-cost conditions; or

(b) Met the insurer's approved AUM requirements and the insured would not have met the insurer's most recent underwriting guidelines in existence prior to July 15, 1995.

(8) If an individual was issued a policy by an insurer in the individual market after July 1, 1998, to be reimbursed from the GAP fund the insurer shall demonstrate that the insured at the time of issuance of the policy:

(a) Was diagnosed with a condition on the list of high-cost conditions; or

(b) Met the insurer's approved AUM requirements.

Section 6. GAP Participation Termination Requirements. (1) A mandatory GAP participating insurer shall not terminate its participation in GAP.

(2) A voluntary GAP participating insurer may elect to terminate its status as a GAP participating insurer.

(3) A voluntary GAP participating insurer that elects to terminate its status as a GAP participating insurer shall do so by submitting a termination letter to the commissioner by September 1 of each year that shall include:

(a) The effective date of termination for issuing a GAP health benefit plan; and

(b) The reason for the termination from GAP.

(4) Upon notification of termination to the commissioner, the voluntary GAP participating insurer shall:

(a) Be prohibited from issuing a new GAP health benefit plan;

(b) Provide a ninety (90) day notice to GAP participants advising the participants of the insurer's GAP participation termination status; and

(c) Provide coverage to currently enrolled GAP participants until renewal of the GAP health benefit plan.

(5) A voluntary GAP participating insurer failing to notify the commissioner by September 1 of each year of its GAP termination status as established in subsection (2) of this section shall issue and renew GAP health benefit plans for the subsequent calendar year.

(6) A voluntary GAP participating insurer terminating its GAP participation may subsequently reapply to become a GAP participating insurer subject to approval by the commissioner.

(7) The commissioner may elect to terminate the status of a GAP participating insurer that is in hazardous financial condition pursuant to 806 KAR 3:150.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: September 30, 1998

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

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Building Codes Enforcement**  
**(As Amended at ARRS, February 9, 1999)**

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

RELATES TO: KRS 198B.010, 198B.040, 198B.050, 198B.060, 198B.080, 198B.110, 198B.260, 198B.990

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 198B.040(7) requires the board to adopt a mandatory uniform state building code to establish standards for the construction of all buildings in the state. This administrative regulation incorporates by reference the Kentucky Building Code, Seventh Edition 1997.

Section 1. Incorporation by Reference. (1) "The Kentucky Building Code", (Seventh Edition - 1997), as amended January 21, 1999 [July 6, 1998] [January 6, 1998 and April 16, 1998], by the Kentucky Board of Housing, Buildings and Construction, is incorporated by reference.

(2) This material [It] may be inspected, copied, or obtained at the Kentucky Department of Housing, Buildings, and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

JUDITH G. WALDEN, Office of General Counsel

APPROVED BY AGENCY: October 5, 1998

FILED WITH LRC: October 7, 1998 at 10 a.m.

**CABINET FOR HEALTH SERVICES**

**Office of Certificate of Need**

**(As Amended at ARRS, January 12, 1999 and**

**As Amended at the Interim Joint Committee**

**On Health and Welfare, February 17, 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 application.

(11) An application that is not declared complete within a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section 8 of this administrative regulation shall be as follows:

(a) Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency and psychiatric residential treatment facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

1. February; and

2. August.

(b) Public notice for hospice and home health agencies shall be given on the third Thursday of the following months:

1. March; and

2. September.

(c) Public notice for mobile services [~~and private pay/third-party payor home health agencies~~] shall be given on the third Thursday of the following months:

1. April; and

2. October.

(d) Public notice for ground ambulance providers, [~~air ambulance providers;~~] and day health care programs, shall be given on the third Thursday of the following months:

1. May; and

2. November.

(e) Public notice for personal care beds and rehab agencies shall be given on the third Thursday of the following months:

1. June; and

2. December.

(f) Public notice for long-term care beds and intermediate care beds for Mental Retardation and Developmentally Disabled facilities shall be given on the third Thursday of June.

(g) Public notice for organ transplantation, magnetic resonance imaging, lithotripter, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

1. January; and

2. July.

(h) Any proposals not listed above shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application must be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) [Within] Fifteen (15) days prior to [of] the deadline for deeming an application complete for the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review granted pursuant to Section 8 of this administrative regulation. Applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall [will] be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative

regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) will be mailed to affected persons.

(6) Deeming an application complete means only that the applicant has minimally responded to the necessary items on the application. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval of a certificate of need.

(7) [(6)] If the cabinet finds that the application is incomplete, the cabinet shall provide the applicant with written notice of the information necessary to complete the application and shall notify the applicant that the cabinet will not deem the application complete unless within ten (10) days of the date of the cabinet's request for additional information:

(a) The applicant submits the information necessary to complete the application by the date specified in the request; or

(b) The applicant requests in writing that the cabinet review its application as submitted.

(8) [(7)] If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) [(8)] If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that:

(a) The application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) A decision to grant or deny nonsubstantive review status shall [will] be made within ten (10) days of the date that the application was deemed complete.

(c) The cabinet shall give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) will be mailed to affected persons.

(10) [(9)] If the [applicant fails to provide the information necessary to complete the] application, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that the [its] application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) [(10)] Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty-five (25) days prior to the date that the deferred application is placed on public notice [prior to the date that the application must be declared complete as provided for in Section 5 of this administrative regulation].

(12) Deeming an application complete means only that the application is sufficiently complete to be reviewed for approval or disapproval. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current state health plan. 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) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting any certificate of need approval, including but not limited to, limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, where applicable. [Written notification of approval shall include:

(a) Verification that the review criteria for approval have been met;

(b) [If the application is inconsistent with any review criteria, the reasons for approval despite the inconsistency;

(c)] Notice of appeal rights; and

(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, provided that upon request parties shall be given an opportunity to compare the copy with the original and provided that the documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #4) and filed with the hearing officer and other parties at least seven (7) working days before the hearing for formal review applications and five (5) working days for nonsubstantive review applications.

(17) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.



(18) The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(19) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(20) In the case of a hearing on an application for a certificate of need, the hearing officer may, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(21) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing; or

(c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of any person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky.*, 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations or is subject to penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

**(2)(a) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.**

**(b) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.**

**(c) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of their certificate of need approval and license.**

(3) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(4) [(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.

(5) [(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.

(6) [(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.

(7) [(6)] Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(8) [(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.

**(9) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.**

**(10) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (2) of this section, the cabinet shall take the following action:**

**(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of their certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that they have corrected the violation. At the conclusion of this period the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.**

**(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of their certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.**

**[(f) 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.

**(23) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.**

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) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of and any sanctions for this violation shall be conducted in accordance with Section 18(2) of this administrative regulation. [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, Form Number #8.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the state health plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the state health plan but for which a certificate of need is not required, shall notify the cabinet that such a service or equipment has been added within ten (10) of such addition.

(2) Notification of the Addition of a Health Service or Equipment (Form #10) shall be used in making such notification.

Section 24. Acquisition and Relocation of Nonconforming Nursing Facility. (1) Any person proposing to acquire a nursing facility in excess of 300 beds that is not in substantial compliance with 902 KAR 20:310 shall provide a notification of intent to acquire pursuant to KRS 216B.065.

(2) The nursing facility acquired pursuant to subsection (1) of this section may be relocated to more than one (1) location, provided that all the beds remain within the county of location of the original facility.

(3) Applications to relocate the nursing facility acquired pursuant to subsection (1) of this section, shall be filed pursuant to KRS 216B.095.

(4) Once relocated and licensed, any person proposing to acquire the relocated nursing facilities shall provide notifications of intent to acquire pursuant to KRS 216B.065.

Section 25. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

(a) Letter of Intent (Form #1);

(b) Certificate of Need Application - Formal and Nonsubstantive Review (Form #2A);

(c) Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers (Form #2B);

(d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C);

(e) Witness List (Form #3);

(f) Exhibit List (Form #4);

(g) Notice of Appearance (Form #5);

(h) Administrative Escalation (Form #6);

(i) Six (6) Month Progress Report (Form #7);

(j) Advisory Opinion Request (Form #8);

(k) Acquisition of a Health Facility, Notice of Intent (Form #9);

(l) Notification of the Addition of a Health Service or Equipment (Form #10).

(2) These forms may be inspected and copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN H. GRAY, Executive Director

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

FILED WITH LRC: December 15, 1998 at noon

**CABINET FOR HEALTH SERVICES  
Office of Inspector General  
Division of Licensing and Regulation  
(As Amended at ARRS, February 9, 1999)**

**902 KAR 20:041. Operation and services; family care homes.**

RELATES TO: KRS 209.030(1) to (3), 216.510 to 216.525, 216.532, 216B.010, 216B.015, 216B.030, 216B.105, [to 216B.130,] 216B.990, 311.560(4), 314.011(8), 314.042(8), 320.210(2)

STATUTORY AUTHORITY: KRS 209.030(1), 216B.010, 216B.042 [216.532, 216B.042, 216B.105, 311.560(4), 314.011(8), 314.042(8), 320.210(2)] [320.240(14), EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides for the licensure requirements for the operation of family care homes. [Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.]

Section 1. Definitions. (1) "Ambulatory" means able to walk without assistance.

(2) "Home" means a family care home.

(3) "Impaired capacity for self care" means mental or physical limitation which decreases the ability to function in a normal adult manner and requires supervision, assistance, or the use of prescription medicines to normalize daily living.

(4) "Licensee" means the operator of the family care home.

(5) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place, and self exit the building, with the use of a device such as a walker, crutches, or wheelchair and capable of independent bed-to-chair transfer.

(6) "Protective environment" means an environment in which basic health care needs, personal care needs, nutritional needs and safety are insured for the resident who is not capable of providing these services in an effective manner.

(7) "Resident" means a [any] person who is admitted to a family care home for the purpose of receiving personal care and assistance.

Section 2. Scope of Operations and Services. A family care home [homes] shall [are operated and maintained to] provide twenty-four (24) hour supervision and personal care services in residential accommodations for a resident [residents] [two (2) or three (3) individuals who are not related within the third degree of consanguinity to the licensee; are at least eighteen (18) years of age, and] who because of impaired capacity for self care, elects [elect] to have or requires [require] a protective environment but does [do] not have an illness, injury, or disability for which constant medical care or skilled nursing services are required. A resident shall [Residents must] be ambulatory or mobile nonambulatory and able to manage most of the activities of daily living.

Section 3. Operation and Management. (1) The licensee shall be legally responsible for the operation of the home and for compliance with [all] federal, state and local laws and regulations pertaining to the operation of the home.

(2) The licensee shall [provide twenty-four (24) hour supervision and assistance to the residents and shall] be a mature literate adult, at least eighteen (18) years of age, who has knowledge and understanding of adults who require supervision and personal care services.

(3) The licensee shall be [the person] directly responsible for the twenty-four (24) hour daily operation of the home and [or] for delegating that responsibility to another similarly qualified individual if [when] a temporary absence is necessary. The name of the [that] individual to whom the responsibility may be delegated [designated] shall be in writing and provided to the representative of the Division of Licensing and Regulation [agents of the board] inspecting the home.

(4) An [No] employee of the home who contracts [contracting] an infectious disease shall not appear for work until the infectious disease can no longer be transmitted.

(5) The licensee shall attend at least one (1) training program for family care home operators per year if [when] offered or approved by the Cabinet for Health Services.

(6) The home shall have no more than three (3) residents [persons residing in the home] who are not related to the operator within the third degree of consanguinity.

(7) The licensee shall provide opportunities for a resident [the residents] to become involved in community activities and activities within the home. A resident [Residents] in cooperation with the licensee and family shall be allowed to use areas of the home, other than his [their] bedroom, such as living rooms, kitchen, dining areas, and recreation areas for entertainment, recreation, and visitation.

(8) The licensee shall maintain a record, located on the premises and available for inspection which contains the following information typed or in ink about each resident:

- (a) Resident name and sex.
  - (b) Marital status.
  - (c) Birthdate and age.
  - (d) Religion and personal clergyman, if any, with consent of resident.
  - (e) Attending physician and dentist, if any; address and phone number for each.
  - (f) Next of kin or responsible person or agency, address and telephone number.
  - (g) Date of admission and discharge.
  - (h) Other relevant information including physician visits [and/or] assessment reports.
  - (i) Amount charged per week or month as compensation for care.
- (9) The licensee shall make arrangements with other health agencies and facilities for residents who, at some time, may require a

transfer to a different level of care.

(10) The licensee shall have phone numbers of a hospital, an ambulance service, fire department, and a physician for emergencies posted by the telephone in large legible print if phone service is available in the area.

(11) The licensee shall have a written procedure for providing or obtaining emergency services.

(12) The licensee shall:

(a) Make a written report of an [any] accident involving a resident, an [any] incident involving a resident's health, welfare or safety, and the [any] death of a resident;

[a] ~~The licensee shall keep one (1) copy in the file and make the original available to the Division of Licensing and Regulation [board's agents] within seven (7) days of the incident; and]~~

(b) Send the original, within seven (7) days of the incident, [shall be sent] to the Cabinet for Health Services, Office of the Inspector General, Division for Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621; and

(c) Retain one (1) file copy.

(13) The licensee shall provide for patient rights pursuant to KRS 216.510 to 216.525.

(14) A resident [All residents] shall be at least eighteen (18) years of age.

(15)(a) A representative of the Division for Licensing and Regulation shall visit the home of the applicant for initial licensure. [(15) Representatives of the Division for Licensing and Regulation shall visit the home of the applicant for initial licensure. The Department for Social Services shall visit the home of the applicant upon notification by the Division of Licensing and Regulation and provide the division information relating to its prelicensure assessment of the applicant.]

(b) A representative of the Department for Social Services shall:

1. Visit the home of the applicant upon notification by the Division of Licensing and Regulation; and

2. Provide the division information relating to its prelicensure assessment of the applicant.

(16) An initial license shall [Initial licenses may] be denied and an existing license shall [licenses may] be revoked if the applicant for licensure or the licensee has been convicted of a crime that has a bearing upon the applicant's suitability to operate a family care home, unless the applicant shows that:

(a) The crime occurred more than five (5) years ago; and

(b) The applicant has been sufficiently rehabilitated.

(17) An initial license shall [Initial licenses may] be denied and an existing license shall [licenses may] be revoked if the applicant for licensure or the licensee:

(a) Has failed to assure that nutrition, medication, or treatment of an individual [individuals] under his [their] care is in accordance with acceptable professional practice;

(b) Has aided, abetted, sanctioned, condoned or participated in the commission of an illegal act involving an individual [individuals] under his [their] care; or

(c) Has had a license to operate a [any] facility or service suspended or revoked during the three (3) years immediately preceding an application for licensure.

(18) The licensee shall comply with KRS 216.532.

(19) The licensee shall report all cases of abuse, neglect, or exploitation of an adult [adults or children] pursuant to KRS 209.030(2) and (3) [Chapters 209 and 620].

Section 4. Services. (1) Basic health and health related services.

(a) A family care home shall, through continuous supervision and monitoring, assure that a resident's health care needs are met by:

1. Supervising self-administration of medication;

2. Monitoring storage and control of medication; and

3. Arranging for necessary therapeutic or physician services.

[All family care homes shall assure that residents obtain basic health and health-related services through the continuous supervision of and monitoring of the resident to assure that the resident's health care needs are being met, supervision of self-administration of medication, storage and control of medications, and making arrangements for

obtaining therapeutic services or physician services as necessary.]

(b) A [No] licensee shall not knowingly admit a person who has ~~[suffering from]~~ a communicable disease which is reportable to the health department, except a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

(c) If ~~[after admission;]~~ a resident is suspected of having a communicable disease that would endanger the health and welfare of another resident ~~[other residents]~~, the licensee shall assure that a physician is contacted and that medically appropriate measures are taken on behalf of that resident and the other residents in the home.

(d) The licensee shall show evidence that a ~~[the]~~ resident has obtained a physical examination by a physician within three (3) months prior to ~~[or upon]~~ admission to the home. If admitted from another health care facility, a discharge summary or transfer form shall be in the resident's record which includes a medical history, record of physical examination and diagnosis.

(e) ~~[It shall be the responsibility of]~~ The licensee shall ~~[to]~~ obtain the services of a physician in case of accident or acute illness of a ~~[any]~~ resident.

(f) A prescription medication ~~[All prescription medications]~~ administered to a resident ~~[residents]~~ shall be noted in writing, with the date, time and dosage, and signed by the person administering the medication.

(g) Medication shall not be administered to a ~~[any]~~ resident except on the written order of a physician or other practitioner ~~[ordering personnel]~~ acting within the limits of his ~~[their]~~ statutory scope of practice ~~[advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrists as authorized in KRS 320.240(14)].~~ If ~~[When]~~ medication requires administration by a licensed person, an ~~[personnel;]~~ arrangement shall be made to procure the services of a person licensed to administer medication. ~~[such personnel;]~~

(h) A medication ~~[Medications]~~ kept in the home shall be kept in a locked cabinet.

(i) Self-administration of a prescription medication ~~[medications]~~ shall be allowed only upon the written instruction ~~[instructions]~~ of the attending physician or other practitioner ~~[ordering personnel]~~ acting within the limits of his ~~[their]~~ statutory scope of practice.

(j) A resident ~~[Residents]~~ admitted or retained for care shall not require because of illness, injury or disease, a degree of care exceeding the skill of the operator to provide.

(2) Personal care services.

(a) A resident in a family care home ~~[Residents in family care homes]~~ shall be assisted to achieve and maintain good personal hygiene by providing assistance as required by individual needs with:

1. Washing and bathing of the body to maintain clean skin and freedom from offensive odors with the following items provided for each resident and not used by others: soap, clean towels and wash cloths, brushes and combs and other appropriate toilet articles.

2. Shaving.

3. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. A resident ~~[All residents]~~ shall be provided with a toothbrush, ~~[toothbrushes, a] dentifrice, and denture container, if~~ ~~[containers, when]~~ applicable.

4. Washing, grooming and cutting of hair.

(b) The home shall provide each resident with a bureau or cupboard for storage of personal belongings.

(c) The home shall provide each resident with a bed equipped with substantial springs, a clean comfortable mattress, two (2) sheets, a pillow, and ~~[such]~~ bed covering as required for resident's health and comfort.

(d) A resident ~~[Residents]~~ shall be allowed ~~[provided the privilege of]~~ rest periods in his own bed if he desires ~~[their own beds if they so desire].~~

(3) Dietary services.

(a) Food shall be prepared with consideration for ~~[any]~~ individual dietary requirements and appetites.

(b) The menu ~~[Menus]~~ shall be planned in writing and rotated to avoid repetition. A written record shall be kept of ~~[all]~~ foods served, including food offered as snacks.

(c) Nutritional needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council and adjusted for age, sex, and activity

in accordance with physician's orders.

(d) Food returned from residents' dishes shall be discarded at the conclusion of the meal and not served again in any form.

(e) Therapeutic diets. A special diet ~~[Special diets]~~ or dietary restriction ~~[restrictions]~~ shall be medically prescribed.

(f) At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the evening meal and breakfast. A snack ~~[Snacks]~~ shall be provided if desired or requested by a patient, ~~[patients]~~ except if it conflicts ~~[when conflicting]~~ with a special diet ~~[special diets]~~ prescribed by a licensed physician.

(g) ~~[All]~~ Food shall be stored above the floor so ~~[in such a manner]~~ as to be protected from dust, flies, vermin, or other forms of contamination.

(h) Each refrigerator ~~[Refrigerators]~~ shall have a complete seal, be clean, free of odors, and kept at a temperature below forty-five (45) degrees Fahrenheit. A thermometer shall be placed in each refrigerator and freezer.

(i) ~~[All]~~ Food showing evidence of spoilage or infestation shall be disposed of immediately upon detection.

(4) Housekeeping and sanitation. Each family care home shall:

(a) Maintain a clean, uncluttered and safe facility with screens on doors and windows;

(b) Eliminate odors at their source by prompt and thorough cleaning of commodes, and other obvious sources;

(c) Maintain the premises so ~~[in such a manner]~~ as to prevent infestation by rodents and insects;

(d) Change bed linens ~~[shall be changed]~~ as often as necessary to provide a clean bed at all times. A mattress pad or other protective covering (excluding paper) shall be used on ~~[all residents]~~ mattresses;

(e) Give soiled clothing and linens immediate attention and not allow them to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned;

(f) Have appropriate toilet facilities which dispose of wastes in a sanitary manner into a public system where available, or if none is available, disposal shall be made into a private system designed, constructed and operated in accordance with the requirements of the cabinet; except ~~[provided however;]~~ if a public sewerage system subsequently becomes available, connections shall be made to that system and any other sewerage system shall be discontinued. ~~[into a system which shall meet the requirements of applicable plumbing codes;]~~ An outside toilet ~~[Outside toilets]~~ shall be allowed ~~[only]~~ if local county health department approves; and

(g) Collect and dispose of all garbage, refuse, trash, and litter in compliance with applicable state and local laws and administrative regulations. A garbage container ~~[Garbage containers]~~ shall be made of metal or other impervious material and shall be water tight and rodent proof and shall have tight-fitting covers.

Section 5. Accommodations. Each family care home shall:

(1) Be safe and of substantial construction and comply with applicable state and local laws relating to location, zoning, plumbing, and sanitation.

(2) Be adequately lighted by natural or artificial light including each hall, stairway, entryway, patient area, kitchen, and bathroom.

(3) Have a water supply of a safe, sanitary quality approved by the local health department or other qualified laboratory or agency.

(4) Have an ample supply of hot and cold running water available at all times for general use. The water temperature at a ~~[any]~~ tap used by a resident ~~[residents]~~ shall not exceed 110 degrees Fahrenheit.

(5) Have appropriate sanitary toilet and bathing facilities conveniently available for resident use with no less than one (1) toilet and lavatory per six (6) persons residing in the home.

(6) Have adequate ventilation in ~~[all]~~ areas used by residents. A toilet room ~~[Toilet rooms]~~ shall be vented to the outside, if there is no window. There shall be an exterior window in each resident room, which can be opened.

(7) A bed ~~[Beds]~~ occupied by a resident ~~[residents]~~ shall be placed so that the ~~[no]~~ resident shall not ~~[may]~~ experience discomfort due to proximity to a radiator ~~[radiators]~~, heat outlet, ~~[outlets]~~ or exposure to drafts.

(8) Not use "bunk" beds.

(9) Have beds that are no less than thirty-three (33) inches wide

and six (6) feet long.

(10) Not house a resident [residents] in a room [rooms] or detached building [buildings] or other enclosure that has [enclosures which have] not been previously inspected and approved for resident use, or in a basement [basements] not constructed for sleeping quarters. An approved basement [Approved basements] shall [must] have an outside door.

(11) Not be located in a house trailer or motor home [homes].

(12) Provide a heating system which can maintain an even temperature of at least [-and is capable of maintaining a minimum temperature of] seventy-two (72) degrees Fahrenheit in resident occupied areas under winter conditions and a maximum temperature of eighty-five (85) degrees under summer conditions.

(13) Have telephone service, if available in the area, accessible to the residents.

(14) If the home accepts a resident who uses a wheelchair, [appropriate measures shall] ~~[must]~~ be taken to insure that the resident is able to exit the building without assistance (i.e., ramps, rails, etc.).

(15) Have a three (3) day supply of food on hand at all times.

Section 6. Safety. Each home shall take appropriate precautions to insure the safety of the residents and visitors by having:

(1) ~~[Having all]~~ Exterior grounds including sidewalks, steps, porches, ramps, and fences in good repair;

(2) ~~[Having all]~~ The home's interior including walls, ceilings, floors, floor coverings, steps, windows, window coverings, doors, plumbing, and electrical fixtures in good repair;

(3) ~~[Having]~~ A fire control and evacuation plan;

(4) ~~[Having]~~ An adequate number of ABC-rated fire extinguishers located throughout the home with a minimum of one (1) per floor or level of the residence;

(5) ~~[Having]~~ A person in charge thoroughly oriented in the evacuation of the residents in the event of a fire;

(6) ~~[Having all]~~ Firearms and ammunition locked in a cabinet, drawer, or closet with the key not accessible to residents. Firearms shall not be loaded; and

(7) ~~[Having]~~ At least two (2) functioning smoke detectors in the home, one of which shall be in each resident bedroom or in a hall adjacent to the resident bedroom.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

JOHN WALKER, Attorney

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**CABINET FOR HEALTH SERVICES**  
Office of Inspector General  
Division of Licensing and Regulation  
(As Amended at ARRS, February 9, 1999)

**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. 4]~~.

(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) Notice of the denial, suspension, or revocation of a license shall be made pursuant to the provisions of KRS Chapter 13B.



(2) A licensee may appeal the denial, suspension, or revocation of his license to the Secretary of the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) A hearing on the denial, suspension, or revocation of a license shall be conducted pursuant to the provisions of KRS Chapter 13B. [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;

tion 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 afforded the opportunity to approve or refuse their release to any individual not involved in her care except as required by Kentucky law or third-party payment contract.

6. Is treated with consideration, respect, and full recognition of her dignity and individuality, including privacy in treatment and in the care of her personal health needs.

#### (3) Personnel.

(a) A facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to the patients.

1. The licensee shall obtain written applications for employment from all employees. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate licensure, if applicable, and health and personal background of each employee.

2. Prior to performing job duties, all employees and volunteers who have direct patient contact within the abortion facility, shall have tuberculin skin testing conducted unless a previously positive reaction is documented in millimeters. The intradermal (Mantoux) method, using five tuberculin units of stabilized purified protein derivative (PPD) is to be used. For employees or volunteers who have no documentation of a negative PPD result during the preceding twelve (12) months, then the two (2) step procedure (one (1) PPD test with negative result followed one (1) to three (3) weeks later by another PPD test) is required to establish a reliable baseline. If employees or volunteers have complete documentation of a negative PPD during the preceding twelve (12) months (may be a single PPD or a two-(2) step PPD), then a single PPD is acceptable to establish the baseline for current employment.

a. A person with negative tuberculin skin tests who has direct contact with patients shall have an annual tuberculin skin test.

b. An initial or routine chest x-ray shall not be required for an employee or volunteer with negative tuberculin test results who is asymptomatic.

c. Personnel with a positive reaction to the skin test shall have no patient contact until certified noncontagious by a physician.

d. A chest x-ray shall be required to determine whether TB disease is present for an employee or volunteer:

(i) With reactions of 10mm and over to the preemployment tu-



berculin test;

- (ii) Who has previously documented positive reactions;
- (iii) With newly converted skin tests; and
- (iv) With symptoms suggestive of TB (e.g., cough, weight loss, night sweats, fever, etc.)

e. If TB disease is diagnosed, appropriate treatment shall be given and patient contacts examined.

f. Personnel who are known or suspected to have TB shall be required to be evaluated by a physician and shall not be allowed to return to work until they have been certified noncontagious by the physician.

g. Preventive treatment of personnel with new positive reactions is essential, and shall be considered for all infected employees or volunteers who have patient contact, unless specifically contraindicated.

(i) An employee or volunteer who completes treatment, either for disease or infection, may be exempt from further routine chest radiographic screening unless he has symptoms of TB.

(ii) Positive reactors who are unable or unwilling to take preventive treatment shall not receive an annual chest x-ray. These individuals shall be informed of their lifelong risk of developing and transmitting TB to individuals in the institution and in the community. They shall be informed of symptoms which suggest the onset of TB, and the procedure to follow should such symptoms develop.

h. Postexposure skin tests shall be provided for tuberculin negative employees or volunteers within twelve (12) weeks after termination of contact for any suspected exposure to a documented case of pulmonary TB.

i. A person shall be designated in writing at each facility to coordinate TB screening of personnel and any other TB control activities.

3. All professional and allied health professional staff members shall be currently certified with American Red Cross or American Heart Association to perform cardiopulmonary resuscitation and capable of recognizing symptoms of distress. ~~[A clinical staff member who is legally qualified to perform advanced cardiac life support shall be present while patients are undergoing abortion procedures and recovery in the facility.]~~

4. No employee or volunteer of the facility while afflicted with any infected wounds, boils, sores, or an acute respiratory infection, or any other contagious disease or illness, shall work in any capacity in which there is a likelihood of such person transmitting disease to other individuals.

5. Each facility shall have and execute a written orientation program to familiarize each new staff member with the facility and its policies and procedures, to include fire safety and other safety measures, medical emergencies, and infection control.

6. In-service training programs shall be planned and provided for all employees and volunteers to ensure and maintain their understanding of their duties and responsibilities. Records shall be maintained to reflect program content and individual attendance. The following training shall be provided at least annually:

a. Infection control, to include as a minimum, universal precautions against blood-borne diseases, general sanitation, personal hygiene such as hand washing, use of masks and gloves, and 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 333.090 [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 cer-

tainty, 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, such as tissues, organs, body parts, and bodily fluids, ~~[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 responsi-

ble 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. [45:] 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. [46:] Infection Control. (1) There shall be an infection control program developed to prevent, identify, and control infections.

(2) Written policies and procedures pertaining to the operation of the infection control program shall be established, reviewed at least annually, and revised as necessary.

(3) A practical system shall be developed for reporting, evaluating, and maintaining records of infections among residents and personnel.

(4) The system shall include assignment of responsibility for the ongoing collection and analysis of data, as well as for the implementation of required follow-up actions.

(5) Corrective actions shall be taken on the basis of records and reports of infections and infection potentials among patients and personnel and shall be documented.

(6) All new employees shall be instructed in the importance of infection control and personal hygiene and in their responsibility in the infection control program.

(7) The facility shall document that in-service education in infection prevention and control is provided to all services and program components.

(8) Adequate space shall be provided for storage, maintenance and distribution of sterile supplies and equipment.

(9) Sterile supplies and equipment shall not be mixed with unsterile supplies, and shall be stored in dust-proof and moisture-free units. They shall be properly labeled.

(10) Sterilizing equipment of appropriate type shall be available and of adequate capacity to properly sterilize instruments and materials. The sterilizing equipment shall have approved control and safety features.

Section 16. [47:] 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. [48:] 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 in-

festation; 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. VENNO, 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.

**CABINET FOR HEALTH SERVICES**  
**Department for Medicaid Services**  
**Division of Financial Management and Analysis**  
**(As Amended at ARRS, February 9, 1999)**

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

RELATES TO: KRS 205.520, 205.640

STATUTORY AUTHORITY: KRS 194A.030, 194A.050 [194.050], 205.640

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Kentucky Hospital Care Program (KHCP) [program], which is a program of hospital care for the indigent provided by Kentucky acute, psychiatric and rehabilitation hospitals participating in the Kentucky Medicaid Program. The cabinet is responsible for establishing eligibility guidelines for determinations of KHCP eligibility to be made by the hospitals. This administrative regulation establishes [sets forth provisions relating to] the eligibility requirements and benefits for recipients under KHCP.

Section 1. Definitions. (1) [~~"Family unit" means the parents, step-parents, their minor children and stepchildren living in the same household; unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household; or a child under age eighteen (18), legal guardian and the legal guardian's family living in the same household. A minor child who is also a minor parent and who lives with his parents is included in the family unit along with his child; if the minor parent, his child and the child's other parent, regardless of their marital status, are in the same household; they shall be considered a separate family unit from any other family unit in that household.~~]

(2) "Kentucky Hospital Care Program" (KHCP) means the [is a] program of [inpatient and outpatient] hospital care, [but excluding nonemergency care rendered in the emergency room,] for Kentucky's indigent citizenry provided by Kentucky hospitals participating in the Kentucky Medicaid Program.

(2) [(3)] "Minor child [children]" means an individual:

(a) [individuals] Under the age of twenty-one (21) living with a parent; [or]

(b) Under the age of eighteen (18) living with a legal guardian in the same household; or

(c) Meeting one (1) of the criteria established in paragraph (a) or (b) of this subsection [~~one (1) of the previously described children~~] attending college or a similar type of higher education facility.

(3) [(4)] "Minor parent" means an individual under the age of twenty-one (21) who has a minor child.

(4) [(5)] "Self-support" means a demonstration by the minor child that he is paying more than fifty (50) percent of his living expenses by showing, for example, [(i.e.,) proof of wages versus expenditures for living expenses, [(i.e.,)]

Section 2. [KHCP Eligibility Manual. (1) The KHCP Eligibility Manual, dated July 15, 1994, which describes the processes for determining KHCP eligibility, is incorporated by reference.

(2) The KHCP Eligibility Manual is available for inspection and copying during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) A fee shall be charged for the KHCP Eligibility Manual not to exceed the approximate cost of copying and materials.

Section 3. Eligibility Requirements. (1) For the purpose of deter-

mining eligibility, a family unit shall be [is] comprised of the following:

(a) Parents, stepparents, their minor children and stepchildren living in the same household;

(b) Unmarried couples who have at least one (1) minor child in common and siblings of that child living in the same household;

(c) A child under age eighteen (18), legal guardian and the legal guardian's family living in the same household;

(d) A minor child who is [also] a minor parent [and] who lives with his parents and the minor parent's [is included in the family unit along with his] child;

(e) A minor parent, his child and the child's other parent, regardless of their marital status, living in the same household, who shall be considered a separate family unit from another [any other] family unit in that household; or [and]

(f) A minor child living with a grandparent who shall comprise [comprises] a family unit separate from the family unit of the grandparent [and the grandparent comprises another family unit].

(2) For an individual or family unit to be KHCP eligible, the following requirements shall be met:

(a) The individual or family unit shall be a resident[(s)] of Kentucky. A transient individual [Transients (individuals) traveling through but not residing in the state] and non-U.S. citizens in visa status (i.e., visitors, students, etc.) shall not be eligible for KHCP;

(b) The individual's or family unit's income shall not exceed 150 [100] percent of the official poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 USC 9902(2) [as promulgated by the Department of Health and Human Services, United States Government, and revised annually] [except for Medicaid recipients receiving additional days of coverage per hospital stay based on medical necessity determined in accordance with 907 KAR 1:012, inpatient hospital services];

(c) The individual or family unit shall be encouraged to apply for Medicaid at the local Department for Social Insurance office if potentially eligible; and

(d) Except for a Medicaid recipient [recipients] receiving additional days of coverage per hospital stay, a potential KHCP recipient receiving services on or after July 15, 1994 shall be required to apply for KHCP benefits by not later than thirty (30) days from the date of service or notification by the hospital of potential KHCP eligibility, whichever is later[; and

(e) ~~A potential KHCP recipient receiving services on or before June 30, 1994 shall be required to apply for KHCP services by August 15, 1994 or thirty (30) days from date of notification by the hospital of potential KHCP eligibility, whichever is later.~~

(3) ~~A [(2) Any] Medicaid recipient receiving additional days of coverage per hospital stay, based on medical necessity determined in accordance with 907 KAR 1:012, shall be determined KHCP eligible without further verification. [; and] An application shall not be required.~~

~~[(3) Individuals or families found eligible prior to July 1, 1993 for the Hospital Indigent Care Assurance Program for a period of time extending past July 1, 1993 shall be determined eligible for KHCP without further verification for that portion of the period of time extending past July 1, 1993.]~~

**Section 3. Alien Eligibility Requirements. Except as provided in Section 4 of this administrative regulation, the following individuals shall be eligible for participation in KHCP:**

(1) An alien legally admitted to this country for permanent residence on or before August 22, 1996, shall be [is] eligible to participate in KHCP.

(2) An alien admitted after August 22, 1996, who is a refugee, asylee, parolee, member of the United States Armed Forces, or a dependent of an active or retired member of the armed forces shall be [is] eligible to participate in KHCP.

(3) Except as provided in subsection (5) of this section, an illegal, undocumented alien shall be [is] eligible to participate if he has a life-threatening emergency condition.

(4) Except as provided in subsection (5) of this section, an alien who is admitted for permanent residence after August 22, 1996, who is not a parolee, refugee, asylee, member of the armed forces, retiree from the armed forces or a dependent of a member

(retiree) of the armed forces, shall be [is] eligible to participate in KHCP if he has a life-threatening emergency condition.

(5) Coverage shall not be provided for an individual specified in subsection (3) or (4) of this section for a transplant or a service related to a transplant.

(6) An alien who is admitted to the United States for a temporary stay, including [such as] a student, tourist, business person or a person on a temporary work permit shall [is] not eligible to participate in KHCP.

Section 4. Exclusions from Eligibility. The following shall not be eligible for coverage under KHCP:

(1) An individual [Individuals] within a correctional system, including an inmate of a jail or prison [(i.e., inmates of jails, prisons, etc.)];

(2) An individual [Individuals] in the custody of a unit of government which is responsible for coverage of the acute care needs of the individual; [individuals];

(3) With the exception of a child specified in 907 KAR 1:012, Section 2, a Medicaid recipient who has [Medicaid recipients who have] been decertified by the peer [utilization] review organization (PRO) for not meeting psychiatric level of care or medical necessity under EPSDT Special Services in accordance with 907 KAR 1:034;

(4) An individual who is covered by health insurance, including Part A Medicare. The hospital shall be [is] responsible for determining if health insurance coverage exists. Policies which provide for a fixed number of dollars per day of hospitalization shall [are] not be considered [to be] health insurance in a KHCP eligibility determination. [Individuals who receive ongoing Medicaid in any category including Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).]

Section 5. Eligibility Periods. [The following provisions shall be applicable for eligibility periods:

(1) ~~For inpatient hospital stays, each determination of eligibility shall be for the period of hospitalization.~~

(2) ~~For major or minor outpatient procedures or services, a determination of eligibility shall be for the date or dates of service.] (1) A single determination of eligibility shall be considered sufficient for a period not to exceed six (6) months, [a prescribed course of outpatient treatment (for example, physical therapy) covering several days or weeks.]~~

(2) ~~[(3)] A retroactive determination of eligibility shall be completed for an inpatient hospital stay or a [stays and] major or minor outpatient procedure or service for a [procedures or services for any] period of time preceding the month of application. [No retroactive coverage shall be provided for a period of time prior to July 1, 1993.~~

(4) ~~No retroactive coverage for individuals between the ages of twenty-two (22) through sixty-four (64) residing in a psychiatric facility shall be available for any period prior to July 15, 1994.]~~

Section 6. Income Considerations. Eligibility shall be determined by comparing the family unit's (or that of the individual not living with other family members) total annual gross income to the poverty income guidelines for the appropriate family size. In comparing the family unit's total annual gross income to 150 [100] percent of the official poverty income guidelines, the following policies shall be applied:

(1) Total annual gross income shall be based on income received during the twelve (12) months preceding the month of application with an adjustment for a projected change [adjustments for projected changes] in income as appropriate;

(2) A hospital [Hospitals] may require submission of a tax return, pay stub, employer statement, or similar document to verify income; [returns, pay stubs, employer statements, and similar documents to verify income;]

(3) Upon verification that income will increase or decrease, the anticipated income shall be used;

(4) The gross income or adjusted gross income for self-employment shall be used. The adjusted gross income shall be determined by allowing a work expense deduction that is [deductions that are] directly related to producing the goods or services and without which the goods or services could not be produced;

(5) Income of all family unit members, including an ineligible member [members], shall be considered and compared to the appro-

priate KHCP family size;

(6) Parental income shall not be considered in an eligibility determination for a child [determinations for children] age twenty-one (21) or older. If the child, regardless of age, is not living with the parent or attending college or a similar type of higher education facility, parental income shall not be considered;

(7) A legal guardian's income shall be considered in determining eligibility for a child [children] living in the same household as the legal guardian until the child reaches the age of eighteen (18);

(8) A grandparent's income shall not be considered for a grandchild [grandchildren] living with the grandparent [(but not also living with the minor parent)] unless the grandparent is the legal guardian; and

(9) Income from a common law spouse living in the same household shall be considered. A common law marriage [Common-law marriages] shall be recognized if that marriage was recognized in another state [other states] or the couple has held themselves out to that community as married]; and

(10) State supplemental payments to individuals in personal care homes shall be excluded from consideration].

Section 7. Resource Considerations. (1) [Resources shall not be considered in determining KHCP eligibility for the period of July 1, 1993, through January 31, 1994.

(2) Effective for determinations of eligibility for the period beginning on February 1, 1994, and ending on April 15, 1994 the following upper limits for liquid assets (cash or assets readily convertible to cash including checking accounts, savings accounts, stocks, bonds, and similar financial instruments, but not including real or personal property including jewelry, household goods, clothing, buildings, land, businesses, and professional practices) shall be applicable: \$2,000 for an individual; \$4,000 for a family size of two (2); and fifty (50) dollars for each additional family member.

(3) Effective for determinations of eligibility for periods beginning on or after April 16, 1994] The following provisions shall be applicable with regard to the computation of allowable resources:

(a) The following upper limits for liquid assets (cash or assets readily convertible to cash including a checking account, savings account, stock, bond, or similar financial instrument [checking accounts, savings accounts, stocks, bonds, and similar financial instruments]) shall be applicable:

1. \$2,000 for an individual;
2. \$4,000 for a family size of two (2); and
3. Fifty (50) dollars for each additional family member;

(b) A homestead, household goods, and personal property including jewelry, clothing, and other items of a personal nature shall be excluded from consideration;

(c) Equity of \$6,000 in income producing nonhomestead real property, business or nonbusiness, essential for self-support shall be excluded from consideration;

(d) Equity of \$4,500 in an automobile [automobiles] shall be excluded from consideration;

(e) A burial reserve of up to \$1,500 per individual, burial space including the plot, casket, vault, or other item of a similar nature, or an irrevocable prepaid burial plan, contract or burial trust shall be excluded from consideration; [Burial reserves of up to \$1,500 per individual, burial spaces including the plot, casket, vault, and items of a similar nature, and irrevocable prepaid burial plans, contracts and burial trusts shall be excluded from consideration;]

(f) The value of excludable assets in excess of excluded amounts shall be added to liquid assets for comparison against the liquid asset upper limits; and

(g) Other assets not excluded or within the upper limits shall be added to liquid assets for comparison against the liquid asset upper limits.

(2) [(4)] Resources above the allowable amounts shall result in ineligibility for benefits under KHCP[, but only] to the extent that liquid resources exceed the allowable upper limits. Liquid resources shall [-this means that liquid resources can] be reduced by incurred medical expenses [spent down] to establish eligibility. For example, if an otherwise eligible individual with \$2,300 in liquid assets is hospitalized, he shall [would] become eligible for KHCP coverage after receiving \$300 in billable services.

Section 8. Verification Requirements. Except as specified in Section 2 [3] of this administrative regulation, the cabinet shall require verification in accordance with the following in an eligibility determination [determinations] (although verification of residency may be requested [should be accomplished] in a questionable situation [situations]):

(1) Income verification for family unit members shall be required for an inpatient hospital admission or [admissions and] major outpatient procedure or service [procedures or services];

(2) Verification shall be required every six (6) months, or more frequently at the option of the hospital, unless the family unit's income has increased;

(3) If the family unit's income has increased, the hospital [shall not be required but] may require verification of income if the newly reported income exceeds the KHCP income limits;

(4) If the family unit alleges zero income, verification may be [obtained or at the option of the hospital] waived;

(5) Income and resource verification may be waived at the option of the hospital for a minor outpatient procedure or service [procedures or services];

(6) Self-support verification for a child [children] under age twenty-one (21) not living with a parent [parents] and who attends [attend] college or a similar type of higher education facility shall be required; and

(7) An applicant [Applicants] for KHCP benefits shall [must] provide requested information within ten (10) days unless this requirement is waived by the hospital.

Section 9. Medicaid Covered Services. (1) [Dual Eligibility. The individual or family unit may be referred to apply for Medicaid benefits. The following provisions shall be applicable for dual eligibility.

(1) An individual may be KHCP eligible and simultaneously determined Medicaid eligible. An individual may apply for ongoing Medicaid and KHCP eligibility concurrently.

(2) An individual may apply for both KHCP and Medicaid spend down eligibility.

(3) For Medicaid spend down eligibility any hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spend down eligibility.

(4) Individuals who are eligible as qualified Medicare beneficiaries (QMBs) only recipients may apply for KHCP eligibility.

(5) An individual may apply for both KHCP and SSI/Medicaid benefits.

(6) If an individual or family unit is subsequently approved for Medicaid [or QMB] benefits during a period of KHCP eligibility, the hospital shall [may] bill the Medicaid Program in accordance with Medicaid requirements [policy] established [shown] in 907 KAR 1:013 and 907 KAR 1:015 if [provided] the hospital reports the KHCP adjustment prior to billing the Medicaid Program.

(2) For Medicaid spend down eligibility, a [any] hospital expense attributed to the individual's KHCP eligibility shall not be considered as an incurred cost in determining Medicaid spend down eligibility.

Section 10. Fair Hearing. (1) An applicant may request a fair hearing on his KHCP eligibility determination within thirty (30) days of the denial or approval date.

(2) Each hospital shall be responsible for conducting hearings to determine if KHCP eligibility was determined correctly and for correcting an error [any errors] in KHCP eligibility which has [have] been made.

(3) A hearing [The hearings] shall be conducted by impartial hospital staff not involved in the KHCP eligibility determination.

(a) A hearing [Hearings] shall be conducted within thirty (30) days of the date of the hearing request.

(b) During the hearing:

1. The appellant shall be provided an opportunity to review evidence against him;

2. To cross-examine witnesses against him;

3. To present evidence in his behalf; and

4. To be represented by counsel.

(c) A hospital decision [Hospital decisions] regarding the hearing shall be rendered within fourteen (14) days of the hearing. [and] A copy of the decision shall be provided to the KHCP applicant and the



Department for Medicaid Services.

(d) The hearing process may be terminated at any time a corrected decision of KHCP eligibility is made in favor of the potential KHCP recipient with appropriate notice of KHCP eligibility and termination of the hearing process required.

(e) Further appeal shall [may] be to the local court having [competent] jurisdiction.

(4)(a) If a hospital contests medical necessity [(whether) [before or after the fact] for a KHCP eligible person or for a Medicaid recipient with regard to additional days of inpatient coverage, the Medicaid [Peer Review Organization] (PRO) shall be contacted by the hospital for a determination of the appropriateness of the service using Medicaid standards of medical necessity established in 907 KAR Chapters 1 and 3;

(b) The decision of the PRO shall be binding upon the hospital for KHCP purposes.

(c) The PRO shall [It shall be the PRO's responsibility to] advise the hospital, the KHCP or Medicaid recipient, and the recipient's physician, in writing, of the PRO's decision.

(d) If the KHCP or Medicaid recipient is dissatisfied with the decision of the PRO, he may appeal the decision in accordance with 907 KAR 1:563. [904-KAR-2:055.]

Section 11. Benefits. Benefits under KHCP shall be as follows:

(1) A Medicaid recipient [Medicaid-recipients] shall receive the [any] necessary days of coverage for a hospital stay as specified in KRS 205.640;

(2) [Except for nonemergency care rendered in the emergency room;] A KHCP recipient, including an individual [recipients, including individuals] with a pending KHCP application, shall not be billed for a hospital service [services] provided by a Medicaid participating hospital [hospitals] in accordance with KRS 205.640.

Section 12. Incorporation by Reference. (1) The Kentucky Hospital Care Program (KHCP) Manual, December, 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. [otherwise specified, the provisions of this administrative regulation shall be applicable for determinations of eligibility made, and services provided, on or after April 16, 1993 except that the Medicaid Program shall also recognize and accept determinations of eligibility made under the previous program guidelines for the period of July 1, 1993 through April 15, 1994.]

DENNIS BOYD, Commissioner

JOHN MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: December 14, 1998

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

**CABINET FOR HEALTH SERVICES**  
Department for Mental Health/Mental Retardation Services  
Division for Administration  
(As Amended at ARRS, February 9, 1999)

908 KAR 3:050. Per diem rate pursuant to KRS 210.710 to 210.760 [the "Patient Liability Act of 1978"].

RELATES TO: KRS 210.700 to 210.760

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, [194A.210; 210.720(2), 210.750, [to] 210.760

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.720(2) requires [directs] the Secretary of the Cabinet for Health Services to establish [Human Resources to fix] the patient cost per day for board, maintenance and treatment for each facility operated by the cabinet at frequent intervals which shall be the uniform charge for [all] persons receiving those [such] services. KRS 210.750 authorizes [194A.050 empowers] the secretary to promulgate administrative regulations. [The function of] This administrative regulation establishes [is to fix] the patient cost per day for board, maintenance and treatment at fa-

cilities operated by the cabinet.

Section 1. Facilities with an All-inclusive Per Diem Rate. The following facility shall charge [~~be on~~] an all-inclusive per diem rate for room and board and ancillary services. Physician services shall be charged on an individual basis as utilized:

| Facility               | Rate  |
|------------------------|-------|
| Eastern State Hospital | \$450 |

Section 2. Facilities with a Routine Service Charge Per Diem with Separate Charges for Treatment Services on an Individual Basis.

(1) The following facilities shall charge a per diem rate for room and board and a separate charge for each treatment service listed in subsection (2) of this section that is provided:

| Facility                       | Rate  |
|--------------------------------|-------|
| Central State Hospital         | \$400 |
| Central State - ICF/MR         | 385   |
| Western State Hospital         | 375   |
| Western State Nursing Facility | 155   |
| Outwood ICF/MR                 | 200   |
| Oakwood                        | 200   |
| Hazelwood Center               | 260   |
| Glasgow State Nursing Facility | 160   |
| Del Maria                      | 375   |
| Meadows                        | 325   |
| Windsong                       | 310   |
| Volta House                    | 125   |

(2) A separate charge shall be imposed if the following [the] treatment services are provided [furnished and/or available] at a Department for Mental Health and Mental Retardation Services facility listed in subsection (1) of this section [Facilities shall be]:

- (a) Physicians services;
- (b) EEG;
- (c) EKG;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) X-ray;
- (g) Laboratory;
- (h) Speech therapy; [and]
- (i) Hearing therapy;
- (j) Psychology;
- (k) Pharmacy;
- (l) Respiratory therapy;
- (m) Anesthesia; and
- (n) Electroshock therapy.

Section 3. Board, Maintenance and Treatment Charges. Cost per day for board, maintenance and treatment charges shall be fixed using the last available audited third party cost report increased for inflation. [(Medicare and Medicaid) trended and indexed for inflation for subsequent years. The basis for trending and indexing shall be current Data Resources Inc. Index for hospitals and intermediate care facilities.] Current rates shall be posted at each facility [and shall be available for public inspection in the Office of the Commissioner for Mental Health and Mental Retardation Services].

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: November 11, 1998

FILED WITH LRC: December 14, 1998 at 11 a.m.



PROPOSED AMENDMENTS RECEIVED THROUGH NOON, FEBRUARY 15, 1999

**COUNCIL ON POSTSECONDARY EDUCATION  
(Amendment)**

**13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.**

RELATES TO: KRS Chapter 13B, 164.020, 164.030, 164A.330(9)  
STATUTORY AUTHORITY: KRS 164.020(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.020(8) requires the Council on Postsecondary Education to determine tuition and approve the minimum qualifications for admission to a state-supported postsecondary education institution and authorizes the Council to set different tuition amounts for residents of Kentucky and for nonresidents. This administrative regulation establishes the procedure and guidelines for determining the residency status of a student who is seeking admission to, or who is enrolled at, a state-supported postsecondary education institution.

Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered, and includes a semester, quarter, or single[,] consolidated summer term as defined by the institution.

(2) "Continuous enrollment" means enrollment in a state-supported postsecondary education institution at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken due to extenuating circumstances beyond the student's control, including serious personal illness or injury, or illness or death of a parent.

(3) "Degree level" means enrollment in a course or program which could result in the award of a:

- (a) Certificate, diploma or other program at an institution;
  - (b) Baccalaureate degree or lower including enrollment in a course by a nondegree seeking postbaccalaureate student;
  - (c) Graduate degree or graduate certification other than a first-professional degree in law, medicine, dentistry or "Pharm. D"; or
  - (d) Professional degree in law, medicine, dentistry, or "Pharm. D".
- (4) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(5) "Dependent person" means a person who cannot demonstrate financial independence from parents or persons other than a spouse and who does not meet the criteria established in Section 5 of this administrative regulation.

(6) "Determination of residency status" means the decision of a postsecondary education institution ~~that may include a formal hearing [and a subsequent decision by the Council on Postsecondary Education including an administrative hearing, if appropriate,]~~ that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(7) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return if absent without intending to establish a new domicile elsewhere.

(8) "Full-time employment" means continuous employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(9) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who can meet the criteria established in Section 5 of this administrative regulation.

(10) "Institution" means an entity defined in KRS 164.001(10) if the type of institution is not expressly stated.

(11) "Kentucky residency" or "Kentucky resident" means the result of a determination by an institution ~~[or by the Council on Postsecondary Education]~~ that a person is a resident of Kentucky for the purpose of tuition assessment and for the purpose of admission to that institution, if applicable.

(12) "Nonresident" means a person who is domiciled outside of

Kentucky or who currently maintains legal residence outside Kentucky or who has not met the criteria for Kentucky residency established in this administrative regulation.

(13) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

(14) "Parent" means one (1) of the following:

- (a) A person's father or mother; or
- (b) A court-appointed legal guardian if:

1. The guardianship is recognized by an appropriate court within the United States;

2. There was a relinquishment of the rights of the parents; and

3. The guardianship was not established primarily to confer Kentucky residency on the person.

(15) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 3 of this administrative regulation.

(16) "Student financial aid" means all forms of payments to a student by an institution where one (1) condition of receiving the payment is the enrollment of a student at the institution.

(17) "Sustenance" means living expenses including room, board, maintenance, transportation, and also may include educational expenses including tuition, fees, books, and supplies.

Section 2. Scope. (1) State-supported postsecondary education institutions were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to postsecondary education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to postsecondary education shall be provided so far as feasible at reasonable cost to an individual who is domiciled in Kentucky and who is a resident of Kentucky.

(2) The Council on Postsecondary Education requires a student who is neither domiciled in nor a resident of Kentucky to meet higher admission standards and to pay a higher level of tuition than resident students.

(3) This administrative regulation applies to all student residency determinations regardless of circumstances, including the Southern Regional Education Board contract spaces; [;] reciprocity agreements, where appropriate; [;] and academic common market programs.

Section 3. Determination of Residency Status; General Rules. (1) A determination of residency shall include:

(a) An initial determination of residency status by an institution during the admission process or upon enrollment in an institution for a specific academic term or for admission into a specific academic program;

(b) ~~[Each administrative and residency review committee determination made by an institution;~~

(c) A reconsideration of a determination of residency status by an institution based upon a changed circumstance;

(c) A formal hearing conducted by an institution upon request of a student after other administrative procedures have been completed.

~~[(d) An intermediate review by the Appeals Officer of the Council on Postsecondary Education if requested by the student; and~~

~~(e) An administrative hearing conducted in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070, if requested by the student.]~~

(2)(~~fa~~) An initial determination of residency status shall be based upon:

(a) The facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution;

(b) ~~[An initial determination of residency status shall be based on:~~

~~1.]~~ Information derived from admissions materials;

(c) ~~2.]~~ Other materials required by an institution and which are consistent with this administrative regulation; or

(d) ~~3.]~~ Other information available to the institution from any

source.

(3) An individual seeking a determination of Kentucky residency status shall demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall accompany the application for a determination of residency status.

(6) A student classified as a nonresident shall retain that status until the student is officially reclassified by an institution ~~[or the Council on Postsecondary Education, as appropriate]~~.

(7) A student may apply for a review of a determination of residency status once for each academic term.

(8) If an institution has information that a student's residency status may be incorrect, the institution shall review and determine the student's correct residency status.

(9) If the Council on Postsecondary Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(10) An institution shall impose a penalty or sanction against a student who gives incorrect or misleading information to an institutional official, including payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status. The penalty may also include:

- (a) Student discipline by the institution through a policy written and disseminated to students; or
- (b) Criminal prosecution.

Section 4. Presumptions Regarding Residency Status. (1) In making a determination of residency status, it shall be presumed that a person is a nonresident if:

(a) A person is, or seeks to be, an undergraduate student and ~~[whose]~~ admissions records show the student to be a graduate of an out-of-state high school;

(b) A person's admissions ~~[admission]~~ records indicate the student's residence to be outside of Kentucky at the time of application for admission;

(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution;

(d) A person moves to Kentucky and within twelve (12) months enrolls at ~~[in]~~ an institution ~~[of higher education]~~ more than half time; or

(e) A person has a continuous absence of one (1) year from Kentucky ~~[the state]~~.

(2) A presumption arising from subsection (1) of this section shall be overcome by a demonstration of Kentucky domicile and residency.

Section 5. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent. This provision is predicated on the assumption that a dependent person lacks the financial ability to live independently of the person upon whom the student is dependent and therefore lacks the ability to form the ~~[their]~~ requisite intent to establish domicile.

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as other relevant information available at the time the determination is made:

(a)1. That the person has not been claimed as a dependent on the federal or state tax returns of a parent or other person for the year preceding the date of application for a determination of residency status; or

2. That the person is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(b) That the person has financial earnings and resources independent of both parents or a person other than an independent spouse necessary to provide for the person's own sustenance.

(3) An individual who enrolls at ~~[in]~~ an institution immediately following graduation from high school and remains enrolled shall be presumed to be a dependent person unless the contrary is evident from the information submitted.

(4) Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(5) Marriage to an independent person domiciled in and who is a resident of Kentucky shall be a factor considered by an institution in determining whether a student is dependent or independent.

(6) A gift from or ~~[;]~~ made~~[; or assigned]~~ by a parent or family member other than an independent spouse, if used for sustenance of the student:

(a) Shall not be considered in establishing a student as independent; and

(b) Shall be a factor in establishing that a student is dependent.

Section 6. Effect of a Determination of Dependent or Independent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent shall be as follows:

(a) The domicile and residency of a dependent person shall be the same as either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be Kentucky if either parent is domiciled in and is a resident of Kentucky regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

(c)1. If the parent or parents of a dependent person are Kentucky residents and are domiciled in Kentucky but subsequently move from the state, the dependent person shall be considered a resident of Kentucky while in continuous enrollment at the degree level in which currently enrolled.

2. If continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of this paragraph are present.

(2) If the sole parent or both parents of a dependent person moves out of state, Kentucky domicile and residency, having been previously established, shall be retained until steps are taken to establish domicile and residency elsewhere.

Section 7. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A member, spouse, or dependent of a member whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status:

(a) During the time of active service; or

(b) If the member, spouse, or dependent returns to this state within six (6) months of the date of the member's discharge from active duty.

(2)(a) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to those orders if the member is not:

1. Stationed in Kentucky for the purpose of enrollment at an institution; or

2. On temporary assignment of less than one (1) year.

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status if the member is thereafter transferred on military orders while the member, spouse or dependent requesting the status is in continuous enrollment at the degree level in which currently enrolled.

(3) Membership in the National Guard or civilian employment at a military base shall not qualify a person for Kentucky residency status under the provisions of subsections (1) and (2) of this section.

(4) A person's residency status established pursuant to this section shall be reassessed if the qualifying condition is terminated.

Section 8. Status of Nonresident Aliens; Visas and Immigration.

(1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as another person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent residency status shall be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H, I, L, N, O, P, R, S, TD or TN shall establish domicile and residency the same as another person.

(3)(a) An independent person holding a nonimmigrant visa with designations B, C, D, F, J, K, M, or Q shall not be classified as a Kentucky resident, because that person does not have the capacity to remain in Kentucky indefinitely and therefore cannot form the requisite intent necessary to establish domicile within the meaning of this administrative regulation.

(b) A dependent person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

(c) A dependent person holding a visa described in subsection (2) of this section or paragraph (a) of this subsection, if a parent is a citizen of the United States and is a resident of and domiciled in Kentucky, shall be a resident of Kentucky for the purposes of this administrative regulation.

Section 9. Beneficiaries of a Kentucky Educational Savings Plan Trust. A beneficiary of a Kentucky Educational Savings Plan Trust shall be granted residency status if the beneficiary meets the requirements of KRS 164A.330(9).

Section 10. Criteria Used in a Determination of Residency Status. (1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. A single fact shall not be paramount, and each situation shall be evaluated to identify those facts ~~[which are]~~ essential to the determination of domicile and residency.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency:

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining residence and domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding the start of the academic term for which a classification of Kentucky residency is sought;

(c)1. Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status; or

2. Payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) Attendance as a full-time, nonresident student at an out-of-state institution based on a determination by that school that the person is a resident of Kentucky;

(f) Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with application to or attendance at an institution following and incidental to the change in domicile and residency;

(g) Obtaining licensing or certification for a professional and occupational purpose in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

(j) Long-term lease of at least twelve (12) consecutive months of noncollegiate housing;

(k) Marriage of an independent student to a Kentucky resident;

(l) Continued presence in Kentucky during academic breaks; and

(m) The extent to which a student is dependent on student financial aid in order to provide basic sustenance.

(3) Except as provided in subsection (4) of this section, the following facts, because of the ease and convenience in completing them, shall have limited probative value in a determination that a per-

son is domiciled in and is a resident of Kentucky:

(a) Kentucky automobile registration;

(b) Kentucky driver's license; and

(c) Registration as a Kentucky voter.

(4) The absence of a fact contained in subsection (3) of this section shall have significant probative value in determining that a student is not domiciled in or is not a resident of Kentucky.

(5) Kentucky residency status shall not be conferred by the performance of an act which is incidental to fulfilling an educational purpose or by an act which is performed as a matter of convenience. Mere physical presence in Kentucky, including living with a relative or friend, shall not be sufficient evidence of domicile and residency.

Section 11. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the residency status of a parent or parents of a dependent person changes, an institution shall reassess residency either upon a request by the student or a review initiated by an institution.

(2) Upon transfer to a Kentucky institution, a student's residency status shall be reassessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment, if applicable.

Section 12. Institutional Requirements; Designation of a Residency Appeals ~~[Office and]~~ Officer and Publication of the Administrative Regulation. (1) Each institution shall designate a residency appeals officer with:

(a) ~~[A person or office at the institution with]~~ Responsibility for a determination of residency status at that institution; and

(b) ~~[An administrative office or person with]~~ Delegated day-to-day responsibility for administration of this administrative regulation.

(2) The designation of a residency appeals officer ~~[an administrative office or person]~~ pursuant to subsection (1) of this section shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Postsecondary Education.

(3) An ~~[Each]~~ institution shall establish an operational policy for the determination of residency status which shall be filed with the Council on Postsecondary Education and which shall include:

(a) Procedures describing the steps in the initial determination of residency status;

(b) Designated responsibilities of each institutional official involved in a determination of residency;

(c) Responsibilities of a person requesting:

1. Admission to an institution or to an academic program; or

2. A change in residency status;

(d) Procedures for the operation of a residency review committee created pursuant to Section 13 of this administrative regulation;

(e) Timetables and deadlines for student and institutional responses to a request for a review of an institutional determination of residency status;

(f) Training of institutional officials responsible for a determination of residency status; ~~[and]~~

(g) The role of the residency review committee; and

(h) The method of selection of a hearing officer and the procedures for conducting a formal hearing that provide due process guarantees substantially equivalent to those provided under KRS Chapter 13B.

(4) This ~~[The]~~ administrative regulation shall be published in its entirety in all of each institution's catalogs and disseminated to each student.

(5) Copies of the administrative regulation shall be ~~[maintained in the office designated pursuant to subsection (1) of this section and shall be]~~ made available to each student requesting a ~~[Council on Postsecondary Education review of an institution's initial]~~ determination ~~[review or reconsideration]~~ of residency status.

Section 13. Establishment of a residency review committee by an Institution. (1) An ~~[Each]~~ institution shall establish a residency review committee, which shall be a standing committee, to review, evaluate, and act upon:

(a) A student appeal of a determination of residency status by an officer designated by an institution pursuant to subsection (1) of this

section; or

(b) ~~[related to an initial determination of residency status;~~  
~~(b) A recommendation of the administrative office or person des-~~  
~~ignated pursuant to Section 12 of this administrative regulation, that~~  
~~the residency review committee review, evaluate, and act upon an~~  
~~initial determination of residency status; and~~

(c) ~~A student request for a reconsideration of a residency deter-~~  
~~mination [classification] because of a changed circumstance.~~

(2) The Kentucky Community and Technical College System may establish uniform operating policies and procedures for each branch within the system as defined in KRS 164.001(11) including a provision for separate institutional residency review committees.

(3) ~~[Membership on the residency review committee shall include~~  
~~at least one (1) faculty and one (1) student member.~~

(4) ~~The policies and procedures of an institution's residency re-~~  
~~view committee shall be in writing and published for student use.~~

(4) ~~(5) A copy of the document authorizing and creating an insti-~~  
~~tution's residency review committee, and a copy of the operating poli-~~  
~~cies and procedures of the residency review committee shall be pro-~~  
~~vided to the Council on Postsecondary Education.~~

Section 14. Student Responsibilities. (1) A student shall register under the proper residency classification which includes the following actions:

(a) Raising a question in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) If a student fails to notify an institutional official of a change in residency, an institutional official may investigate and evaluate the student's current residency status.

(3) ~~(a) If a student fails to provide, in a timely manner, information~~  
~~required by an institution in a determination of residency status [or by~~  
~~the Council on Postsecondary Education in an appeal of a determina-~~  
~~tion of residency status], the student shall be notified by the institution~~  
~~[or by the Council on Postsecondary Education, as appropriate,] that~~  
~~the review has been canceled and that a determination has been~~  
~~made.~~

(b) Notification shall be made by registered mail, return receipt requested.

(c) Notification shall be made within ten (10) calendar days after the deadline for receipt of materials has passed.

(4) A student shall not be entitled to appeal a determination of residency status if the determination made by an institution is ~~[or by~~  
~~the Council on Postsecondary Education is made] because a student~~  
~~has failed to meet published deadlines for the submission of informa-~~  
~~tion as set forth in subsection (3) of this section. A student may re-~~  
~~quest a review of a determination of residency status in a subsequent~~  
~~academic term.~~

Section 15. Procedures for an Initial Determination of Residency Status, an Institutional Review of Residency Status and for a Reconsideration of a Determination of Residency Status. (1) Application for a review of a determination of residency status shall be made to the residency appeals officer ~~[administrative office or person]~~ designated by an institution pursuant to Section 12 of this administrative regulation.

(2) The application, with supporting documentation, shall be made by the student no later than thirty (30) calendar days after the first day of classes of the academic term for which a review of a determination of residency status is sought.

(3) An application shall consist of:

(a) An affidavit authorized by an institution ~~[the Council on Postsecondary Education]~~ and submitted by the student or the parent of a dependent student asserting the claim for a determination of residency status and asserting that the documentation and information are accurate and true; and

(b) Information and documentation required by an institution and consistent with this administrative regulation which is necessary to substantiate a request for a change in a determination of residency

status.

(4) ~~(a) An application shall be first reviewed by the residency ap-~~  
~~peals officer [office or person designated by the institution pursuant to~~  
~~Section 12 of this administrative regulation.~~

~~(b) If a student asks, in writing and in a manner set forth by the~~  
~~institution consistent with this administrative regulation, to appeal the~~  
~~decision of the designated office or person, the residency review~~  
~~committee shall review, evaluate, and act upon that appeal.]~~

~~(b) [(c)] An application for a review of residency status which is not~~  
~~submitted in a timely manner shall result in a determination of resi-~~  
~~dency status consistent with an initial determination of residency~~  
~~status.~~

(5) The decision of the residency appeals officer ~~[designated office~~  
~~or person, or of the residency review Committee]~~ shall be set forth in a letter that includes:

(a) Findings of fact;

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person";

(c) Whether the applicant is a resident or nonresident, and the reasons consistent with institutional policy and this administrative regulation; and

(d) A citation of the specific section of the administrative regulation that provided the basis for the institutional determination.

(6) If a student has requested an institutional review of a residency determination, the student shall be notified in writing, by registered or certified mail, of the decision of the residency appeals officer ~~[admin-~~  
~~istrative officer designated by the institution or the residency review~~  
~~committee, as appropriate,] within forty-five (45) calendar days after~~  
~~receipt of a person's application for a change.~~

(7) A change in a determination of residency shall not be made retroactive beyond the academic term in which the request for a change is made.

~~(8) [A student shall have the right to appeal a decision of the resi-~~  
~~dency review committee to the Council on Postsecondary Education~~  
~~pursuant to Sections 16, 17, and 18 of this administrative regulation.~~

~~(9) An institution shall, by written policy, establish deadlines for~~  
~~the submission of written documentation by a person seeking a review~~  
~~of an initial determination of residency status and shall not consider an~~  
~~appeal which does not conform to the timetable requirements for~~  
~~documentation and for the process established in the institution's op-~~  
~~erational policy.~~

Section 16. Procedure for ~~[Appeal to the Council on Postsecond-~~  
~~ary Education and] Intermediate Review by an Institution's Residency~~  
~~Review Committee. (1) The [the Council on Postsecondary Education~~  
~~Appeals Officer. (1) The President of the Council on Postsecondary~~  
~~Education shall designate a person on the staff of the Council on~~  
~~Postsecondary Education to serve as an appeals officer.~~

~~(2) The appeals officer's] review of an institution's [institutional]~~  
~~determination of residency status by a residency review committee~~  
~~shall be to determine whether the [residency review committee's]~~  
~~written decision of the residency appeals officer was supported by a~~  
~~preponderance of evidence and whether the decision conforms to this~~  
~~administrative regulation.~~

(2) ~~[(3)] Upon receipt of notice from the residency appeals officer~~  
~~[residency review committee] of an institution's decision by certified or~~  
~~registered mail, the student shall have fourteen (14) calendar days to~~  
~~appeal that decision to a residency review committee [the Council on~~  
~~Postsecondary Education] by giving notice in writing to the [office or]~~  
~~person designated by the institution to administer this administrative~~  
~~regulation.~~

~~(3) [(4)] An appeal filed more than fourteen (14) calendar days~~  
~~after receipt of the decision of the residency appeals officer [review~~  
~~committee] shall be dismissed and the decision of the residency ap-~~  
~~peals officer [review committee] shall be final.~~

~~(4) A residency review committee shall have twenty-one (21)~~  
~~calendar days following notice of a student's appeal to make a de-~~  
~~termination of residency status. Notice to the student shall be pro-~~  
~~vided by certified or registered mail, return receipt requested.~~

~~(5) The determination of residency status by a residency review~~  
~~committee shall be in writing and shall state the reason for the deci-~~  
~~sion including reference to relevant sections of this administrative~~  
~~regulation which were used to support the decision.~~

Section 17. Formal Institutional Hearing. (1) A student who appeals a determination of residency by a residency review committee shall be granted a formal hearing by an institution if the request is made by a student in writing within fourteen (14) calendar days after notification of a determination by a residency review committee.

(2) If a request for a formal hearing is received, an institution shall appoint a hearing officer to conduct a formal hearing. The hearing officer:

(a) Shall be a person not involved in determinations of residency at an institution except for formal hearings; and

(b) Shall not be an employee in the same organizational unit as the residency appeals officer.

(3) An institution shall have written procedures for the conduct of a formal hearing that have been adopted by the board of trustees or regents, as appropriate, and that provide for:

(a) A hearing officer to make a final determination of a residency appeal;

(b) Guarantees of due process to a student that are substantially equivalent to those provided in KRS Chapter 13B including:

1. The right of a student to be represented by legal counsel; and

2. The right of a student to present new information and to present testimony and information in support of a claim of Kentucky residency.

(c) A final written decision or recommendation to be issued by the hearing officer.

(4) An institution's formal hearing procedures shall be filed with the Council on Postsecondary Education and shall be available to a student requesting a formal hearing.

Section 18. Cost of Formal Hearings. (1) An institution shall pay the cost for all residency determinations including the cost of a formal hearing.

(2) A student shall pay for the cost of all legal representation in support of the student's claim of residency.

[(5) The office or person designated by the institution pursuant to Section 12 of this administrative regulation shall be responsible for forwarding to the Council on Postsecondary Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Postsecondary Education.]

Section 17. Determination of the Council on Postsecondary Education Appeals Officer. (1) Except as provided in subsection (2) of this section, the appeals officer shall make a determination, based solely on the written record submitted, to affirm or reverse the residency review committee's decision:

(2) The appeals officer may order the appeal remanded to the residency review committee for further proceedings before the appeals officer renders a final determination if the appeals officer determines that:

(a) The residency review committee failed to consider all information and evidence submitted;

(b) The residency review committee failed to follow institutional policies and procedures; or

(c) The information provided by an institution does not support a determination of residency status.

(3)(a) New information provided by the student that was not available to the institution at the time of the institution's determination of residency status shall result in a decision by the appeals officer to remand the case to the residency review committee for further action.

(b) A remand by the appeals officer shall require the residency review committee to reconsider the determination of residency status in light of the new information.

(c) An institution shall notify a student in writing of additional information required and shall establish a deadline for the receipt of that information.

(d) The residency review committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(e) A copy of the residency review committee recommendation shall be provided to the student.

(f) A remand shall be part of the appeal to the Council on Postsecondary Education and shall not constitute a determination by the appeals officer.

(4) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(5)(a) Except as provided in paragraph (b) of this subsection, within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person designated by the institution to administer this administrative regulation.

(b) If the appeals officer remands an appeal under subsection (2) of this section, the twenty-one (21) days shall not include the time the order was made until the time the residency review committee's written recommendation was received by the appeals officer.

(6) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal by registered or certified mail with the Council on Postsecondary Education requesting a formal adjudicatory hearing pursuant to KRS Chapter 13B and 13 KAR 2:070.

Section 18. Administrative Hearing to be Held If Requested by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070.

(2) The recommended order shall be received by the President of the Council on Postsecondary Education who shall issue a final decision on the appeal.

(a) The decision of the president shall be in writing and in accordance with KRS 13B.120.

(b) The decision of the president shall be provided to the student and the institution within twenty-one (21) calendar days after receipt of the hearing officer's decision.

(3) Upon receipt of the notification of the final decision of the president, the student shall have the right to appeal the decision to the appropriate court in accordance with KRS 13B.140.

Section 19. Charges to Institutions for Administrative Hearings: The Council on Postsecondary Education, upon receipt of a bill for the conduct of an administrative hearing on an appeal of a determination of residency status, shall assign one-half (1/2) of the cost of the administrative hearing to the institution from which the appeal is taken. An institution shall provide payment to the Council on Postsecondary Education or to the office or administrative entity so designated by the Council on Postsecondary Education within thirty (30) calendar days of receipt of the notice of payment.]

LEONARD V. HARDIN, Chair  
DENNIS L. TAULBEE, General Counsel

APPROVED BY AGENCY: January 25, 1999

FILED WITH LRC: February 12, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes, will be held on March 22, 1999, at 9 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Postsecondary Education in writing by March 15, 1999. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the administrative regulation. A transcript of the public hearing will not be made unless requested in writing. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the new administrative regulation to: Mr. Dennis L. Taulbee, Associate Vice President, Staff Services/General Counsel, Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: This administrative regulation affects 10 public entities: the nine postsecondary education institutions and the Council on Postsecondary Education. All of these entities are required to determine residency status for students.

(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. No increase or decrease is anticipated or required.

2. Second and subsequent years. No increase or decrease is anticipated or required.

(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. 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 - existing appropriation. No new funds required.

(6) Economic impact in Kentucky on:

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

(b) On Kentucky. None

(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.

## DEPARTMENT FOR LOCAL GOVERNMENT (Amendment)

### 109 KAR 9:010. Area Development Fund.

RELATES TO: KRS 42.345 to 42.370 [Chapter 42]

STATUTORY AUTHORITY: KRS 42.360

NECESSITY, FUNCTION, AND CONFORMITY: [Pursuant to the authority vested in the Commissioner of the Department of Local Government by KRS 42.360,] This administrative regulation establishes procedures relating to implementation of KRS 42.345 to 42.370 [42.350 to 42.360], including submission and approval of proposed capital projects, expenditure of moneys from the Area Development Fund and completion of capital projects.

Section 1. (1) ~~In determining the eligibility of capital projects pursuant to KRS 42.350(2) and (3), [The board of directors of each area development district shall select from among capital projects proposed by eligible beneficiary agencies; projects consistent with goals, objectives and priorities of adopted state, local or regional development~~

~~plans and shall submit recommended projects to the Department of Local Government for approval.~~

(2) ~~the board of directors of each area development district shall give priority consideration to proposed projects which have funds allocated in addition to area development funds and shall consider need and long-term benefits in selection of projects.~~

(2) ~~The~~ (3) ~~boards of directors of two (2) or more area development districts may propose joint capital projects to be financed by funds allocated to each participating area development district.~~

Section 2. All project proposals shall be submitted on forms prescribed by the Department ~~for~~ [of] Local Government, and no proposal shall be considered officially submitted until complete information and documentation required has been received by the Department ~~for~~ [of] Local Government.

Section 3. Each proposal submitted by an area development district shall be accompanied by the following documentation:

(1) Minutes of area development district board meeting specifying project approval and amount of area development funds allocated to the project.

(2) Except cities and counties:

(a) A court order ~~containing~~ [contained] a reference to the authorizing statute by which the special district was established; ~~or~~

(b) An executive agreement approved by the Attorney General as an agency created under the Interlocal Cooperation Act; or

(c) Articles of incorporation of a nonprofit corporation organized for a public purpose and performing governmental functions and services.

(3) If funds from other sources are to be used for the project, the availability of such funds shall be verified by:

(a) ~~A~~ resolution, minutes of legislative body or adopted budget of a local government; ~~and/or~~

(b) ~~A~~ copy of grant or loan award notice from a federal or state agency which states the amount of funds and date such grant or loan funds will be available; ~~and/or~~

(c) ~~An~~ affidavit by the authorized agent of a private funding source; ~~or~~

(d) ~~Any other documentation the commissioner shall require in order to verify the availability of funds pursuant to this subsection.~~

(4) Itemized cost estimates prepared within thirty (30) days prior to the date of submission by a licensed architect or engineer; or a price quote on each item from one (1) or more vendors or contractors obtained within thirty (30) days prior to submission.

(5) Statement of assurances by the chief executive officer of the beneficiary agency that all applicable laws and administrative regulations have been or will be met with attestation of the county clerk that such written assurances required by KRS 42.355 are recorded in the office of the clerk of the county in which the project is located.

(6) Any proposal to acquire real property or acquire interest in real property shall be accompanied by a licensed attorney's statement which sets forth the present holder of title, book and page number of the deed by which the holder received title and sets forth any liens, mortgages and claims against the property.

(7) When the beneficiary agency owns property rights by lease, the proposal shall be accompanied by a copy of the executed lease which must be for a term longer than the life expectancy of the project, generally not less than a twenty-five (25) year period.

(8) Proposals to extend new water, sewer or other utilities shall be accompanied by easements, right-of-ways or attorney determination and certification of existence of ~~those easements or right-of-ways~~ [same].

(9) Proposals for purchase of real property shall be accompanied by an appraisal.

(10) ~~A digitized map of proposed lines for all water and sewer line projects consistent with the Water Resources Development Commission Digital Submission Standards.~~

(11) ~~Other information required pursuant to KRS 42.350(3).~~

Section 4. A project may be given conditional approval pending submission of any documentation or other information required by these administrative regulations, but final payment shall not be made on any project until all documentation has been submitted ~~and approved.~~



Section 5. A beneficiary agency shall maintain and furnish the following records to the Department for Local Government upon request (as appropriate the following documentation):

- (1) A project completion report on a form prescribed by the Department of Local Government.
- (2) A copy of advertisement for bids, indicating the date(s) and source of publication.
- (3) A tabulation of all bids received with certification by the chief executive officer that all bids were opened at the time and place stated in the advertisement, the tabulation is true and accurate and all laws applicable to advertisement and award have been met.
- (4) A copy of official records documenting award of the bid.
- (5) A copy of each executed contract (or purchase order) and any change order(s) to the contract.
- (6) Specifications upon which the bid and award were based.
- (7) A copy of the fully executed deed.
- (8) A copy of all statements/invoices.
- (9) A copy of note or other document marked paid.
- (10) Any other records the Department for Local Government deems [Other such documents or information which may be] necessary to verify appropriate use of grant funds.

Section 6. (1) Upon the area development district receiving either conditional or final approval of a project proposal by the commissioner of the Department for Local Government, the area development district shall have two (2) years to implement and complete the project from the date at which the earliest approval was granted.

(2) Any area development funds allocated to a particular area development district that remain in the Department for Local Government Area Development Fund Account as of close of business June 30 of the last year of a biennium shall be forfeited and returned to the Department for Local Government area development fund account to be reallocated among all the area development districts.

Section 7. (1) Local government units that have received Department for Local Government project approval shall complete a project prior to being eligible to engage in any future area development fund projects.

(2) A project shall not be deemed completed until all work has been completed and approved, and the project completion report submitted to the Department for Local Government.

Section 8. Beneficiary agencies receiving grants in aid as authorized by KRS 42.345 through 42.370 [42.350 through 42.355] shall expend granted funds only for the payment of the costs of the capital project for which such grant was made. Grantee beneficiary agencies shall be liable to repay to the area development fund any granted funds expended by the agency in violation of this section or the provisions of KRS 42.345 through 42.370 [42.350 through 42.355].

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) The Area Development Fund Project Profile, filed and dated February 15, 1999; and
  - (b) The Area Development Fund Project Completion Report, filed and dated February 15, 1999.
- (2) Copies of the forms may be inspected, copied, or obtained at the office of the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

BOB ARNOLD, Commissioner  
THOMAS M. TROTH, Legal Counsel

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1999, at 10 a.m. at the Department for Local Government, 1024 Capital Center Drive Suite 340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 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 cancelled. This hearing is open to the public.

Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Thomas M. Troth, Legal Counsel, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601, (502) 573-2382, Fax Number (502) 573-2939.

## REGULATORY IMPACT ANALYSIS

Contact person: Tom Troth

(1) Type and number of entities affected: Area development districts, political subdivisions, special districts, agencies created pursuant to the Interlocal Cooperation Act, and not-for-profit corporations organized for public purposes and performing governmental functions and services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no cost of living and employment costs associated with these programs.

(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: Inapplicable at this time because the notice of intent hearing was cancelled because there was no public comment 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: Local governments would have to develop project proposals and submit them to their area development district for approval. There are two forms required by the Department for Local Government that must be used for participation in the Area Development Fund Program.

2. Second and subsequent years: Little if any additional reporting or paperwork requirements after initial start-up.

(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: No other known factors known at this time.

(b) Reporting and paperwork requirements: The department requires the local government to submit a project completion report to the department once the area development fund project is completed.

(4) Assessment of anticipated effect on state and local revenues: Unknown at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There will be no additional revenues needed for 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: No public comments received because the notice of intent hearing was cancelled.

(b) Kentucky: No public comments received because the notice of intent hearing was cancelled.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statute mandates the method chosen for approval of area development fund projects.

(8) Assessment of expected benefits: Local governments will have access to funds so as to develop capital projects which contribute to community or industrial development.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Unknown at this time.

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



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health would result if not implemented: There will be no detrimental effect.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no conflicting statutes, regulations or policies.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied to this administrative regulation because it was intended that these administrative regulations apply equally to all local governments. Failure to apply this administrative regulation equally and fairly might lead to accusations of equal protection and due process violations.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this program.
2. State compliance standards. KRS 42.345 to 42.370.
3. Minimum or uniform standards contained in the federal mandate. Not applicable, see 1 above.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable, see 1 above.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable, see 1 above.

### 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. Area development districts, political subdivisions, special districts, agencies created pursuant to the Interlocal Cooperation Act, and not-for-profit corporations organized for public purposes and performing governmental functions and services.
3. State the aspect or service of local government to which this administrative regulation relates. Implementation of capital improvement projects.
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 (+/-): \$1,000,000 is available biennially to local governments.

Expenditures (+/-):

Other Explanation: This administrative regulation has been filed to implement the provisions of KRS 42.345 to 42.370 which provides a method for local governments to receive funding for capital building projects.

### DEPARTMENT FOR LOCAL GOVERNMENT Division of Financial Services (Amendment)

#### 109 KAR 13:010. Uniform financial information report.

RELATES TO: KRS 65.900 to 65.925

STATUTORY AUTHORITY: KRS 65.905

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.905 authorizes [requires] the Department for [of] Local Government to prescribe the format of the uniform financial information report. This administrative regulation prescribes the format that shall be used for the report. This administrative regulation also describes the mechanism for initiating the penalty provisions of KRS 65.920 for failure to submit the report annually.

Section 1. [(1) The County Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-2), dated August 7, 1991, is hereby incorporated by reference.

(2) The City Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-3), dated August 1, 1991, is hereby incorporated by reference.

(3) The Special Taxing Districts Uniform Financial Information Report, Fiscal Year 1990-91, form F-65 (KY-5), dated September 3, 1991, is hereby incorporated by reference.

(4)(a) The appropriate form shall be provided to each county, city, and special district by the Department of Local Government.

(b) Other interested parties may inspect and obtain copies of the forms at the offices of the Department of Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 2. (1)(a) Each county, city and special taxing district which has not completed and submitted a uniform financial information report to the Department for [of] Local Government pursuant to KRS 64.905 [by February 1 of each year] shall be notified by mail of its noncompliance.

(b) The notice to a county, [or] city, or special taxing district shall also advise [it] of the possible penalties [suspension of its road aid moneys] pursuant to KRS 65.920.

(c) A list of all noncomplying counties, cities and special districts shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest.

(2)(a) Each county, [and] city, and special taxing district which has not completed and submitted a uniform financial information report [by March 1 of each year] shall be notified by mail of the penalty imposed [suspension of its road aid moneys] pursuant to KRS 65.920.

(b) A list of all noncomplying counties and cities shall be sent to the Legislative Research Commission, the Kentucky League of Cities, the Kentucky Association of Counties, area development districts, and such other state agencies which may have an interest.

(c) Specific notice shall be sent to the appropriate agencies of government [Transportation Cabinet and the Finance and Administration Cabinet] to suspend payments of [road aid] moneys to the listed counties, [and] cities, and special taxing district.

(3)(a) Each county, city and special district which submits an incomplete or incorrect report shall be notified in writing and shall be given thirty (30) days to complete or correct the report.

(b) The Department for Local Government may utilize information in the Annual Debt Report to supplement the responses of counties, cities and special taxing districts in the Uniform Financial Information Report.

(4) The Department for [of] Local Government shall notify the appropriate agencies of government [Transportation Cabinet and the Finance and Administration Cabinet] to resume payment of [road aid] moneys upon submission of a complete and correct report by the affected county, [or] city, or special taxing district.

Section 2. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) The County Quarterly Report, form F-65 (KY-2), filed and dated February 15, 1999;

(b) The City Uniform Financial Information Report, form F-65 (KY-3), filed and dated February 15, 1999; and

(c) The Special Taxing Districts Uniform Financial Information Report, form F-65 (KY-5), filed and dated February 15, 1999.

(2) Copies of the forms may be inspected, copied or obtained at the offices of the Department for Local Government, 1024 Capital Center Drive, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

BOB ARNOLD, Commissioner

THOMAS M. TROTH, Legal Counsel

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1999, at 10 a.m.

at the Department for Local Government, 1024 Capital Center Drive Suite 340, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by March 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Thomas M. Troth, Legal Counsel, Department for Local Government, 1024 Capital Center Drive #340, Frankfort, Kentucky 40601, (502) 573-2382, Fax Number (502) 573-2939.

#### REGULATORY IMPACT ANALYSIS

Contact person: Tom Troth

(1) Type and number of entities affected: Counties, cities and special districts.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no cost of living and employment costs associated with this program.

(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: Inapplicable at this time because the notice of intent hearing was cancelled because there was no public comment 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 should be no additional paperwork requirements for local governments. They are already required to file the Uniform Financial Information Report. Counties are already required to file quarterly report.

2. Second and subsequent years: No additional requirements.

(a) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No additional costs or savings.

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

3. Additional factors increasing or decreasing costs: No other known factors known at this time.

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: There should be no effect on state and local revenues

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: DLG employees will be utilized and paid through the general operating budget.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received because the notice of intent hearing was cancelled.

(b) Kentucky: No public comments received because the notice of intent hearing was cancelled.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statute mandates the reports and the penalty.

(8) Assessment of expected benefits: The reports have been streamlined and easier to complete.

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

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

effect.

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

(9) Identify any statute, administrative regulation or government policy, which may be in conflict, overlapping, or duplication: There are no conflicting, overlapping or duplicative statutes or policies.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was applied to the administrative regulation only in the sense that various governmental entities require different Uniform Financial Information Reports. An attempt was made to streamline the forms and make them more user friendly. This is especially true of special districts, since the department has had limited success getting special districts to comply with the requirements of KRS 65.900 to 65.925.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for this program, except to the extent that the United States Census Bureau will use this information in performing the year 2000 census.

2. State compliance standards. KRS 65.920 to 65.945

3. Minimum or uniform standards contained in the federal mandate. The Bureau of Census has approved these forms.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? In some cases the statute requires more information than the federal government requires.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Statute requires the information.

#### 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. Cities, counties, and special districts.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation requires the filing of Uniform Financial Information Reports

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

Revenues (+/-): -0-

Expenditures (+/-): -0-

Other Explanation: This administrative regulation has been filed to implement the provisions of KRS 65.900 to 65.925. There will be no additional cost to any local government as a result of this administrative regulation.

#### GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

#### 201 KAR 2:030. License transfer.

RELATES TO: KRS 315.191(1)(c), (d), (i)

STATUTORY AUTHORITY: KRS 315.191(1)(a), (c), (d), (i), 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.210 requires the board to establish conditions for licensure by reciprocity. This administrative regulation establishes conditions, forms, and examination, for licensure by reciprocity.

## VOLUME 25, NUMBER 9 – MARCH 1, 1999

Section 1. Definitions. (1) "Board" means the Kentucky Board of Pharmacy.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "License transfer" means a license to practice pharmacy in Kentucky issued by the board to a pharmacist licensed in another jurisdiction.

Section 2. An applicant licensed in another jurisdiction shall be eligible for license transfer, if:

(1) The requirements for initial licensure of the jurisdiction that granted his license met or exceeded Kentucky requirements for licensure at the time the license in the other jurisdiction was granted;

(2) The applicant has not failed a board licensure examination;

(3) The applicant has:

(a) Completed and certified the "NABP Preliminary Application for Transfer of Pharmaceutic Licensure" form; and

(b) Received an "NABP Official Application for Transfer of Pharmaceutic Licensure";

(4) The applicant is in good standing in the jurisdiction from which he has applied;

(5) The applicant has successfully completed an examination in jurisprudence; and

(6) The applicant has met the requirements established by the provisions of this administrative regulation.

Section 3. Required Information. An applicant shall provide the information required by the NABP Preliminary Application for Transfer of Pharmaceutic Licensure, including:

(1) Name, maiden, and other names used currently or previously;

(2) Address, telephone number;

(3) Date and place of birth, and current age;

(4) Social Security number;

(5) Citizenship;

(6) Gender;

(7) State of original license by examination, including:

(a) License number;

(b) Original date of issue;

(c) Current status of original licensure; and

(d) State for which license transfer is requested;

(8) Pharmacy education, including:

(a) Name and location of pharmacy school;

(b) Name of pharmacy degree;

(c) Date degree was received;

(d) Other professional degrees, including the information specified by paragraphs (a) to (c) of this subsection;

(9) Whether the applicant has earned certification by the Foreign Pharmacy Graduate Examination Committee, and, if so, the examination equivalency number assigned;

(10) Total hours of practical experience prior to licensure as a pharmacist, including the State Board of Pharmacy with which the hours are filed;

(11) States, dates, and results of pharmacist licensure examinations;

(12) Pharmacist licenses obtained by:

(a) Score transfer; and

(b) Licensure transfer;

(13) Practice and employment, including nonpharmacist employment, from initial licensure to date of filing application; and

(14) Record of charges, convictions, and fines imposed, or certification that the applicant has not been convicted, fined, disciplined, or had a license revoked.

Section 4. The board shall accept a license transfer from a jurisdiction that:

(1) Is an active member of the NABP; and

(2) Grants license transfer to a pharmacist pursuant to conditions and requirements that are the equivalent of conditions and requirements established by the board.

Section 5. An applicant shall take and pass the Multistate Pharmacy Jurisprudence Examination administered by the NABP. [appear in person before the board or a member thereof for the jurisprudence

examination].

Section 6. An applicant who has not actively engaged in the practice of pharmacy as a registered pharmacist during the year preceding the time of filing the application shall take a practical examination.

Section 7. Fee. An applicant shall include the fee specified by 201 KAR 2:050, Section 1(3).

Section 8. Incorporation by Reference. (1) "NABP Preliminary Application for Transfer of Pharmaceutic Licensure", is incorporated by reference.

(2) It may be inspected, copied, or obtained at Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m.

RODNEY C. STACEY, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 2:30 p.m. on March 25, 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 March 18, 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: Only those pharmacists who request license transfer into the Commonwealth. It is unknown the number of pharmacists who will elect to move into the Commonwealth.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None other than the cost of licensure as a pharmacist which is required of everyone who is actively engaged in the practice of the profession in Kentucky.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None other than those required of all licensees.

2. Second and subsequent years: None other than those required of all licensees.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Application renewals.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for licensure.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that pharmacists will be available to the citizens on an expedited or fast-track basis for licensure.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in a shortage of pharmacists in the Commonwealth at times during the year when pharmacists move into and out of the jurisdiction.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All pharmacists who elect this process are treated identically by this amended administrative regulation.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Pharmacy  
(Amendment)**

**201 KAR 2:040. Registration of interns.**

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.050(4), (5), 315.191(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Kentucky Board of Pharmacy is authorized by KRS 315.050(1) to determine the minimum experience internship required to qualify for examination as a registered pharmacist. KRS 315.191 also authorizes the board to establish requirements and standards for educational, technical and professional qualifications of applicants for license to practice pharmacy. This administrative regulation is to assure uniformity of the minimum experience internship.

Section 1. Every person who desires to become a pharmacy intern in Kentucky shall register as an intern with the Kentucky Board of Pharmacy. No credit for internship shall be recognized by the board for periods prior to such registration. To qualify for registration, a person shall have been accepted to an accredited college or school of pharmacy recognized by the board [successfully completed two (2) full years attendance at an accredited college or university], and shall furnish proof of such to the executive director of the board prior to the registration.

Section 2. The practical experience required prior to licensure shall be referred to as internship. The minimum internship required as to a prerequisite for licensure examination shall be 1,500 hours; not more than forty-eight (48) hours of internship may be allowed for credit in any one (1) calendar week.

Section 3. The board shall ~~[furnish application blanks and]~~ issue a numbered registration identification card to each applicant who meets the requirements for registration as a registered intern upon receipt of a completed registration form and the fee. The registered intern shall have his registration identification card in his possession at all times when on duty and it shall be exhibited by the holder upon request of any member of the board or its authorized agents.

Section 4. (1) Internship registration shall be limited to those per-

sons who are actively engaged in meeting the academic or practical experience requirements for licensure examination. No person who terminates the educational requisites is entitled to the privileges of internship registration, with the exception of any hardship case given written approval by the board.

(2) No person unregistered with the board as a pharmacy intern shall take, use, or exhibit the title of pharmacy intern, pharmacy apprentice, pharmacy extern, or any term of similar or of like import.

(3) Internship, other than the internship awarded by completion of academic coursework, shall be credited only when it has been obtained in a pharmacy, or when approval for a nontraditional internship has been granted by the board prior to commencement of the nontraditional internship. The maximum hours that may be approved for a nontraditional internship is 400. Interns who receive board authorization for a nontraditional internship shall provide to the board at least a 500 word essay describing their experience and its relation to the practice of the profession prior to receiving internship credit. [acceptable to the board for that purpose.]

(4) Internship may be acquired only under the supervision of a preceptor. The preceptor, the pharmacy intern's supervising pharmacist, must have been licensed by the board for at least one (1) year. Effective August 1, 2000, the preceptor shall be either a community-based faculty member of the University of Kentucky or meet the standards established by the University of Kentucky for community-based faculty. He must be actively engaged in the practice of pharmacy full-time in the pharmacy where the pharmacy intern is to obtain his internship. A preceptor may supervise only one (1) [pharmacy] intern at a time.

Section 5. An [A-pharmacy] intern having served part or all of his time in a pharmacy outside the state shall be given credit for the same, when affidavit(s) of his [said] employment is made by his preceptor(s) showing the exact time and dates served, and when [same is] attested by the Board of Pharmacy of that state. In such cases, their requirements for internship must be comparable and acceptable to the Kentucky board.

Section 6. Internship report forms may be obtained from the board and shall be filed in accordance with printed instructions on such forms.

Section 7. Hours of internship on an hour-per-hour credit basis for practice of pharmacy experiences shall be awarded for the successful completion of a doctor of pharmacy degree when documented and certified by the accredited school or college of pharmacy when the student receives a grade of "C" or its equivalent for each course. Until January 1, 2000, a minimum of 710 hours of internship shall be awarded for the successful completion of a bachelor of science in pharmacy degree and a minimum of 960 hours of internship shall be awarded for the successful completion of a doctor of pharmacy degree.

RODNEY C. STACEY, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 3 p.m. on March 25, 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 March 18, 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:

## VOLUME 25, NUMBER 9 – MARCH 1, 1999

(502) 573-1580; Fax: (502) 573-1582.

### REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: All interns who desire licenses in the Commonwealth. It is unknown the actual number of interns.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None other than those required of all interns.

2. Second and subsequent years: None other than those required of all interns.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Annual registrations.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for registration.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that interns will receive practical education in a uniform manner.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in a disparity in the education and training of pharmacy students.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All interns are treated identically by this amended administrative regulation.

form its duties and responsibilities. This administrative regulation provides [is to provide] reasonable fees for this agency to perform all the functions for which it is responsible and to operate within its budget. All monies are held in a trust and agency fund to the credit of the board.

Section 1. The following fees shall be paid in connection with pharmacist examinations and licenses, pharmacy permits, intern certificates and the issuance and renewal of licenses and permits:

(1) Application for a registered pharmacist license by examination including a license issued as a result thereof but does not include any direct costs for test materials and supplies - \$150.

(2) Retake examination as described in 201 KAR 2:020 - \$100.

(3) Application and initial license for a [registered] pharmacist license by license transfer [reciprocity including license issued as a result thereof] - \$250.

(4) Certifying the grades of a licentiate of Kentucky to the licensing agency of another state - ten (10) dollars.

(5) Annual renewal of a pharmacist license - seventy (70) dollars.

(6) Delinquent renewal penalty for a pharmacist license - seventy (70) dollars.

(7) Annual renewal of an inactive pharmacist license - ten (10) dollars.

(8) Pharmacy intern certificate valid six (6) [four (4)] years - twenty-five (25) dollars.

(9) Duplicate pharmacist license certificate - twenty (20) dollars.

(10) Application for a permit to operate a pharmacy - \$100.

(11) Renewal of a permit to operate a pharmacy - \$100.

(12) Delinquent renewal penalty for a permit to operate a pharmacy - seventy-five (75) dollars.

(13) Change of location or change of ownership of a pharmacy, drug wholesaler or manufacturer permit - seventy-five (75) dollars.

(14) Application for a permit to operate as a drug wholesaler or manufacturer - \$100.

(15) Renewal of a permit to operate as a drug wholesaler or manufacturer - \$100.

(16) Delinquent renewal penalty for a permit to operate as a drug wholesaler or manufacturer - \$100.

RODNEY C. STACEY, President

CHERYL LALONDE-MOONEY, J.D., Assistant Attorney General

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 3:15 p.m. on March 25, 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 March 18, 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 applicants for license transfer, interns, wholesalers and manufacturers and continuing education providers who desire licenses in the Commonwealth. It is unknown the actual number of each of these persons.

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

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

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

### GENERAL GOVERNMENT CABINET Kentucky Board of Pharmacy (Amendment)

#### 201 KAR 2:050. Licenses and permits; fees.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.035, 315.050, 315.060, 315.110(1), (2), 315.191(2), 315.195, 315.210

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.191(1)(i) to assess reasonable fees for services rendered to per-

administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Annual registrations.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for registration.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust Fund.

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The public should accrue a benefit in that registrations for interns will be consistent with the educational process and will not require extensions, continuing education providers will maintain records rather than the board and those wholesalers and manufacturers will be encouraged to renew in a timely manner.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in increased costs for the board as a result of increased paperwork and investigation and complaint processing a disparity in the education and training of pharmacy students.

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All persons in each class are treated identically by this amended administrative regulation.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Nursing  
(Amendment)**

**201 KAR 20:400. Delegation of nursing tasks to unlicensed persons.**

RELATES TO: KRS 314.011(5), (9), (12), 314.021(2), 314.091(1)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: To establish standards governing the delegation of nursing tasks to unlicensed persons in a safe, effective manner so as to safeguard the health and welfare of the citizens of the Commonwealth.

Section 1. Definitions. (1) "Board" means the Kentucky Board of Nursing.

(2) "Client" means a patient, resident or consumer of nursing care.

(3) "Competence" means performing an act in a safe, effective manner.

(4) "Delegatee" means a person to whom tasks are delegated.

(5) "Delegator" means the nurse delegating tasks to others.

(6) "Nurse" means a registered nurse or a licensed practical nurse.

(7) "Supervision" means the provision of guidance by a qualified nurse for the accomplishment of a nursing task with periodic observation and evaluation of the performance of the task including validation that the nursing task has been performed according to established standards of practice.

(8) "Unlicensed person" means an individual, other than a nurse, who functions in an assistant or subordinate role to the nurse. The term excludes ~~those self-care tasks performed by~~ a client, client's family or legal guardian, or a client's delegatee.

Section 2. Nurse's Responsibility in Delegation. (1) A registered nurse or a licensed practical nurse may delegate tasks to unlicensed persons in accordance with Sections 3 and 4 of this administrative regulation.

(2) Prior to delegating a nursing task the nurse shall determine the nursing care needs of the client. The nurse shall retain responsibility and accountability for the nursing care of the client, including nursing assessment, planning, evaluation and assuring documentation.

(3) The nurse, prior to delegation to an unlicensed person, shall have either instructed the unlicensed person in the delegated tasks or determined that [verified] the unlicensed person is competent [person's competency] to perform the nursing tasks.

(4) Delegation of nursing tasks may be direct or indirect via established nursing policies and procedures. Indirect delegation in no way alters the responsibilities of the nurse for appropriately assigning and supervising an unlicensed person.

(5) A nurse who delegates a nursing task in violation of this administrative regulation or participates in the utilization of an unlicensed person in violation of this administrative regulation is acting in a manner inconsistent with the practice of nursing.

Section 3. Criteria for Delegation. The delegation of nursing tasks to an unlicensed person shall meet the following criteria:

(1) The delegated nursing task must be one (1) that a reasonable and prudent nurse would find is within the scope of sound nursing judgment and practice to delegate.

(2) The delegated nursing task must be one (1) that, in the opinion of the delegating nurse, can be competently and safely performed by the unlicensed person involved without compromising the client's welfare.

(3) The nursing task must not require the unlicensed person to exercise independent nursing judgment or intervention.

(4) The delegator shall be responsible for assuring that the delegated task is performed in a competent manner by the delegatee.

Section 4. Supervision. (1) The nurse shall provide supervision of delegated nursing tasks.

(2) The degree of supervision required shall be determined by the delegator after an evaluation of appropriate factors involved including, but not limited to, the following:

(a) The stability and acuity of the client's condition;

(b) The training and competency of the delegatee;

(c) The complexity of the nursing task being delegated; and

(d) The proximity and availability of the delegator to the delegatee when the nursing task is performed.

SUE DAVIS, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: February 8, 1999

FILED WITH LRC: February 9, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 22, 1999 at 9 a.m. (EST) 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 March 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: All licensed nurses, approximately 60,000.

(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: N/A

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

(a) Geographical area in which administrative regulation will be implemented: No 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: N/A

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

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

(9) Identify any statute, administrative regulation, or 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? Tiering does not apply as the change in the regulation affects all equally.

#### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Vehicle Enforcement (Amendment)

#### 601 KAR 1:005. Safety administrative regulation.

RELATES TO: KRS Chapters 138, 281, 49 CFR Parts 40, 382-383, 385, 390-397

STATUTORY AUTHORITY: KRS 138.665, 281.600, 281.730, 281.750, 281.880 through 281.888, 49 CFR Parts 40, 382-383, 385,

390-397

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to establish ~~set forth~~ the safety requirements that KRS 281.600 allows the Transportation Cabinet to establish. This administrative regulation sets out safety procedures to be followed by motor carriers operating in the Commonwealth of Kentucky. The safety requirements of this administrative regulation essentially conform to the provisions of the federal safety requirements. While Kentucky's requirements are more lenient in minor intrastate areas, the Federal Highway Administration has determined that this administrative regulation essentially complies with the federal mandate.

Section 1. Definitions. (1) "City bus" is ~~means as~~ defined in KRS 281.013(1).

(2) "Daylight hours" means that period of time one-half (1/2) hour before sunrise through one-half (1/2) hour after sunset.

(3) "Farm-to-market agricultural transportation" means the operation of a motor vehicle that is controlled and operated by a farmer who, as a private motor carrier is using a vehicle:

(a) To transport agricultural products from his farm;

(b) To transport farm machinery or farm supplies to his farm; or

(c) Generally thought of as farm machinery; and

(d) Which is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 601 KAR 1:025.

(4) "Load limit" means the seating capacity established by the manufacturer for a passenger-carrying vehicle plus an additional twenty-five (25) percent.

(5) "Suburban bus" is ~~means as~~ defined in KRS 281.013(2).

(6) "Utility" means an entity which provides water, electricity, natural gas, sewage disposal, telephone service, television cable, or community antenna service.

Section 2. Governing Federal Regulations. All commercial motor vehicles and their operators meeting the definitions set forth in 49 CFR 390.5 operating for-hire or in private carriage, interstate or intrastate, except as set forth in Section 3 of this administrative regulation shall be governed by the following Motor Carrier Safety Regulations adopted and issued by the United States Department of Transportation:

(1) 49 CFR Part 40, as effective October 1, 1998 as amended at 63 Fed. Reg. 65128, December 1, 1998 [1997], Procedures for Transportation Workplace Drug Testing Programs;

(2) 49 CFR Part 382, as effective October 1, 1998 [1997], Controlled Substances and Alcohol Use and Testing;

(3) 49 CFR Part 383, as effective October 1, 1998 [1997], Commercial Driver's License Standards; Requirements and Penalties;

(4) 49 CFR Part 385, as effective October 1, 1998 as amended at 63 Fed. Reg. 62957, November 10, 1998 [1997 as amended at 62 Fed. Reg. 60042, November 8, 1997], Safety Fitness Procedures;

(5) 49 CFR Part 390, as effective October 1, 1998 [1997], General;

(6) 49 CFR Part 391, as effective October 1, 1998 [1997], Qualifications of Drivers;

(7) 49 CFR Part 392, as effective October 1, 1998 [1997], Driving of Motor Vehicles;

(8) 49 CFR Part 393, as effective October 1, 1998 [1997 as amended at 63 Fed. Reg. 1383, January 9, 1998 and 63 Fed. Reg. 8330, February 18, 1998], Parts and Accessories Necessary for Safe Operation;

(9) 49 CFR Part 395, as effective October 1, 1998 [1997], Hours of Service of Drivers;

(10) 49 CFR Part 396, as effective October 1, 1998 [1997], Inspection, Repair and Maintenance; and

(11) 49 CFR Part 397, as effective October 1, 1998 [1997], Transportation of Hazardous Materials; Driving and Parking Rules.

Section 3. Exemptions and Exceptions. The following exemptions and exceptions to compliance with the provisions of Section 2 of this administrative regulation are adopted:

(1)(a) City buses and suburban buses are not required to comply with the federal regulations adopted by or incorporated by reference in



this administrative regulation.

(b) The operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall comply with the provisions of 49 CFR Parts 382 and 383 and provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(2)(a) A motor vehicle operated by the federal government, a state government, a county government, a city government, or a board of education is not required to comply with the federal regulations adopted in this administrative regulation.

(b) An operator of one (1) of these vehicles who is required by KRS Chapter 281A to obtain a commercial driver's license shall provide proof of having passed the medical examination set forth in 49 CFR Part 391 or have received a medical waiver as set forth in 601 KAR 11:040 and subsection (7) of this section.

(c) The operator of a vehicle specified in paragraph (a) of this subsection shall meet the requirements of 49 CFR Part 382 relating to drug and alcohol testing.

(3)(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively in farm-to-market agricultural transportation when operated during daylight hours by a private motor carrier is not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B, relative to lighting device requirements.

(b) It is required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(4)(a) A motor vehicle which is used exclusively in intrastate commerce and exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility which is located at a point not more than fifty (50) air miles (eighty and five-tenths (80.5) air kilometers) from the harvest area when operated during daylight hours is not required to comply with Title 49, Code of Federal Regulations, Part 393, Subpart B relative to lighting devices requirements.

(b) It is required to have two (2) stop lamps and mechanical turn signals as set forth in 49 CFR 393, Subpart B.

(5) Except for a transporter of hazardous materials subject to the requirements of 601 KAR 1:025, a motor vehicle operator who is operating a vehicle in [an] intrastate commerce is not required to be twenty-one (21) years of age as set forth in 49 CFR 391.11(b)(1). However, he shall be at least eighteen (18) years of age.

(6) A utility motor carrier if operating exclusively in intrastate commerce shall be exempt from the maximum and on-duty hours for drivers set forth in 49 CFR 395.3 during an emergency which requires their employees to work to restore service.

(7)(a) A commercial vehicle driver who operates a commercial vehicle exclusively in intrastate commerce within Kentucky, may apply for a medical waiver of the requirements of 49 CFR Part 391 under the provisions of 601 KAR 11:040.

(b) If a medical waiver is issued, the waiver shall be in the possession of the commercial driver any time he is operating a commercial motor vehicle.

(8) Except for a farm-to-market agricultural transportation motor vehicle with a gross vehicle weight rating of 26,000 pounds or less, a motor carrier which operates exclusively in intrastate commerce shall:

(a) Apply for an intrastate motor carrier identification number on Form TC 92-150, "Application for Intrastate Carrier Identification Number", March 1996 edition;

(b) Display the assigned intrastate motor carrier identification number and the name and location of the motor carrier in the same manner as required pursuant to 49 CFR Part 390.21 except the identification number shall be preceded by the letters "USDOT" and followed by the letters "KY".

(9) A Kentucky licensed commercial driver operating a passenger transportation vehicle on behalf of a private motor carrier of passengers contrary to 49 CFR Part 391.68(d), shall not be exempt from the sections of 49 CFR Parts 391.41 and 391.45 requiring a driver to be medically examined and to have a medical examiner's certificate on his person.

Section 4. Buses. (1) A bus shall be maintained in a clean and sanitary condition so that the health of passengers will not be impaired.

(2) A seat shall be comfortable in order that passengers will not be subjected to unreasonable discomfort which might be detrimental to their health and welfare.

(3) An employee in charge of buses shall be courteous and helpful to passengers, properly caring for baggage so that it will not be damaged, and shall be acquainted with the routes traveled and schedules maintained, so that the passengers will not be subjected to unnecessary delays.

(4) An operator shall take into consideration the health and welfare of his passengers and control his operations in the public interest.

(5) Express and freight, mail bags, newspapers and baggage shall be so placed as not to interfere with the driver or with the safety and comfort of passengers. These items shall be protected from the weather but shall not be carried in the aisles or in a position to block exits or doorways on the bus.

Section 5. Overcrowding of Passenger Vehicles. A bus operated by an authorized carrier, except city or suburban buses, shall not be used to transport passengers in excess of its load limit. A passenger shall not be permitted to occupy the rear door-well of any bus vehicle that is equipped with a rear doorwell.

Section 6. Out-of-service Criteria and Sticker. (1) The basic safety criteria to be followed by the Kentucky Transportation Cabinet in determining if a commercial motor vehicle driver or commercial motor vehicle shall be declared unqualified or placed out-of-service shall be the "North American Uniform Out-of-service Criteria" issued [as revised April 1, 1997] by the Commercial Vehicle Safety Alliance.

(2)(a) If a commercial motor vehicle is being operated either improperly registered or without registration or in violation of any safety regulation or requirement, an officer or inspector of the Division of Motor Vehicle Enforcement shall be authorized to affix to the vehicle a notice indicating the nature of the violation and requiring its correction before the commercial motor vehicle is further operated.

(b) Refusal of the vehicle operator to grant permission for a law enforcement officer or inspector to conduct a safety inspection of the vehicle shall be cause for the officer or inspector to place the vehicle out-of-service until the permission is granted.

(c) Operation of a vehicle in violation of the out-of-service notice affixed to it shall constitute a separate violation of these regulations.

(3)(a) If a commercial motor vehicle driver is determined to be unqualified to drive and is placed out-of-service but the commercial motor vehicle is not placed out-of-service, the motor carrier may provide a different driver for the commercial motor vehicle.

(b) The commercial motor vehicle driver placed out-of-service shall not again operate a commercial motor vehicle until he is once again qualified.

(c) Refusal of the commercial motor vehicle driver to grant permission for a law enforcement officer or inspector to conduct a safety inspection regarding the driver himself shall be cause for the officer to place the driver out-of-service until the permission is granted.

(d) Operating a commercial motor vehicle in violation of an out-of-service order shall constitute a separate violation of this administrative regulation.

Section 7. Persons Allowed to Perform Physical Examinations. Medical examiner is defined in 49 CFR 390.5 as a person who is licensed, certified, and/or registered, in accordance with applicable state laws and administrative regulations, to perform physical examinations. According to Kentucky state law this shall include the following:

(1) Physician licensed by the Kentucky Board of Medical Licensure;

(2) Osteopath licensed by the Kentucky Board of Medical Licensure;

(3) Physician assistant certified by the Kentucky Board of Medical Licensure when working under the direct supervision of a licensed physician;

(4) Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing; and

(5) Chiropractor licensed by the Kentucky State Board of Chiropractic Licensure.

Section 8. Interpretations of the Federal Motor Carrier Regulations. The document published by the Federal Highway Administration in the Federal Register at 62 Fed. Reg. 16370 on April 4, 1997 presents official interpretive guidance material for the Federal Motor Carrier Safety Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.

Section 9. Relief and Safety Demonstration Project. (1) In accordance with Section 344 of the National Highway System Designation Act of 1995 (PL 104-59, 109 Stat. 568 (1995)), until June 10, 2000, the Federal Highway Administration is allowing an operator of a commercial motor vehicle with a gross vehicle weight rating over 10,000 pounds but not more than 26,000 pounds limited exemptions from the motor carrier safety regulations. These exemptions and the criteria for participating in the federal program are set forth in the "Motor Carrier Regulatory Relief and Safety Demonstration Project - OMC Internal Guidance".

(2) A motor carrier approved for participation in this project will be issued a "Roadside Enforcement Letter" by the Federal Highway Administration.

(3) The Transportation Cabinet shall honor the exemptions of each valid "Roadside Enforcement Letter" if the motor vehicle is being operated under the criteria set forth in the "Motor Carrier Regulatory Relief and Safety Demonstration Project - OMC Internal Guidance".

Section 10. Intrastate Safety Rating System. (1) The Transportation Cabinet may issue a safety rating to a motor carrier subject to the provision of this administrative regulation if all of the commercial motor vehicles operated by the motor carrier are operated exclusively in intrastate commerce.

(2) The safety standards and rating criteria set forth in 49 CFR Part 385 shall be used by the Transportation Cabinet in issuing a safety rating.

Section 11. Random Alcohol Testing Rate. The 1998 random alcohol testing rate required by 49 CFR Part 382 shall be ten (10) percent.

Section 12. Material Incorporated by Reference. (1) The following material is incorporated by reference [as a part of this administrative regulation]:

- (a) "North American Uniform Out-Of-Service Criteria" revised April 1, 1998 by the Commercial Vehicle Safety Alliance;
- (b) 62 Fed. Reg. 16370, April 4, 1997;
- (c) 63 Fed. Reg. 62957, November 10, 1998;
- (d) 63 Fed. Reg. 65128, November 25, 1998; [62 Fed. Reg. 60042, November 8, 1997];
- (e) 63 Fed. Reg. 1383, January 9, 1998;
- (f) 63 Fed. Reg. 8330, February 18, 1998; and
- (g) "Motor Carrier Regulatory Relief and Safety Demonstration Project - OMC Internal Guidance", July 1997 edition issued by the Federal Highway Administration.

(2) This [The] material [incorporated by reference in this administrative regulation] may be reviewed at any of the weigh stations operated by the Transportation Cabinet. Further, the material may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, Frankfort, Kentucky 40622, Monday through Friday, [The office hours are] 8 a.m. through 4:30 p.m. [eastern time on week days. The telephone number is (502) 564-3276.]

ED LOGSDON, Commissioner  
JAMES C. CODELL, III, Secretary  
E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: January 19, 1999

FILED WITH LRC: January 19, 1999 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 30, 1999 at 10 a.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 March 23, 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 March 23, 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 March 30, 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: 30,000 motor carriers operating in Kentucky; 790,000 commercial trucks operating in Kentucky; and 118,000 commercial drivers licensed in Kentucky.

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

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

(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 changes in this administrative regulation should have no effect on compliance, reporting, and paperwork for the motor carrier industry.

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

(3) Effects on the promulgating administrative body: The Transportation Cabinet will continue to enforce the most recent safety regulations.

(a) Direct and indirect costs or savings:

1. First year: The costs will not change since only the focus of this safety management unit has changed.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The safety management unit will continue to complete the safety rating forms for intrastate motor carriers.

(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 Kentucky Road Fund as authorized in the Transportation Cabinet, Department of Vehicle Regulation Biennial Budget. A significant portion of these funds are made available to Kentucky as a grant from the Federal Motor Carrier Safety Program.

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

(a) Geographical area in which administrative regulation will be implemented: No anticipated economic impact.

(b) Kentucky: No anticipated economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The General Assembly provided statutory authority for the intrastate on-premise motor carrier safety management program several years ago. Now that the safety unit has been hired and trained, the alternative of not implementing the intrastate safety rating program was rejected. The Transportation Cabinet

adopted a random alcohol testing rate of 10%. The Federal Highway Administration published a notice of the 10% testing rate in the "Federal Register" on January 14, 1998. In order to not be more stringent than the federal mandate, the Transportation Cabinet also adopted the 10% testing rate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: With the added focus on the safety of intrastate motor carriers, highway safety on the less traveled highways which are traditionally used more by intrastate motor carriers should increase.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The highway safety improvements anticipated with the implementation of this program would not occur without the implementation of the intrastate on-site motor carrier inspection program.

(c) If detrimental effect would result, explain detrimental effect: The intrastate motor carriers are required to maintain the same level of safety as are the interstate motor carriers. However, we have been told that since these trucks do not routinely operate on the interstate highways and are therefore not subject to routine scrutiny at the weigh stations, some companies do not take as much care in the maintenance of the vehicles as is required. Implementing this administrative regulation change will aid in enforcing the safety requirements which have been in effect for years. Not implementing this change will allow the enforcement of the safety requirements relating to the intrastate segment of the trucking industry to continue to be spotty. This in turn, will not improve highway safety.

(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: The amendments to the federal motor carrier safety regulations also included many minor technical amendments to keep the regulations accurate and up to date.

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that more stringent safety requirements are imposed on the owners and operators of larger vehicles.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 390-399. These federal regulations extensively reference 49 CFR Part 383 relating to the commercial driver's license.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Part 40, Parts 382-383 and 390-397. To date the Federal Highway Administration has agreed that it is not necessary for Kentucky to adopt 49 CFR Part 398 relating to the transportation of migrant workers and 49 CFR Part 399 relating to motor carrier employee safety and health standards.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

(a) Commercial driver's license standards for the issuance, testing and withdrawal of a CDL;

(b) Establishes 0.04% BAC as the level at which an operator of a commercial vehicle is considered to be DUI;

(c) Establishes the maximum number of hours a commercial

driver may be on-duty and how he must keep a record of the amount of time he has worked;

(d) Establishes the qualifications for a commercial driver including his physical fitness, age, emotional condition, prior driving history and a drug testing program for interstate and intrastate motor carriers;

(e) Defines the safe method in which a commercial vehicle must be operated including stopping at railroad crossings; cease driving when ill or fatigued; not to use drugs or alcohol while operating a commercial vehicle; conformance with the speed limit; required use of turn signals; use of seat belts; use of emergency flashers when the commercial vehicle is stopped on the highway; use of lights on the commercial vehicle; duty in case of an accident; and fueling precautions;

(f) Defines the parts and accessories necessary for the safe operation of a commercial vehicle;

(g) Establishes a formal maintenance and repair schedule and records for the safe operation of a commercial vehicle and requires the maintenance and inspections to be performed by certified inspectors or mechanics; and

(h) Driving and parking rules while transporting hazardous materials.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. In fact, Kentucky, with reluctantly given federal approval, has imposed slightly less restrictive standards on intrastate drivers. For example, intrastate motor carriers have a minimal medical waiver program. However the medical waiver program for intrastate commercial drivers has been expanded. Unless operating a school bus or transporting hazardous materials, the intrastate Kentucky driver must only be 18 rather than 21, and farmers in daylight hours have less restrictive lighting requirements than the operators of other commercial vehicles.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The less stringent requirements for intrastate motor carriers were adopted to allow Kentucky companies to continue operating as they had been doing for years. The Transportation Cabinet was strongly petitioned by legislators and public interest groups to allow these exemptions.

#### 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. In most instances, the effect will be on the county road or public works department.

3. State the aspect or service of local government to which this administrative regulation relates. The local government drivers of the commercial vehicles above 26,000 pounds will have to be drug and alcohol tested on a preemployment, random, post-accident, and for cause basis.

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

Revenues (+/-): None

Expenditures (+/-): It will cost local governments approximately \$100 for each drug and alcohol test performed. The cost to each unit of local government depends on the number of commercial drivers it employs.

Other Explanation:

VOLUME 25, NUMBER 9 – MARCH 1, 1999

TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Vehicle Enforcement  
(Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-173, 175, 177, 178, 180

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts 130, 171-173, 175, 177, 178, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources (now Health Services), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) 49 CFR Part 107, effective October 1, 1998 [1997]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) 49 CFR Part 130 effective October 1, 1998 [1997]. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) 49 CFR Part 171 effective January 1, 1999 as amended by Final Rule 63 Fed. Reg. 57929, October 29, 1998 [October 1, 1997, as amended at 62 Fed. Reg. 65188, December 10, 1997]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) 49 CFR Part 172 effective October 1, 1998 [1997, as amended at 62 Fed. Reg. 66898, December 22, 1997, and 62 Fed. Reg. 66900, December 22, 1997]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) 49 CFR Part 173 effective October 1, 1998 [1997]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) 49 CFR Part 175 effective October 1, 1998 [1997, as amended at 62 Fed. Reg. 66898, December 22, 1997]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) 49 CFR Part 177, effective October 1, 1998 [1997, as amended at 62 Fed. Reg. 66898, December 22, 1997]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) 49 CFR Part 178 effective October 1, 1998 [1997]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) 49 CFR Part 180, effective October 1, 1998 [1997]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

Section 2. Interpretations of the Federal Hazardous Materials Transportation Regulations. The Question and Answer document by

the Research and Safety Programs Administration effective October 1, 1998 presents official interpretive guidance material for the Federal Hazardous Material Transportation Regulations which govern this administrative regulation. The document shall be used to interpret the provisions of this administrative regulation.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) The interpretations of the Federal Hazardous Materials Regulations effective October 1, 1998 are incorporated by reference; and [62 Fed. Reg. 65188, December 10, 1997;]

(b) 63 Fed. Reg. 57929, October 29, 1998. [62 Fed. Reg. 66898, December 22, 1997;

(c) 62 Fed. Reg. 66900, December 22, 1997.]

(2) This [The] material [incorporated by reference in this administrative regulation] may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, [-The office hours are] 8 a.m. through 4:30 p.m. [eastern time on] week days. [The telephone number is (502) 564-3276.]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: January 19, 1999

FILED WITH LRC: January 19, 1999 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 30, 1999 at 10 a.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 March 23, 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 March 23, 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 March 30, 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: All transporters of hazardous materials by highway or air in Kentucky.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There is no known cost of living or employment impact expected in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There is no known cost of doing business impact expected in Kentucky as a result of the changes to this administrative regulation.

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

1. First year following implementation: No change as a result of the changes to the administrative regulation.

2. Second and subsequent years: Same

(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: 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 Highway Administration funding through the Motor Carrier Safety Assistance Program 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: A public comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now how to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171-173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance program since its inception in

the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 107, 130, 171-173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

(a) The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;

(b) Establishes the emergency response information requirements for each transporter of a hazardous material;

(c) Defines the general requirements for shipping and packaging of each type of hazardous material;

(d) Defines the unacceptable hazardous material shipments on a highway;

(e) Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;

(f) Establishes shipping container specifications for the transportation of hazardous materials;

(g) Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and

(h) Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

#### TRANSPORTATION CABINET Department of Highways Division of Traffic (Amendment)

#### 603 KAR 4:035. Logo signs; placement along fully-controlled and partially-controlled access highways.

RELATES TO: KRS 177.0734 through 177.0738

STATUTORY AUTHORITY: KRS 177.0736, 177.0738

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0734 through 177.0738 require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available.

Section 1. Definitions. (1) "Business sign" means a separately attached sign mounted on the specific information panel to show the name, brand name or trademark of a qualified motorist service available near the interchange.

(2) "Clear zone" means the area between the edge of the driving-lane of a fully controlled or partially-controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway.

(3) "Combination specific information sign" means a specific information sign with more than one (1) of the services "gas", "food", "lodging", "camping", or "tourist activities" listed on it.

(4) "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 6:070 to administer the specific information signing program in Kentucky. The activities of the contractor shall include marketing; determination of business eligibility; maintenance, erection, and removal of the specific

information panels and installation and removal of business signs.

(5) "Contract year" means July 1 through the following June 30.

(6) "Cover" means place a protective shield over a business sign to prohibit viewing of the sign.

(7) "Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.

(8) "Fully controlled access highway" means as defined in KRS 177.0734(1).

(9) "Highway guide sign" means an official highway sign which is erected by the Department of Highways to give directions; to furnish advance notice of the approach to intersections or interchanges; to direct drivers into appropriate lanes; to identify routes, and directions on those routes; to show distances to destinations; to indicate access to general motorist services, rest, scenic and recreational areas; and to provide other information of value to the traveling public.

(10) "Interchange" means a junction of two (2) or more highways by a system of separate levels that permit traffic to pass from one to another without the crossing of traffic streams.

(11) "Intersection" means a junction of two (2) roads at the same grade level.

(12) "Logo" means as defined in KRS 177.0734(2).

(13) "Motorist service" means a place of business providing gas, food, lodging, tourist activities, or camping facilities or a combination thereof.

(14) "Ramp sign" means a sign that is placed along the ramp or at the ramp terminal for service facilities which have business logos displayed along the main roadway.

(15) "Single exit interchange" means a grade-separated crossing of roadways having one (1) mainline off-ramp per direction to provide access to the crossroad.

(16) "Specific information panel" means an official sign placed within the highway right-of-way with the words "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" or combinations thereof, and space for one (1) or more individual business signs which may be attached to the panel.

(17) "Tourist activities" means activities or locations that are natural phenomena; historic, cultural, scientific, educational and religious sites; or areas of natural beauty or naturally suited for outdoor recreation. These activities are deemed to be in the interest of the traveling public.

(18) "Trailblazing sign" means a sign similar to a ramp sign used on nonfully controlled access highways from which a service is available to indicate the direction to the service.

(19) "Partially-controlled access highway" means as defined in KRS 177.0734(4).

Section 2. General Provisions. (1) The Commissioner, Department of Highways, shall authorize the placement of specific information panels with business signs within the right-of-way of fully controlled and partially-controlled access highways.

(2) The Department of Highways shall control the erection and maintenance of panels and signs in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD) as incorporated by reference in 603 KAR 5:050 and with the provisions of this administrative regulation.

Section 3. Application and Contracts for Specific Information Signs. (1) Application for a business to place a logo relating to gas, food, lodging, camping, or tourist activities on a specific information panel shall be on "Application for Highway Logo Signing" forms prepared by Kentucky Logos, Inc. in March 1997.

(2) ~~The notice by the business to the Department of Highways' contractor of the number, type and placement of each logo sign shall be on "Logo Program Billing Information" forms prepared by Kentucky Logos, Inc. in January 1997.~~

(3) The contract to be entered into between the participating business and the Department of Highways' contractor shall be the "Highway Logo Program Agreement" form prepared by Kentucky Logos, Inc. as revised March 1997. Addenda to this form may be included in the contract where appropriate.

Section 4. Location and Erection of Specific Information Panels.

(1) A specific information panel bearing separately attached business signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific information panel shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

(3) A specific information panel shall not be erected if there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific information panel.

(4) A specific information panel shall not be erected at an interchange ~~or intersection~~ which intersects another limited access facility.

(5) A specific information panel shall not be erected at any interchange ~~or intersection~~ which does not have a convenient reentry in the same direction of travel.

(6)(a) Except as provided in subsection (9) of this section, there shall not be more than one (1) specific information panel erected in each direction of an interchange or intersection for the following:

1. "GAS";
2. "FOOD";
3. "LODGING";
4. "CAMPING"; or
5. "TOURIST ACTIVITIES".

(b) There shall not be more than four (4) specific informational panels erected in one (1) direction of travel for an interchange or intersection.

(c) In one (1) direction of travel, the successive panels shall be erected in the order of "TOURIST ACTIVITIES" or "CAMPING," "LODGING," "FOOD," and "GAS" unless a combination specific information sign is erected in accordance with Section 5(9) or (10) of this administrative regulation.

(d) At an interchange with insufficient space available in a single direction for four (4) specific information panels, or at an interchange with requests for all five (5) type services, service signing preference shall be in the order "gas," "food," "lodging," "camping," and "tourist activities," with "gas" having the highest priority.

(7) The specific information panels shall be located to:

- (a) Take advantage of natural terrain;
- (b) Have the least impact on the scenic environment; and
- (c) Avoid visual conflict with other signs within the highway right-of-way.

(8) Unprotected sign panel supports located within the clear zone shall be of a breakaway design.

(9)(a) If a specific information panel has at least two (2) unused display spaces, and if another of the specific information panels is full but there is an additional eligible business requesting logo space for that panel or service, the panel with the unused space may be converted to a combination specific information sign to include the additional service.

(b) A qualified motorist service logo displayed as a result of the creation of a combination specific service information sign in paragraph (a) of this subsection shall have a lower priority than a qualified motorist service of the type initially displayed on the panel.

Section 5. Interchange Specific Information Panel Composition.

(1) A specific information panel shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific information panel shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific information panel.

(7)(a) For single exit interchanges, a standard full-size specific information panel shall accommodate a maximum of six (6) business signs.



(b) If the number of businesses does not warrant a full-size panel, a half-size or combination panel may be used.

(8)(a) At a double exit interchange, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit.

(c) Each section shall accommodate a maximum of four (4) business signs for each service per exit, with the total number of signs not to exceed six (6).

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information panel may be omitted or a single exit interchange sign may be used.

(9) Business signs for two (2) types of services may be displayed on the same combination specific information sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange unless as set forth in Section 4(9) of this administrative regulation;

(b) Up to four (4) business signs may be displayed for a type of service in combination on a panel;

(c) If four (4) business signs are displayed for one (1) type of service on a combination specific information sign, more than two (2) business signs for the other type of service shall not be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective business signs.

(10) Business signs shall not be combined on a panel as described in subsection (9) of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) business signs for the two (2) types of services displayed in combination.

(11)(a) Except at an unnumbered exit, the exit number shall be displayed above the name of the type of service; and

(b) At an unnumbered exit, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the name of the type of service.

Section 6. Ramp Signs. (1) At a single-exit interchange, an exit ramp sign shall be installed except that the logo for a facility visible from the ramp terminal may be omitted.

(2) The business sign on a ramp sign shall be a duplicate of the corresponding logo installed along the main roadway, but reduced in size.

(3) A ramp sign for a service facility not visible from the ramp terminal may include the distance to the service facility. Direction to the service facility shall be indicated by an arrow.

(4) Ramp signing may be used on ramps at double-exit interchanges.

Section 7. Business Signs. (1) Each business sign shall have a legend and border. However, if the business identification symbol or trademark is used alone for a business sign, the border may be omitted.

(2) Each business sign on the specific information panel shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol, or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between business signs on specific information panels shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The required reflectivity, material composition, and adhesiveness of the business signs are set forth in the "LOGO PROGRAM SPECIFICATIONS" form 99-133 last revised by the Kentucky Transportation Cabinet in April 1991.

(8) If a business ceases to exist or is not in operation for thirty (30) days, the business sign shall be immediately covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. A business of this type shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.

(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the business sign.

(11)(a) With the exception of "Open 24 Hours" or "24 Hours," descriptive advertising words, phrases or slogans shall not be allowed on a business sign; i.e., "Joe's 24-Hour Market," "Free Coffee," "Credit Cards Accepted," etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a business sign; i.e., "hotel," "motel," "inn," "lodge," "restaurant," "cafe," "cafeteria," "diner," or others with a similar meaning.

(c) The word "Diesel" on a "GAS" business sign shall be permitted.

(12) If there is more than one (1) eligible business at an interchange with the same business symbol, brand, trademark or logo, more than one (1) business symbol, brand, trademark or logo with the same design may be placed on a specific information panel or on a ramp sign to indicate the distances to the individual businesses.

(13)(a) The Transportation Cabinet shall review and approve the design of a "TOURIST ACTIVITIES" business sign prior to its placement on a panel.

(b) The Transportation Cabinet shall not approve the design of a business sign which would be difficult to comprehend by the traveling public at highway speeds and under normal atmospheric conditions.

Section 8. Business Criteria, Eligibility, and Priority. (1) motorist service business located at, or conveniently accessible from, an interchange or intersection of a fully-controlled and partially-controlled access highway shall be eligible for placement of a business sign on a specific information panel if it qualifies under the following conditions:

(a) Each business shall offer written assurance that it conforms with all applicable laws and administrative regulations concerning the provision of public accommodations with regard to race, religion, color, sex, age, disability, or national origin.

(b) To qualify for a "GAS" business sign, a business shall:

1. Be in operation seven (7) days a week, and continuously open for sixteen (16) hours a day; and

2. Have motor vehicle fuel, oil, water, drinking water, restroom facilities, and a telephone available for use by the traveling public.

(c) To qualify for a "FOOD" business sign, a business shall:

1. Be licensed in accordance with KRS Chapter 219;

2. Be in continuous operation to serve three (3) meals a day, seven (7) days a week;

3. Have a seating capacity for a minimum of six (6) guests at sit-down, eat-in service; and

4. Have a telephone and restroom available for use by the traveling public.

(d) To qualify for a "LODGING" business sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219;

2. Have a minimum of two (2) rooms available for sleeping accommodations; and

3. Have a telephone available for use by the persons staying at the facility.

(e) To qualify for a "CAMPING" business sign, a facility shall:

1. Be licensed in accordance with KRS Chapter 219; and

2. Have a minimum of ten (10) parking accommodations which have modern sanitary facilities and drinking water.

(f) To qualify for a "TOURIST ACTIVITIES" business sign, a facility shall:

1. Be an activity or location that is one (1) or more of the following:

a. Natural phenomena;

b. Historic site;

c. Cultural site;

d. Scientific site;

- e. Educational site;
- f. Religious site;
- g. Area of natural beauty; or
- h. Area naturally suited for outdoor recreation.
- 2. Maintain regular hours for that type of establishment;
- 3. Be licensed in accordance with KRS Chapter 219, if applicable;
- 4. Have restroom facilities available for use by the traveling public;
- 5. Have drinking water available for the traveling public;
- 6. Have an on-premise or nearby public telephone available for use by the traveling public; and
- 7. Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.

(2)(a) The eligible business making application for a logo of a specific service which is located nearest to the interchange or intersection shall receive first priority in the selection process.

(b) Subsequent proximities to the interchange or intersection shall establish subsequent priorities.

(c) A business further than fifteen (15) miles (24.15 kilometers) from the interchange shall not be eligible to qualify for placement of a business sign. However, any business at a distance greater than fifteen (15) miles (24.15 kilometers) from the interchange with a business sign in place on January 1, 1994, may continue to display the business sign until the business fails to meet another criterion of this administrative regulation or is bumped pursuant to Section 9 of this administrative regulation.

(3)(a) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period.

(b) Distance from the interchange shall only be considered in determining priority after the business hours for a qualifying food business have been considered.

(4) A business with an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a business sign until the violation has been removed.

(5) A business with an advertisement on an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a business sign until the violation has been removed.

(6) An activity which is identified at an interchange by a highway guide sign pursuant to Chapter 2F of the "Manual on Uniform Traffic Control Devices" may also be identified with a logo, but shall have a lower priority for selection than any other eligible business with the same activity.

(7) A business offering more than one (1) motorist service shall not be eligible to display more than one (1) business sign with the same logo at an interchange or intersection unless no other eligible business has applied for use of the available space on the second specific information panel.

Section 9. Bumping. (1) An eligible business with a higher priority, pursuant to Section 8 of this administrative regulation, shall be permitted to display its sign at the beginning of the next contract year, in the place of a currently displayed, lower priority business if:

- (a) The information panel is fully utilized; and
- (b) It files an application by April 1;

(2) The business with the lowest priority shall have its business sign removed at the end of the current contract year.

Section 10. Fees. (1) The qualifying business shall pay to the department's contractor an annual fee of \$600, in advance, for each business sign placed on the fully controlled access highway for gas, food, and lodging and \$300 for camping and tourist activities.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the business sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The yearly renewal fee and application for renewal shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee guarantees that the business sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of its agreement with the Department of Highways' contractor.

(2) If a sign for a business is removed or covered for any reason, a fee of \$100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(3) The qualifying business shall be responsible for damage to its business sign caused by an act of vandalism or natural causes requiring repair or replacement of a business sign.

(4) A business sign shall provide a new or renovated business sign if the displayed sign:

- (a) Would misinform the traveling public; or
- (b) Is unsightly, badly faded, or in a state of dilapidation.

Section 11. Trailblazing Signs For Campgrounds. (1) Only those campgrounds within fifteen (15) miles (24.15 kilometers) of the centerline of a fully controlled access highway shall be eligible for new trailblazing signs.

(2) Only one (1) specific service trailblazing sign shall be erected for each business with a logo. This sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the business is visible from a point on the fully controlled access highway within 300 feet (91.5 meters) prior to intersection.

Section 12. Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled or partially-controlled access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service.

Section 13. Business Sign Contract. (1)(a) A Highway Logo Program Agreement between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a business sign.

(b) Each business sign and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating business shall be cause for the revocation of a business sign contract.

(d) If the contract is revoked for cause, the prepaid fees for a contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a contract, business, or business sign does not comply with the requirements of this administrative regulation, the Department of Highways' contractor shall notify the business in writing of the violation.

(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

(4) If, in a single contract year, a business has been issued a notice pursuant to subsection (2) of this section and is again in non-compliance with this administrative regulation, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

Section 14. Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways may grant an exemption to a business from the necessity of complying with a requirement set forth in this administrative regulation provided:

(a) It is determined by the commissioner that the exemption is in the public interest;

(b) The business conforms to the Federal Highway Administration standards for specific information signs; and

(c) That a business which conforms to all the requirements set forth in this administrative regulation shall be given a preference over

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a business not conforming to all of the requirements in qualifying for placement of a business sign on a specific information panel.

(2) An appeal of the denial of a request for an exemption by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 16 of this administrative regulation.

**Section 15. Encroachment Permits.** The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new specific information panel proposed to be erected, modified, or removed from state-owned right-of-way.

**Section 16. Appeal of Department of Highways Action.** (1) A business or person aggrieved by the action taken by the Department of Highways or its contractor in administering this administrative regulation may request a formal hearing before the Commissioner of the Department of Highways.

(2) The request for the formal hearing shall:

(a) Be filed in writing with the Commissioner, Department of Highways, 501 High Street, Frankfort, Kentucky 40622; and

(b) Set forth the nature of the complaint and the grounds for the appeal.

(3)(a) Upon receipt of a request for a hearing, the general counsel of the Transportation Cabinet shall assign the matter to a hearing examiner.

(b) The hearing officer shall issue his recommended order to the Commissioner of the Department of Highways.

(c) The Commissioner of the Department of Highways shall issue the final order of the department in this matter.

(4) A party aggrieved by the final order of the Department of Highways may appeal pursuant to the provisions of KRS 13B.140.

**Section 17. Material Incorporated by Reference.** (1) The following material is incorporated by reference as part of this administrative regulation:

(a) "Application for Highway Logo Signing" forms prepared by Kentucky Logos, Inc. in March 1997;

(b) ~~["Logo Program Billing Information" forms prepared by Kentucky Logos, Inc. in January 1997;~~

(c) ~~["Highway Logo Program Agreement" form prepared by Kentucky Logos, Inc. in March 1997; and~~

(c) ~~[(d)] "Logo Program Specifications" form 99-133 last revised by the Kentucky Transportation Cabinet in April 1991.~~

(2) The material incorporated by reference may be viewed, copied, or obtained from the Kentucky Logos, Inc., Suite 6, State National Bank Building, 305 Ann Street, Frankfort, Kentucky 40601. The telephone number is 1-800-469-5646 or (502) 227-0802. The fax number is (502) 227-7286. The forms may also be viewed, copied, or obtained from the Transportation Cabinet, Department of Highways, Division of Traffic [Permits Branch], 501 High Street, [Mail Code 11-2], Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Executive Director

APPROVED BY AGENCY: January 19, 1999

FILED WITH LRC: January 19, 1999 at noon

**PUBLIC HEARING:** A public comment hearing on this administrative regulation will be held on March 23, 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 March 16, 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 March 16, 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 March 23, 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: All travelers using Kentucky's interstate highways and parkways as well as over 1000 businesses which are eligible to and choose to purchase a logo sign.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no change in the cost of living. However, businesses which are able to purchase logo space as a result of this administrative regulation are likely to experience growth and therefore may need to hire an additional employee or two.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The amendment to the administrative regulation will make more logo space available in Kentucky. The businesses which are able to purchase the logo space will do so voluntarily. In most instances, the erection of a logo on a limited access highway increases the activity at the specific 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 change.

2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Slight increase in the revenue anticipated to be collected from signs erected on partially controlled access highways.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: Kentucky is expanding the logo sign program to include partially controlled access highways across the state.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because both the Transportation and Tourism Cabinets want to expand the logo program to benefit business and provide a service to the traveling public.

(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? Yes. Tiering is applied by allowing Logo Signs only on fully and partially controlled access highways.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices". Logo signs are included in the Manual. However, the primary requirement beyond limiting the placement, size, color and services listed, is that each state choosing to have a logo sign program, have its policies specifically set forth and submitted to the Federal Highway Administration. This administrative regulation accomplishes the federal requirement.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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

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

#### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Learning Programs Development (Amendment)

704 KAR 3:410. Preschool education program for four (4) year old children.

RELATES TO: 156.160, 157.3175

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.3175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 authorizes the Kentucky [State] Board of [for-Elementary-and-Secondary] Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance, [; and] KRS 157.3175 authorizes preschool education programs for "at risk" four (4) year old children and authorizes that administrative regulations be promulgated to establish eligibility criteria, program guidelines, and standards for personnel. This administrative regulation sets forth the criteria for the preschool education program for "at risk" four (4) year old children, including procedures for a grant allocation system, eligibility criteria for children to be served, guidelines for program operation, and standards for personnel.

Section 1. Definitions. (1) ~~[Children eligible for enrollment in the preschool program shall include children who are:~~

~~(a) Residents of the district;~~

~~(b) Four (4) years old by October 1 of the school year; and~~

~~(c) Approved for free lunch based on federal free lunch criteria as of the child's initial day of attendance in preschool. Once free lunch eligibility has been approved, the child remains eligible for enrollment in the preschool program for the remainder of the school year.~~

~~(2) Resident children who are four (4) years old by October 1 but who are not eligible for the free lunch program may be served if space is available.~~

~~(3) The following definitions apply to this administrative regulation:~~

~~(a) "Developmentally appropriate preschool program" means a program as defined by KRS 157.3175(2);~~

~~(b) "Day care" means a program which is designed to supplement but not substitute for the parent's responsibility for the child's protection, development and supervision, when it is necessary or desirable for the parent or child to be out of the home for all or part of the day or night.~~

~~(2) "Developmentally appropriate preschool program" means a program as defined by KRS 157.3175(2).~~

~~[(c) "Screening" means a systematic process for determining which children from the general population may need further evaluation in a particular area.]~~

~~(3) [(d)] "Double session" means a variation of the program that operates with one (1) teacher who works with a group of children in a morning session and a different group of children in the afternoon session.~~

~~(4) "Screening" means a systematic process for determining which children from the general population may need further evaluation in a particular area.~~

Section 2. Eligibility. (1) Children eligible for enrollment in the preschool program shall include children who are:

(a) Residents of the district;

(b) Four (4) years old by October 1 of the school year; and

(c) Approved for free lunch based on federal free lunch criteria in effect as of the child's initial day of attendance in preschool. Preschool eligibility may be determined up to four (4) months prior to the start of school. Once free lunch eligibility has been approved, the child shall remain eligible for enrollment in the preschool program for the remainder of the school year.

(2) Resident children who are four (4) years old by October 1 but who are not eligible for the free lunch program may be served if space is available.

Section 3. [Section-2:] Grant Allocation System. (1) Local school districts shall submit proposals to the Kentucky Department of Education to operate or oversee the operation of developmentally appropriate preschool education programs for eligible children. Each proposal shall include [at-a-minimum] the requirements set forth in KRS 157.3175(5).

(2) The chief state school officer shall [receive-and] review proposals from local school districts for the preschool program for eligible children. Programs shall be implemented only on the basis of an approved preschool proposal.

(3) In developing the proposal for the program, the district shall work with existing preschool programs to avoid duplication of programs and services to the same children.

(4) The proposal may include activities to implement new services to be operated by the district, enhance existing preschool services, contract for services, or any combination of these [the-above] strategies which will enable the district to assure that a developmentally appropriate program is available for each eligible child.

(5) Funding for districts shall be based on the preschool grant allocation system established in 702 KAR 3:250.

Section 4. [3:] Interagency Agreements. (1) A [Any] preschool facility or service [facilities-or-services] provided by a local school district, either directly or by contract or cooperative agreement with another provider, shall meet the requirements of this administrative regulation and all other applicable school laws and administrative regulations.

(2) A contract [Contracts] or cooperative agreement [agreements] for operating the preschool program may be negotiated with another school district, another public agency, private school or preschool program. A [All] nonpublic school program [programs] providing preschool services shall be approved for that purpose by the Kentucky [State] Board of [for-Elementary-and-Secondary] Education.

(3) A contract [All-contracts] and cooperative agreement [agreements] shall be in writing and shall include at a minimum the contents set forth in KRS 65.250.

(4) State preschool funds may be used in private programs only if a signed contract or cooperative agreement is on file in the district which documents that:

(a) The program is separately incorporated from any religious institution;

(b) The program maintains a nonsectarian board of directors;

(c) All proceeds and debts are the property of that corporation;

(d) The program pays only reasonable rent; and

(e) No part of the program's curriculum is religious in nature.

Section 5. [4:] Enrollment. (1) Enrollment of children in the preschool program shall be [is] at the discretion of the parent or legal guardian. Each local school district shall establish and maintain an active recruitment process which systematically assures enrollment of eligible children. This process shall be outlined in a written plan which includes procedures for:

- (a) Notification of the right to participate, presented in the parent's primary language or natural mode of communication;
- (b) Identification of all eligible children regardless of race, sex, creed, color, national origin or handicapping condition;
- (c) Written documentation to demonstrate that emphasis has been given to recruiting those eligible children not currently served by any preschool program; and
- (d) Contact to agencies and programs serving local preschool children or their families to encourage participation in the recruitment process, taking into account the demographic makeup of the community and the needs of the children and their families.

(2) Prior to attendance [enrollment], each child shall have on file [at a minimum]:

- (a) A copy of a legal birth certificate as required by KRS 156.495;
- (b) A Kentucky Certificate of Immunization as required by KRS 214.034;
- (c) A medical examination meeting requirements of 704 KAR 4:020 conducted within six (6) months prior to entry into the school program [Social Security number]; and
- (d) A completed application form for the National School Lunch Program.

(3) An [All] educational record [records] shall be kept confidential according to the requirements of the Family Education Rights and Privacy Act regulations, 34 CFR Part 99.

(4) Daily attendance records shall be maintained and submitted through the district's standard attendance reports or an approved, verifiable alternative method. A parent [Parents] or legal guardian [guardians] shall be contacted with respect to an enrolled child whose participation in the program is irregular or who has been absent for four (4) consecutive program days.

Section 6. [5:] Program Operation. (1) The local school district may select any of the following program options:

- (a) Standard half-day, five (5) day a week program (single session only);
- (b) Half-day, four (4) day a week program in single or double session, with the fifth day for services to children and their families, such as home visits, special experiences for children, parent training, or coordination of medical or social services; or
- (c) Locally-designed programs approved by the chief state school officer.
- (2) If a double session program is utilized, the following provisions shall be made:
  - (a) Time shall be allotted prior to each session to allow staff to prepare for the session as well as give individual attention to children entering and leaving the program;
  - (b) Adequate break time shall be provided for staff during the course of the day;
  - (c) Staff assignments shall provide time for parent involvement activities and coordination of services described in Section 6 [5](5) through (8) of this administrative regulation; and
  - (d) Maximum number of children assigned to one (1) lead teacher shall be limited to the guidelines in Section 7 [6](4) of this administrative regulation.

(3) The hours of operation of the half-day program may vary but shall provide a minimum of two and one-half (2 1/2) hours of classroom time per day, which does not include the time required to provide breakfast or lunch. The program shall provide direct services for children or parents for the minimum number of teaching days set by the local school district for the school year.

(4) Maximum group size for eligible children shall be [is] twenty (20) children. The staff ratio in the classroom shall consist of one (1) adult for a maximum of ten (10) children pursuant to staff qualifications described in Section 7 [6] of this administrative regulation. Consideration shall be given to increasing the number of staff or decreasing the group size depending upon the needs of the children, including [but not limited to] the needs of children with disabilities [handicapping

conditions]. An adult shall never be left alone with more than ten (10) preschool children, and the local school district shall have a written policy for assistance from another adult whenever only one (1) adult is responsible for a group of children.

(5) The program shall allow for active parental involvement. Consideration of the different types of family structures, such as the single parent, foster parent and extended family, shall be made when planning activities. At least the following opportunities shall be made available to parents:

- (a) Participation in classroom and other preschool activities as volunteers or observers;
- (b) Parent training, education or other activities which the parent has helped to develop;
- (c) Working with the child in cooperation with preschool staff;
- (d) Meeting with preschool and other appropriate staff regarding the child's individual needs and progress or other two (2) way communication systems developed with the parent;
- (e) Periodic home visits by preschool staff, with a minimum of two (2) visits per child per year and with the first visit conducted within sixty (60) school days after enrollment.

(6) [In order] To meet the comprehensive needs of children, the program shall collaborate with medical, health, mental health and social service agencies. Information about community services, resources and facilities shall be made available to parents. Program staff shall assist parents in coordinating interagency services for children and families.

(7) A [Each] local school district shall assure through coordination with existing medical and social services that all children participating in the program receive child development and health screening.

(a) Health screening shall include [at a minimum] growth assessment, vision and hearing screening, assessment of current immunization status, and general health status.

(b) Child development screening shall include [at a minimum] screening of gross and fine motor skills, cognitive functioning, communication skills, self-help skills and social-emotional skills.

(c) Child development screening may be accomplished through various means, including [but not limited to] systematic observation in the classroom or other natural settings. Screening results shall not be used for determining placement or planning the curriculum.

(d) Child development and health screening shall be completed within thirty (30) school days of enrollment by personnel trained in the procedures utilized.

(e) Contact shall be made with the parent or legal guardian if screening results indicate a need for further assessment by a specialist, follow-up, or referral for special education and related services or other appropriate resources.

(8) A [Each] local school shall assist the parent or legal guardian as needed through cooperation with existing medical and social services to obtain the physical examination required of all children prior to school [kindergarten] enrollment.

(9) The preschool program shall include developmentally appropriate experiences in cognitive, communication, social, physical, and emotional development as well as creative expression. The preschool program shall assist young children with their intrapersonal and interpersonal skills and in maximizing self-management and independence. The program shall include appropriate learning activities and teaching techniques in accordance with each child's level of comprehension and maturation.

(10) The program shall provide a supportive social and emotional climate which:

- (a) Enhances children's understanding of themselves as individuals, and in relation to others, by providing for individual, small group, and large group activities; and
- (b) Gives children many opportunities for success through developmentally appropriate program activities; and
- (c) Provides an environment of acceptance which helps each child develop a positive self-concept, enhance his or her individual strengths, build ethnic pride, and facilitate social relationships.

(11) The program shall promote the development of intellectual skills by:

- (a) Encouraging children to solve problems, initiate activities, explore, experiment, question, and gain mastery through learning by doing (concrete experiential learning);

(b) Promoting language understanding and use in an atmosphere that encourages each communication among children and between children and adults;

(c) Utilizing a curriculum in which a variety of skills are integrated into activities targeted toward the interests of children;

(d) Encouraging children to organize their experiences and understand concepts;

(e) Utilizing a language experience approach to introduce printed materials according to the individual developmental level of the child; and

(f) Providing a daily balance of activities in the following dimensions:

1. Indoor/outdoor;
2. Quiet/active;
3. Individual/group;
4. Large/small group;
5. Child/staff initiated; and
6. Structured/spontaneous.

(12) The program shall promote physical growth by:

(a) Providing adequate indoor and outdoor space pursuant to Section 8 [7] of this administrative regulation;

(b) Providing developmentally appropriate materials and equipment, in sufficient quantity to allow choice, and providing supervised time for children to use large and small muscles to increase their physical skills;

(c) Providing appropriate guidance while children use equipment and materials which promote children's physical growth;

(d) Providing breakfast or lunch to each eligible child, pursuant to the requirements of the National School Breakfast Program/National School Lunch Program;

(e) Providing developmentally appropriate information regarding nutrition, involving children as feasible in the planning and preparation of snacks and meals, and providing appropriate supervision during meals to develop language, understanding and problem-solving skills; and

(f) Providing developmentally appropriate information about health as an integral part of program activities.

(13) The program shall promote social skills and social interactions by:

(a) Providing positive guidance with consistent, clear rules presented in developmentally appropriate ways; and

(b) Providing positive adult and peer role models, focusing on the level of the child.

(14) The program shall be individualized to meet the special needs of children by:

(a) Having a curriculum which is relevant and reflective of the needs of the population served (such as, bilingual/bicultural, multicultural, rural, urban, or migrant);

(b) Having staff and program resources reflective of the racial and ethnic population of the children in the program; and

(c) Providing adaptations for children with special needs.

(15) The program shall utilize developmentally appropriate materials and equipment as follows:

(a) Furniture, equipment and materials shall be of sufficient quantity, quality and variety to meet the needs of the children and shall be arranged in such a way as to facilitate learning, assure a balanced program of spontaneous and structured activities, and encourage self-reliance in the children. Test sheets, workbooks and ditto sheets shall not be used as they are not developmentally appropriate for [use with] preschool children.

(b) The equipment and materials shall be:

1. Consistent with the specific educational objectives of the local program;

2. Consistent with the cultural and ethnic background of the children;

3. Geared to the age, ability, and developmental needs of the children;

4. Safe, durable, and kept in good condition;

5. Stored in a safe and orderly fashion when not in use;

6. Accessible, attractive, and inviting to the children; and

7. Designed to provide a variety of learning experiences and to encourage experimentation and exploration.

(16) Space shall be arranged so that children may work individually,

together in small groups, and in a large group. Space shall be arranged to provide clear pathways for children to move from one area to another.

(17) Centers or areas in the classroom shall include space for such activities as art, blockbuilding, cooking, gross motor, house-keeping/dramatic play, language arts/library, manipulative materials, math/problem solving, multimedia, music, science/social studies, and wood working.

(18) Assessment of children within the preschool program shall be for the purpose of planning activities and evaluating progress, and shall not be used to restrict entry into or exit from the preschool program. The program shall include developmentally appropriate assessment of children which:

(a) Provides for ongoing observation, recording and evaluation of each child's growth and development for the purpose of planning activities to suit individual needs;

(b) Is accomplished by observation or activity with the child in familiar structured and informal situations;

(c) Includes information from parents;

(d) Is used to inform parents on a regular basis regarding the child's progress in physical, intellectual, communication, social, emotional, intrapersonal, and interpersonal skills and development; and

(e) considers the cultural background of the child.

(19) Children shall not be retained in the preschool program.

(20) The preschool program shall provide developmentally appropriate instruction to children regarding safety procedures, such as riding the bus and emergency procedures.

(21) The preschool program shall utilize the local school district's current safety policies regarding accident records, medical emergency plans, fire and disaster plans, first aid, dispensing of medications, and reporting of child abuse and neglect, with modification as needed to accommodate young children.

Section 7. [6.] Personnel. (1) Instructional staff in the preschool shall include~~[-but not be limited to,] the following types of personnel:~~

(a) A lead teacher who meets the following ~~[interim]~~ qualifications:

1. Beginning with the 2002-2003 school year, one (1) who holds a certificate or statement of eligibility for a certificate in interdisciplinary early childhood education, or has been exempted by the Kentucky Education Professional Standards Board from additional certification in order to continue teaching in an early childhood position. A school district may request approval from the Department of Education to use as the instructional lead one (1) who meets the preschool associate teacher qualifications and who has been employed prior to school year 2004-2005 to perform paraprofessional instructional duties pursuant to 704 KAR 3:420; or

2. Prior to the 2002-2003 school year, if one (1) meeting qualifications listed in subparagraph 1 of this paragraph is not available, [until superseded by the Education Professional Standards Board. This] interim approval shall be issued in accordance with the following criteria:

[1. Level I approved preschool instructional personnel include:]

a. Personnel with a baccalaureate or higher degree in child development, early childhood education, or early childhood special education;

b. Personnel with kindergarten certification;

c. Personnel with special education certification valid for primary grades; ~~[and]~~

d. Personnel with a master's degree, bachelor's degree or licensure in communication disorders, speech and language, or speech pathology;

e. If one (1) meeting qualifications listed in subparagraph 1 of this paragraph or clauses a through d of this subparagraph is [2. If Level I personnel are] not available, a [the] local board may develop a training plan in early childhood education and request approval for [Level II personnel. These individuals shall complete training activities in early childhood education as specified by the Kentucky Department of Education. Level II approved preschool instructional personnel include] individuals with a minimum of one (1) year of early childhood training or experience and a degree in family studies, social work, psychology, nursing, or other related area, including education if not specified under subparagraph 1 of this paragraph or clauses a through d of this subparagraph; and



f. A [Level I:

3.) local board [boards] may also request approval for one (1) who meets the preschool associate teacher qualifications to perform para-professional instructional duties pursuant to 704 KAR 3:420; and [Level III personnel. These individuals shall:

a. ~~Be supervised by Level I preschool instructional personnel or by local school district staff currently directing special education or kindergarten programs; and~~

b. ~~Complete training activities in early childhood education as specified by the Kentucky Department of Education. Level III approved preschool instructional personnel include individuals with the following:~~

- (i) ~~An associate (AA) degree in early childhood;~~
- (ii) ~~A child development associate credential (CDA);~~
- (iii) ~~Completion of a vocational child care worker training program;~~

or

(iv) ~~A high school diploma or GED and minimum one (1) year early childhood training or experience.]~~

(b) A teaching assistant who is [associate, such being] an instructional aide [meeting the qualifications required under 704 KAR 15:080].

(2) A [Every] preschool classroom shall have at least one (1) lead teacher. A teaching assistant [associates] or other professional personnel shall be used in addition to the lead teacher to provide an appropriate adult-child ratio in each classroom, pursuant to Section 6 [5](5) of this administrative regulation. A [Each] lead teacher shall provide instructional services to a maximum of twenty (20) children, within the parameters of subsection (4) of this section.

(3) A [The] lead teacher shall be [is] responsible for organizing the classroom, providing a developmentally appropriate curriculum, and supervising and assigning the activities of teaching assistants [associates], student helpers, and other noncertified staff in the preschool class. A [The] lead teacher shall [is] also be responsible for at least the following parental activities, described in Section 6 [5](5) of this administrative regulation:

- (a) Parent participation in the classroom;
- (b) Parent-teacher conferences; and
- (c) A minimum of two (2) home visits per child per year.

(4) A [The] local school district shall assign professional staff, including [but not limited to] the lead teacher, to conduct parental involvement activities and coordination with health and social services, pursuant to Section 6 [5](5) through (8) of this administrative regulation. A lead teacher [teachers] who has [have] been assigned coordination responsibilities related to parent involvement activities and health and social services and who operates [operate] double sessions shall be [are] considered to be going beyond responsibilities set out in subsection (3) of this section and shall provide services to a maximum of thirty-four (34) children total, within the guidelines for the adult-child ratio per classroom in Section 6 [5](5) of this administrative regulation.

(5) A lead teacher [Lead teachers] shall participate in the required number of professional development days applicable to certified personnel in the local school district. A teaching assistant [Teaching associates] shall participate annually in a minimum of eighteen (18) hours of professional development. Professional development activities shall be related to the nature and needs of young children and their families, including those with special needs. Records shall be kept for all personnel documenting [attendance and] participation in professional development training.

(6) At all times, a [the] program shall have a staff person on the premises who is trained in emergency first aid and cardiopulmonary resuscitation (CPR).

Section 8. [7-] Facilities and Transportation. (1) A [The] preschool program shall operate in compliance with administrative regulations promulgated by the Kentucky [State] Board of [Elementary and Secondary] Education in areas including, [but not limited to,] facilities, safety, health, and transportation.

(2) If a [the] program is extended to provide child care before or after the standard operating hours of the preschool program, [then] that portion of the program shall be [is] considered day care and shall meet the standards for day care facilities promulgated by the Cabinet for Families and Children [Human Resources] and set forth in 905 KAR Chapter 2 [2:040].

(3) A [The] local school district may provide transportation to preschool children. If a local school district transports preschool children, [such] services shall be operated in conformance with administrative regulations pertaining to the transportation of school children, as set forth in 702 KAR Chapter 5.

(4) Regardless of whether transportation is provided, a [the] local school district shall make provisions for safe arrival and departure of all children, with a procedure for ensuring that preschool children are released only to the parent or person(s) authorized by the parent.

Section 9. [8-] Program Evaluation. (1) At least annually, parents, staff and other professionals shall be involved in evaluating the local preschool program's effectiveness in meeting the needs of participating children.

(2) The program evaluation shall address [at a minimum]:

- (a) Rate of participation by eligible children;
- (b) Parental satisfaction with services provided;
- (c) Success of participating children as they complete the preschool program and progress through the primary school program; and
- (d) Adherence to state administrative regulations on the subject area.

(3) A [The] local school district shall provide data on the preschool program [according to guidelines determined by the chief state school officer] for evaluating the effectiveness of the statewide preschool program.

[4-] Monitoring of the preschool program shall occur in conjunction with the monitoring of the local school district's educational program; as deemed necessary by the State Board for Elementary and Secondary Education.]

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Debbie Schumacher

(1) Type and number of entities affected: 176 school districts.

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

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

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

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

1. First year following implementation: Local school districts will have reduced paperwork and administrative costs due to changes in enrollment and eligibility requirements. Changes in personnel re-

quirements may affect professional development costs only for new teachers without proper credentials.

2. Second and subsequent years: Same through 2004-2005. May require more certified rather than paraprofessional staff after 2004-2005 to meet requirement that all teachers be certified.

(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: State general funds.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented: Possible costs of professional development for new teachers without proper credentials.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is to require all certified teachers immediately. Alternative was rejected to allow time for districts to adjust and plan for changes in personnel assignment and in budget if not currently using certified teachers.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. This administrative regulation applies equally to all public preschool programs for 4 year old children.

# **EDUCATION, ARTS, AND HUMANITIES CABINET** **Education Professional Standards Board** **(Amendment)**

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

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

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

Section 1. Definition. "Qualified teacher" means a teacher who holds an interdisciplinary early childhood education certificate or who has received an approval identified in 704 KAR 20:084, Section 5.

Section 2. If a qualified teacher is not available for the position as teacher of children birth to primary age, as attested by the local school superintendent, the superintendent, on behalf of the local board of education, may request a one (1) year probationary recruitment certi-

cate be issued as provided in this administrative regulation.

(1) A prerequisite for a one (1) year probationary certificate for teaching children, birth to primary age, shall be:

(a) A certificate or statement of eligibility in kindergarten or elementary special education; or

(b) A baccalaureate or advanced degree in early childhood education, early childhood special education, or child development; or

(c) Other certificate areas if the applicant has had early childhood experience and training.

(2) The applicant shall have:

(a) Enrolled in a preparation program in interdisciplinary early childhood education; and

(b) Completed a minimum of nine (9) semester hours of credit in the development of children below primary age or in special education.

(3) The applicant shall complete twelve (12) clock hours of training as required by the Division of Extended Learning [Preschool-Programs] prior to employment.

(4) The applicant shall complete an additional six (6) clock hours of training required by the Division of Extended Learning [Preschool Programs] within the first three (3) months of employment.

Section 3. The renewal of the one (1) year probationary certificate for teachers of children birth to primary age shall require recommendation by the approved preparation program that the candidate has made significant progress toward the completion of the interdisciplinary early childhood education certificate, as measured by the teaching standards established in 704 KAR 20:084.

Section 4. Upon recommendation of an approved teacher education institution, teaching experience performed in a full-time position requiring certification for teachers of children birth to primary age shall be substituted for the student teaching requirement.

Section 5. An applicant holding a classroom teaching certificate who is recruited into a position for teachers of children birth to primary age under this administrative regulation shall complete the assessment requirements established in 704 KAR 20:084 for interdisciplinary early childhood education.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Office of Legal Services

APPROVED BY AGENCY: December 28, 1998

FILED WITH LRC: February 10, 1999 at 11 am.

PUBLIC HEARING: A public hearing on this administrative regulation will be held March 23, 1999, at 10 a.m. in the Local District Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 1999, five work days prior to hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

## **REGULATORY IMPACT ANALYSIS**

Contact Person: Janet Banta

(1) Type and number of entities affected: All applicants for the probationary interdisciplinary early childhood education certification are affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Greater employment potential.

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

administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The state needed more birth-primary teachers than the number with regular certificates available.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are the same for all applicants.

# EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

## 704 KAR 20:084. Interdisciplinary early childhood education, birth to primary.

RELATES TO: KRS 157.3175, 161.020, 161.030

STATUTORY AUTHORITY: KRS 161.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher and other professional school personnel hold a certificate of legal qualifications for his respective position to be issued upon completion of a program of preparation prescribed by the Education Professional Standards Board. Additionally, the statute requires a teacher education institution to be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. This administrative regulation establishes the professional certificate for interdisciplinary early childhood education, birth to primary; the teacher standards; and the standards for approval of a program leading to this certificate.

Section 1. Definitions. (1) "Culturally diverse" means the wide range of differences among individuals that result from cultural and ethnic backgrounds, socioeconomic status, gender, personality traits, physical abilities and disabilities, and the interaction of factors of variability.

(2) "Interdisciplinary" means a preparation program that includes child development, family studies, early childhood education, and early childhood special education.

(3) "Teacher performance standard" means a set of teaching and managing tasks that an early childhood educator shall be able to demonstrate in early childhood programs.

Section 2. (1) The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued to an applicant who has completed:

(a) A bachelor's degree and the approved program of preparation for this certificate as described in Sections 7, 8, and 9 of this administrative regulation at a teacher education institution approved by the Education Professional Standards Board;

(b) The approved written assessments as required by subsection (2) of this section; and

(c) One (1) year internship as required by subsection (4) of this section.

(2)(a) In order to satisfy the testing prerequisites for teacher certification as required by KRS 161.030, the applicant shall score at least the following minimum passing scores on the [tests identified below]:

1. The NTE Core Battery tests:

a. Communication skills, 646;

b. General knowledge, 643; and

c. Professional knowledge, 644; and

2. The Kentucky test of interdisciplinary early childhood, 150.

(b) The assessment [assessments] shall be waived for an out-of-state teacher who has two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program on at least a half-time basis and whose preparation corresponds to the interdisciplinary early childhood education outlined in this administrative regulation.

(3) The Education Professional Standards Board shall issue the one (1) year certificate for the beginning teacher internship as provided in KRS 161.030 upon applicant's confirmation of employment in a position teaching children from birth to entry into a primary program on at least a half-time basis in a school which meets the criteria identified in KRS 161.030.

(4)(a) The beginning teacher internship shall be waived for an out-of-state applicant who has completed two (2) or more years of successful experience in a position teaching children from birth to entry into the primary program.

(b) The beginning teacher internship shall be waived for an applicant who has completed two (2) or more years of successful experience in a position teaching children from birth to entry into a primary program on at least a half-time basis in Kentucky while holding one (1) of the following credentials:

1. Baccalaureate or higher degree in child development or early childhood education or early childhood special education;

2. Certification valid for kindergarten; or

3. Special education certification valid for primary grades.

Section 3. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

Section 4. The professional certificate for interdisciplinary early childhood education, birth to primary, shall be valid for teaching children from birth to entry into the primary program, including teaching children in kindergarten or another program for five (5) year old children if the program is operated separately from the primary program. A person holding this certificate shall serve as a primary developer and implementer of an individual program for children with and without disabilities including an individual education plan (IEP) and individual family service plan (IFSP) with consultation and support from a specialist according to the needs of the child.

Section 5. A teacher serving in a position identified in Section 4 of this administrative regulation as an early childhood teacher during the 1998-99, 1999-2000, 2000-2001, or 2001-2002 [1994-95, 1995-96, 1996-97, or 1997-98] school year in a district with an approved preschool program shall be eligible to continue serving in the same position without additional certification. Upon application to the Education Professional Standards Board, a teacher shall receive a letter certifying eligibility.

Section 6. A teacher preparation institution offering an approved program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall establish an assessment system to judge the performance of a candidate on the teacher performance standards identified for this certificate.

Section 7. Standards for Program of Preparation. In order to receive approval of the Education Professional Standards Board, a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall meet the following standards:

(1) The program shall be designed to prepare candidates to teach and manage tasks as identified in the teacher standards established in Section 9 of this administrative regulation;

(2) The program shall include a system of continuous assessment to evaluate a candidate's progress and level of attainment on the teacher standards. The assessments shall include performance on authentic teaching and managing tasks in settings that are inclusive of children across abilities and contexts. Candidates shall be evaluated by paper and pencil tests and authentic assessments of performance;

(3) The program of preparation shall ensure that candidates from culturally diverse backgrounds are recruited and retained in the program;

(4) The program of preparation shall provide the candidate with knowledge and experiences to perform teaching and managing tasks identified in the teacher standards with children from culturally diverse backgrounds; and

(5) Student teaching experiences shall be supervised by a teacher who has a letter certifying eligibility to continue teaching in an interdisciplinary early childhood position, or a teacher holding a master's degree with emphasis in early childhood and three (3) years of teaching experience.

Section 8. Application for Program Approval. (1) A teacher education institution which proposes to offer a program of preparation leading to the professional certificate for interdisciplinary early childhood education, birth to primary, shall make application for approval to the Education Professional Standards Board. The application for approval shall include a program description which includes the following:

(a) Program outcomes which include teacher standards for interdisciplinary early childhood education;

(b) Program components which provide a list of coursework, clinical and field experiences, and student teaching related to general education, interdisciplinary specialty studies, and professional studies;

(c) A list of faculty responsible for and involved with the conduct of the specific program and their qualifications;

(d) A description of student admission and retention policies and procedures that are specific to this program; and

(e) A description of the system of continuous assessment of teacher standards.

(2) An institution may receive interim program approval for a one (1) year period which may be extended for one (1) additional year while the institution develops the assessments required by Section 7(2) of this administrative regulation. At the end of the period of interim approval, the institution shall apply for full approval to the Education Professional Standards Board.

Section 9. Teacher Standards. (1) Teacher Standard I. The early childhood educator shall design and organize learning environments, experiences, and instruction that address the developmental needs of infants, toddlers, preschool children, and kindergarten children and goals established by KRS 158.6451. The early childhood educator shall develop plans for:

(a) Implementation in a classroom setting;

(b) Implementation in a home or other settings;

(c) Implementation by teaching assistants and other staff in a variety of settings; and

(d) Training teaching assistants, other staff, and parents.

These plans shall include individual family service plans (IFSP's), individual education programs (IEP's), and transition plans for children across disabilities developed in partnership with family members.

(2) Teacher Standard II. The early childhood educator shall create appropriate learning environments for infants, toddlers, preschool

children, and kindergarten children that are supportive of developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall provide developmental and learning activities in classroom and home settings, and in other settings, such as other preschools, child care programs, and hospitals. Within these settings, the learning context may include individual child activities, parent-child activities, small groups, and large groups. The early childhood educator shall create appropriate learning environments for children with diverse abilities including children with and without disabilities.

(3) Teacher Standard III. The early childhood educator shall introduce, implement, facilitate, and manage development and learning for infants, toddlers, preschool children, and kindergarten children to promote growth toward developmental needs of the age group and goals established by KRS 158.6451. The early childhood educator shall implement instruction in classroom and home settings, through itinerant services, and in other settings such as day care, other preschools, and hospitals. The early childhood educator shall implement instruction for young children with diverse abilities including children with and without disabilities.

(4) Teacher Standard IV. The early childhood educator shall assess children's cognitive, emotional, social, communicative, adaptive, and physical development; organize assessment information; and communicate the results appropriate to the purpose of the assessment. Assessment purposes shall include:

(a) Determining learning results;

(b) Developmental screening;

(c) Program planning;

(d) Eligibility for disability services;

(e) Program evaluation;

(f) Progress on IFSP's and IEP's; and

(g) Needs for transition to the next educational setting or program.

(5) Teacher Standard V. The early childhood educator shall reflect on and evaluate teaching and learning situations, learning environments, and programs for infants, toddlers, preschool children, kindergarten children, and their families. This shall include learning situations and programs that are provided in relation to an IFSP or an IEP and by the early childhood educator, a teaching assistant or other staff member, the family, or other caregiver.

(6) Teacher Standard VI. The early childhood educator shall collaborate and consult with the following to design, implement, and support learning programs for children:

(a) Staff in a team effort;

(b) Volunteers;

(c) Families and primary caregivers;

(d) Other educational, child care, health and social services providers in an interagency and interdisciplinary team; and

(e) Local, state, and federal agencies.

(7) Teacher Standard VII. The early childhood educator shall engage in self-evaluation of teaching and management skills and participate in professional development to improve performance. This shall include the following performance areas:

(a) Designing and planning developmental and learning activities;

(b) Creating learning environments;

(c) Implementing and managing activities;

(d) Assessing children's learning development;

(e) Evaluating learning situations and environmental programs; and

(f) Collaborating with colleagues, parents, and others.

(8) Teacher Standard VIII. The early childhood educator shall support and promote the self-sufficiency of families as they care for and provide safe, healthy, stimulating, and nurturing environments for young children.

ROSA WEAVER, Chair

ROBERT S. SHERMAN, Office of Legal Services

APPROVED BY AGENCY: December 28, 1998

FILED WITH LRC: February 10, 1999 at 11 am.

PUBLIC HEARING: A public hearing on this administrative regulation will be held March 23, 1999, at 10 a.m. in the Local District Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 16, 1999, five work days prior to hearing, of their

intent to attend. If no notification to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Susan Leib, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, FAX: (502) 573-1610.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Janet Banta

(1) Type and number of entities affected: All teachers who presently hold a position in an early childhood education setting and applicants for the interdisciplinary early childhood education certificate.

(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 amendment will allow more teachers to keep their present teaching position resulting in a positive impact on their income.

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The state needed more birth-primary teachers than the number with regular certificates available

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are the same for all applicants.

#### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Office of Learning Programs Development (Amendment)

**707 KAR 1:150. Preschool education program for children with disabilities.**

RELATES TO: KRS 156.160, 157.226, 34 CFR 99, 20 USC 1400-1420

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.226

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 authorizes the Kentucky [State] Board of [for Elementary and Secondary] Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, services and operational performance. [and] KRS 157.226 authorizes preschool education programs and related services for handicapped children who are three (3) or four (4) years of age or who become five (5) after October 1 of the current year and mandates that administrative regulations be promulgated related to the administration and supervision of programs, eligibility criteria, personnel requirements, and the use of funds. This administrative regulation implements that state board duty.

Section 1. Definitions. (1) "Preschool education" means programs which:

(a) Focus on the physical (e.g., motor development, self-help or [f] adaptive behavior), intellectual (e.g., cognition, communication), and social and emotional development of the child;

(b) Include appropriate student learning activities to assist the child with intrapersonal, interpersonal and socialization skills development; and

(c) Meet the unique needs of a child with disabilities.

(2) "Related services" means transportation and such developmental or other supportive services as are required to assist an eligible child to benefit from preschool education. Related services for preschool children include[~~but are not limited to~~], parent education and service coordination to assist the parent in coordinating services for the child with disabilities.

Section 2. Free Appropriate Preschool Education. (1) [~~Effective at the beginning of the 1991-92 school year~~] Each local school district shall make available a free appropriate preschool education and related services to all eligible children with disabilities.

(2) Children shall meet the following criteria to be eligible for this program:

(a) The child is a resident of the school district;

(b) The child is three (3) or four (4) years of age, or becomes five (5) years of age after October 1 of the current year; and

(c) The child has disabilities as identified under Sections 4 and 5 of this administrative regulation.

(3) Enrollment of eligible children shall be [is] at the discretion of the parent or legal guardian. Prior to attendance [enrollment], each child shall have on file [at a minimum]:

(a) A copy of a legal birth certificate as required by KRS 156.495;

(b) A Kentucky certificate of immunization as required by KRS 214.034; and

(c) A medical examination meeting requirements of 704 KAR 4:020 conducted within six (6) months prior to entry into the school program [Social Security number].

(4) State funding shall be provided to local school districts for serving eligible children and shall be based upon funding allocation procedures established by 702 KAR 3:250.

(5) Daily attendance records shall be maintained and submitted through the district's standard attendance reports or an approved, verifiable alternative method. Parents or legal guardians shall be contacted with respect to an enrolled child whose participation in the program is irregular or who has been absent for four (4) consecutive program days.

Section 3. Child Identification and Location. (1) A [The] local school district shall advise parents of eligible children of the availability

of services, pursuant to child location and identification requirements contained in 707 KAR Chapter 1 for children and youth with disabilities, and pursuant to preschool recruitment requirements contained in 704 KAR 3:410, Section 4.

(2) Referral procedures shall enable the individual education plan (IEP) to be developed and services initiated for eligible children, pursuant to timelines and procedures for IEP development and service initiation set forth in 707 KAR Chapter 1.

(3) For a child who has ~~[these children who have]~~ been referred to the school district prior to the child's third birthday, referral procedures shall:

(a) Include district collaboration in the development of the Individual Family Service Plan (IFSP) transition plan prepared by the early intervention agency if the child is receiving early intervention services; and

(b) Allow initiation of preschool services upon the third birthday.

Section 4. Due Process Procedures. (1) An eligible child ~~[Eligible children]~~ shall be afforded all the rights and protections afforded to children with disabilities, pursuant to 707 KAR Chapter 1.

(2) An ~~[The]~~ Admissions and Release Committee shall include among its membership representative(s) from agencies providing early childhood or intervention services to the child or family which relate to the child's preschool education needs.

(3) An ~~[The]~~ Admissions and Release Committee shall assign a specific person(s) to report to parent(s) or legal guardian on at least a semiannual basis regarding the child's progress toward and mastery of the objectives on the IEP.

(4) A district ~~[Districts]~~ shall have the option to develop local policies and procedures on alternate membership of administrative admissions and release committees for preschool children who are not attending a preschool program directly operated by the district, within the requirements of 20 USC 1400 to 1420.

Section 5. Evaluation. (1) Multidisciplinary evaluations for determining the eligibility of a preschool child with suspected disabilities shall include:

(a) Current information on hearing, vision and health to determine if there is a need for further assessment;

(b) Developmental and social history, including any health or medical concerns;

(c) At a minimum, information across all areas of development sufficient to determine if there is need for further assessment in any areas: cognition, communication, motor development, social-emotional development, or self-help or ~~[f]~~ adaptive behavior;

(d) Norm-referenced and informal assessment of basic skills in any area of suspected delay: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior;

(e) Written behavioral observations in natural settings and familiar environments;

(f) Any additional information required under 707 KAR Chapter 1 if the child is to be determined eligible under a specific category of disability; and

(g) Additional reports, information, and assessments as deemed necessary by the Admissions and Release Committee.

(2) For preschool children, the educational evaluation used in specific categories of disability under 707 KAR Chapter 1 shall refer to evaluation of developmental, rather than academic, skills. The school district shall not routinely use intelligence (IQ) testing with preschool children, but when appropriate shall use alternative tools, including norm-referenced instruments which assess cognitive function.

(3) When a preschool child has been or is currently being provided early childhood or intervention services by another agency, the school district shall contact these agencies for available data and assessment information. Available information which is current within one (1) year shall be used in conjunction with other new or existing data, unless the Admissions and Release Committee determines a need for further information to meet evaluation and eligibility requirements under subsection (1) of this section and Section 5(1) of this administrative regulation.

(4) An ~~[The]~~ Admissions and Release Committee shall assure that the parent, legal guardian, or parent's designee is interviewed as part of the evaluation process to obtain information about the child's devel-

opmental history and current functioning levels.

Section 6. Criteria for Identification. (1) For a preschool child who is ~~[all preschool children who are]~~ suspected of having a disability, the Admissions and Release Committee may use a specific categorical identification under other sections of 707 KAR Chapter 1 or may identify the child as having a developmental delay if the child is determined to be eligible.

(2) An ~~[The]~~ Admissions and Release Committee shall determine that a child has a developmental delay only if:

(a) The child is under six (6) years of age;

(b) The child has not acquired skills or achieved commensurate with recognized performance expectations for his or her age in one (1) or more of the following developmental areas: cognition, communication, motor development, social-emotional development, or self-help/adaptive behavior; and

(c) The child demonstrates a measurable, verifiable discrepancy between expected performance for the child's chronological age and the current level of performance. The discrepancy shall be documented by:

1. Scores of two (2) standard deviations or more below the mean in one (1) of the five (5) developmental areas, as obtained using norm-referenced instruments and procedures;

2. Scores of one and one-half (1 1/2) standard deviations below the mean in two (2) or more of the five (5) developmental areas, as obtained using norm-referenced instruments and procedures; or

3. The professional judgment of the Admissions and Release Committee that there is a significant atypical quality or pattern of development. Professional judgment shall be used only where normed scores are inconclusive and the Admissions and Release Committee documents in a written report the reasons for concluding that the child has a developmental delay based on the required evaluation information.

(3) An ~~[The]~~ Admissions and Release Committee shall review progress data on an annual basis to determine any need to reevaluate the child for purposes of ongoing eligibility.

Section 7. Individual Education Programs. (1) A ~~[The]~~ local school district shall have policies and procedures for the development of an IEP for each eligible child prior to the delivery of preschool education and related services, pursuant to 707 KAR Chapter 1.

(2) An ~~[The]~~ Admissions and Release Committee shall consider the need for parent education and service coordination as related services on the child's IEP.

Section 8. Placement in the Least Restrictive Environment. (1) To the maximum extent appropriate, a preschool child ~~[children]~~ with disabilities shall be educated with children without disabilities, pursuant to 707 KAR Chapter 1. A ~~[The]~~ district shall not routinely place a child ~~[children]~~ with disabilities in settings serving only other children with disabilities.

(2) In developing the IEP, an ~~[the]~~ Admissions and Release Committee shall consider the child's need for the development of interpersonal and socialization skills and for the maintenance and generalization of developmental skills in natural settings.

(3) A ~~[The]~~ school district shall make available to preschool children with disabilities the same or similar learning opportunities which are available through the district to nondisabled preschool children of the same age.

Section 9. Delivery of Services. (1) Preschool education and related services shall be made available to eligible children through programs directly operated by the school district or contractual or other cooperative agreements between the district and other agencies, pursuant to Section 10 of this administrative regulation.

(2) For a child ~~[children]~~ with disabilities who is ~~[are]~~ four (4) years of age by October 1, the district shall make available preschool services which are operated according to the requirements for four (4) year old children at risk of educational failure, pursuant to 704 KAR 3:410, Section 6 [5], or as determined by the Admissions and Release Committee based on the options described under subsection (3) of this section.

(3) A ~~[The]~~ district shall make preschool services available to eli-



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gible children through a variety of program options. Options may include~~[-but are not limited to;-]~~ the following:

(a) Parent-child programs which are provided in the home or a center to work with the child and parent together shall include one and one half (1 1/2) hours or more of service per child per week and allow socialization experiences with other children at least once per month, or as determined by the Admissions and Release Committee;

(b) Itinerant programs which are provided by personnel who travel to the child's class, day care center, or other setting shall include one (1) or more hours of services for each child per week, either direct or in consultation with the staff in the setting, or as determined by the Admissions and Release Committee;

(c) Preschool class programs which provide educational services in a setting with other children shall provide six (6) or more hours of instruction per week for three (3) year olds or ten (10) or more hours per week for four (4) year olds, or as determined by the Admissions and Release Committee; or

(d) Combinations of any of the above options.

(4) When a preschool child ~~[children]~~ with disabilities is ~~[are]~~ placed in classes in which [where] the majority of the children do not have disabilities, the Admissions and Release Committee shall determine any modifications or support needed to implement the IEP, including ~~[but not limited to]~~ the need for decreasing the maximum group size allowed for nondisabled children of that age or increasing the minimum adult-to-child ratio required for nondisabled children of that age, as set forth in 704 KAR 3:410.

(5) The maximum number of preschool children with disabilities who may be present at any one time in a class in which ~~[where]~~ half or more of the children have disabilities shall be six (6), with at least one (1) adult for every three (3) children with disabilities, or as determined by the Admissions and Release Committee.

(6) Instructional staff providing preschool and related services to eligible children under each of the program models shall include~~[-but not be limited to;-]~~ the following types of personnel as required by subsections (8), (9), and (10) of this section:

(a) A lead teacher meeting the qualifications set forth in 704 KAR 3:410, Section 7 [6](1)(a);

(b) A teaching assistant who is ~~[associate, such being]~~ an instructional aide ~~[meeting the qualifications required under 704 KAR 15:080]; and]~~

(c) Related services personnel who meet licensing requirements specific to the discipline; and

(d) Itinerant, resource, diagnostic, special class or consulting personnel who hold appropriate special education certification valid for primary ages.

(7) A ~~[Each]~~ parent-child and itinerant program shall be operated by at least one (1) lead teacher with responsibility for providing preschool and related services as indicated on the IEP, supervising and assigning the activities of teaching assistants ~~[associates]~~ and other noncertified staff in the program, and conducting parent-teacher conferences.

(8) A ~~[Each]~~ preschool class shall have at least one (1) lead teacher.

(a) Teaching assistants ~~[associates]~~ and other personnel shall be used in addition to the lead teacher to provide an appropriate adult-child ratio in each classroom. The local school district shall have policies and procedures for additional adult support whenever an adult is to be alone with a group of children.

(b) A ~~[The]~~ lead teacher is responsible for organizing the classroom, providing preschool and related services as indicated on the IEP, supervising and assigning the activities of teaching assistants ~~[associates]~~ and other noncertified personnel in the classroom, and conducting parent-teacher conferences.

(9) A ~~[The]~~ local school district shall assign staff, including ~~[but not limited to]~~ the lead teacher, to implement parent education and service coordination activities indicated as related services on the IEP, pursuant to Section 6(2) of this administrative regulation.

(10) Maximum caseloads for lead teachers shall be individually determined by the district to allow for the time required to provide the preschool and related services required for the assigned children under the parent-child, itinerant or class program~~(s)~~, travel to and from sites as needed and a minimum of one-half (1/2) day per week for planning for a full-time position.

(11) A ~~[The]~~ preschool program shall operate in compliance with administrative regulations promulgated by the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education in areas including ~~[but not limited to]~~ facilities, safety, health, transportation, finance and food services.

Section 10. Confidentiality. A district ~~[Districts]~~ shall maintain the confidentiality of the child's educational records as required under 707 KAR 1:240 ~~[1:054]~~ and the Family Educational Rights and Privacy Act regulations, 34 CFR Part 99. A ~~[The]~~ school district shall obtain the parent's consent prior to collecting information from other agencies about any early intervention services provided to the child under an individual family service plan (IFSP) prior to the age of three (3).

Section 11. Interagency Services. (1) A preschool facility or service ~~[Any preschool facilities or services]~~ provided by a local school district, either directly or by contract or cooperative agreement with another provider, shall meet the requirements of this administrative regulation and all other applicable school laws and administrative regulations.

(2) A contract ~~[Contracts]~~ or cooperative agreement ~~[agreements]~~ for operating a preschool program may be negotiated with another school district, another public agency, or a nonpublic school preschool program. A ~~[All]~~ nonpublic school program ~~[programs]~~ providing preschool placements shall be approved for that purpose by the Kentucky ~~[State]~~ Board of ~~[for Elementary and Secondary]~~ Education, pursuant to KRS 157.280, and shall meet the requirements for interagency agreements specified for the preschool program for four (4) year old children at risk of educational failure, as contained in 704 KAR 3:410, Section 4 [3].

Section 12. Personnel Development. (1) A lead teacher ~~[Lead teachers]~~ shall participate in the required number of professional development days applicable to certified personnel in the district.

(2) A teaching assistant ~~[Teaching associates]~~ shall participate annually in a minimum of eighteen (18) clock hours of professional development.

(3) Professional development activities shall be related to the nature and needs of young children and families, including those with special needs. Records shall be kept for all personnel documenting ~~[attendance and]~~ participation in professional development activities.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502)564-4474, fax (502)564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: Debbie Schumacher

(1) Type and number of entities affected: 176 school districts.

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

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

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

1. First year following implementation: Local school districts will have reduced paperwork and administrative costs due to changes in enrollment requirements. Changes in personnel requirements may affect professional development costs only for new teachers without proper credentials.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: 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 Individuals with Disabilities Education Act (IDEA).

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented: Possible costs of professional development for new teachers without proper credentials.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is to require current special education teachers to hold on additional endorsement. Alternative was rejected as unnecessary burden.

(8) Assessment of expected benefits:

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

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

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

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. Tiering was not applied because the regulation applies equally to all public preschool education programs for children with disabilities.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**  
**(Amendment)**

**806 KAR 18:080. Association uniform data collection.**

RELATES TO: KRS 304.2-140, 304.17A-320, 304.17A.330, 304.18-020, 304.48-170 [304.18-050]

STATUTORY AUTHORITY: KRS 304.2-110(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may promulgate reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.17A-320 provides that an employer-organized association that self-insures must comply with the provisions of KRS Chapter 304, Subtitle 48. [KRS 304.18-050 allows eligible associations to offer group health insurance if approved by the Department of Insurance pursuant to Subtitle 18 and applicable administrative regulations promulgated under that Subtitle.] This administrative regulation requires each association and employer-organized association to pro-

vide [obtains] information to the commissioner [from associations] regarding membership, financial condition, and health plans. In addition, this administrative regulation [and] establishes an administrative penalty [fine] for the failure of an association or employer-organized association to timely submit the required information.

Section 1. Definitions. (1) "Member" means employer group or individual who joins the association.

(2) "Health plan subscriber" means an employee of an employer group or an individual who participates in the health insurance plan. [; and]

(3) "Covered lives" means health plan subscribers and subscribers' spouses and dependents covered under the health insurance policy. [; and]

(4) "Contract type" means single or family plan.

(5) "Association" is defined by KRS 304.17A-005(1).

(6) "Eligible association" is an association qualified as eligible by the commissioner prior to the effective date of 1998 Ky. Acts ch. 496, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled.

(7) "Employer-organized association" is defined by KRS 304.17A-005(8).

Section 2. Reporting Requirements. (1) An association or employer-organized association offering group health insurance to its members shall file a quarterly report with the Department of Insurance on the Association Uniform Data Collection Form beginning with the quarter of October 1, 1996 through December 31, 1996 and quarterly thereafter.

(2) The report shall be filed within forty-five (45) days after the end of each quarter.

(3) The report shall include the following information [at the end of each quarter]:

(a) Name of association or employer-organized association;

(b) Location of its principal office;

(c) Name of its contact person;

(d) Mailing address;

(e) Telephone and facsimile numbers;

(f) Beginning date of association or employer-organized association;

(g) Beginning date of health insurance plan;

(h) Purpose of the association or employer-organized association;

(i) Description of persons solicited for membership;

(j) Name of health insurers.

(k) Number of members in the association or employer-organized association;

(l) Number of members in the association or employer-organized association that are eligible for the health insurance plan;

(m) The fiscal year-end date for the association or employer-organized association; and [Number of members enrolled in the health insurance plan;]

(n) Number of health plan subscribers and covered lives in the following: [health insurance plan:]

1. A nonself-insured plan; or

2. A self-insured plan.

(4) The quarterly report required pursuant to subsection (1) of this section shall state the following:

(a) Whether the association or employer-organized association is an eligible association;

(b) Whether the association or employer-organized association is insurer-controlled;

(c) Whether the membership of the association or employer-organized association consists principally of employers;

(d) Whether the health insurance issues of the association or employer-organized association are decided by a board or committee of whom the majority is representative of employer members; and

(e) Whether the health insurance decisions of the association or employer-organized association are recorded in written minutes or other written documentation.

(5) Each association or employer-organized association that is required to file the Association Uniform Data Collection Form pursu-

ant to subsection (1) of this section shall also file the following:

~~[(4) The following shall be attached under separate cover to each Association Uniform Data Collection Form filed with the department and clearly marked proprietary:]~~

~~(a) [Insurer and association] Underwriting eligibility requirements for the following:~~

- ~~1. Insurer;~~
- ~~2. Association; and~~
- ~~3. Employer-organized association; [and]~~

~~(b) Method of allocation of the rate within the association or employer-organized association; and~~

~~(c) Standard Industry Codes used by members enrolled in the health insurance plan.~~

~~(6) Information required to be filed pursuant to subsection (5) of this section shall be:~~

- ~~(a) Attached to the Association Uniform Data Collection Form;~~
- ~~(b) Filed under separate cover;~~
- ~~(c) Clearly marked proprietary.~~

Section 3. Penalty. The commissioner may impose a civil penalty against ~~[(1) Except as provided in subsection (2) of this section:]~~ an association or employer-organized association subject to this administrative regulation that ~~[who]~~ fails to file a quarterly report in the time period prescribed by Section 2(2) of this administrative regulation in an amount of not more than ~~[shall be fined up to]~~ \$100 per day for each day that the association or employer-organized association fails to file the report with the Department of Insurance. The commissioner may waive the civil penalty for an association or employer-organized association that demonstrates good cause for a late filing.

~~[(2) If an association demonstrates good cause for a late filing, the commissioner shall waive the fine.]~~

Section 4. Financial Condition. In accordance with KRS 304.48-170, each self-insured association, employer-organized association, association group that markets a health benefit plan to its members shall file a statement of financial condition with the commissioner on or before 120 days from the end of the fiscal year. The statement of financial condition shall be filed annually and contain a statement of the financial condition of the self-insured association, employer-organized association, or association group based on the financial data of the association or group for the preceding calendar year.

Section 5. Incorporation by Reference. (1) "Association Uniform Data Collection Form", (12/98 Edition) [May, 1997 Edition], Department of Insurance, is incorporated by reference.

(2) This material [it] may be inspected, copied, or obtained at [from] the Department of Insurance, 215 W. Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner  
GALE PEARCE, General Counsel

APPROVED BY AGENCY: February 9, 1999

FILED WITH LRC: February 11, 1999 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1999, at 10 a.m. (ET) at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by March 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: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-

1456.

## REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect the 95 associations that currently file health benefit plan information with the Department of Insurance. This administrative regulation will also affect any future association and employer-organized association that may desire to offer health benefit plans in Kentucky. The number of future associations and employer-organized associations is 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: The department has received no public comments regarding this issue.

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

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

1. First year following implementation: This administrative regulation requires associations and employer-organized associations to report to the Department of Insurance the number of members enrolled in a non-self-insured plan or a self-insured plan. This reporting is in addition to the information that associations are currently required to report to the department. Lastly, this administrative regulation requires associations, including employer-organized associations, that provide self-insured health benefit plans to file an annual statement of financial condition with the department.

2. Second and subsequent years: The reporting requirements and financial statements for the first year will continue to be required for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department currently collects and reviews the reports submitted by associations. The additional information required in the reports by this administrative regulation will not effect the department. However, the department will begin to collect and review financial statements from associations that provide self-insured health benefits. The costs associated with reviewing these financial statements will be minimal

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will collect and review the reports and financial statements submitted by associations pursuant to this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

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

(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 permits the Department of Insurance to collect data from associations and employer-organized associations.

The data requested pursuant to this administrative regulation will enable the department to assess the financial strength of associations that self-insure. The financial strength of the self-insured associations is crucial to a determination as to whether or not the association has sufficient reserves to pay members' claims.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health may result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented, the department would lack sufficient resources and information to determine if an association or employer-organized association that self-insure have sufficient monetary reserves to pay claims submitted by their members. Absent an early warning that claims may not be paid from the association's self-insured fund, members of the associations may be forced into a situation where their medical claims are unpaid.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This emergency administrative regulation amends 806 KAR 18:080.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all associations and employer-organized associations offering health benefit plans in the state of Kentucky.

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

**921 KAR 3:010. Definitions.**

RELATES TO: [KRS 194.050,] 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, 274.12, 7 USC 2012(g), (i)

STATUTORY AUTHORITY: KRS 194B.050 [194.050], 7 CFR 271.4, 274.12, EO 98-731 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.~~] The Cabinet for Families and Children shall administer a Food Stamp Program. KRS 194B.050 [194.050] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in administrative regulations relating to the Food Stamp Program are as follows:

(1) "Application for participation" means the form to apply for food stamps that is completed by:

- (a) A household member; or
- (b) An authorized representative.

(2) [~~"Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.~~

(3) "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

- 1. Making application for the program;
- 2. Obtaining the coupons or EBT card; and
- 3. Using the coupons or EBT card.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

- 1. Has been designated in writing by:
  - a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency official is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

- a. A state agency employee who is involved in the certification or issuance processes;
- b. A retailer that is authorized to accept food coupons; and
- c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

- 1. Misrepresented a household's circumstances;
- 2. Knowingly provided false information pertaining to the household; or
- 3. Made improper use of coupons.

(3) "Benefits" mean any of the following items issued in accordance with the Food and Nutrition Service regulations for the purchase of eligible food:

(a) Any stamp;

(b) Coupon;

(c) Type of certification; or

(d) Access device, including an electronic benefit transfer (EBT) card or personal identification number.

(4) "Boarder":

(a) Means an individual to whom a household furnishes lodging and meals for reasonable compensation;

(b) "Reasonable compensation" is determined:

- 1. By considering only the amount paid for meals; and
- 2. Provided that the amount paid for meals is distinguishable from the amount paid for lodging.

(c) A reasonable monthly payment for meals shall be:

1. An amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for more than two (2) meals a day; or

2. An amount which equals or exceeds two-thirds (2/3) of the thrifty food plan for the appropriate size of the boarder household for a boarder whose board arrangement is for two (2) meals or less per day.

(d) A boarder is ineligible to participate in the program independent of the household providing the board.

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

(6) "Certification" means the action necessary to determine eligibility of a household including:

- (a) Interview;
- (b) Verification; and
- (c) Decision.

(7) [(6)] "Communal dining facility" means:

(a) A public or nonprofit private establishment, approved by FNS [FCS], that prepares and serves meals for elderly persons;

(b) A public or private nonprofit establishment (eating or otherwise) that feeds:

- 1. Elderly persons; and
- 2. SSI recipients and their spouses;

(c) Federally subsidized housing for the elderly that prepares and serves meals to the residents; and

(d) A private establishment that contracts with an appropriate state or local agency to offer meals at concessional prices to:

- 1. Elderly persons; and
- 2. SSI recipients and their spouses.

[(7)] "Coupon" means:

(a) Any stamp;

(b) Coupon; or

(c) Type of certificate; that is

(d) Issued in accordance with the Food and Consumer Service regulations for the purchase of eligible food.

(8) "Date of entry" or "date of admission" means the date established by the Immigration and Naturalization Service as the date the sponsored alien was admitted for permanent residence.

(9) "Disability" means:

- (a) An individual who receives:
1. Supplemental Security Income (SSI) or presumptive SSI under 42 USC 1381 to 1385;
  2. Disability or blindness payments under:
    - a. 42 USC 301 to 306;
    - b. 42 USC 401 to 433;
    - c. 42 USC 1201 to 1206;
    - d. 42 USC 1351 to 1355; or
    - e. 42 USC 1381 to 1385;
  3. Optional or mandatory state supplementation;
  4. Disability retirement benefits from a:
    - a. Federal;
    - b. State; or
    - c. Local governmental agency; and
    - d. Resulting from a disability considered permanent under 42 USC 421(i);
  5. Annuity payments under:
    - A. 45 USC 231(a); and
    - b. Is determined to qualify for Medicare by the Railroad Retirement Board; or
    - c. Has a disability based upon the criteria used under 42 USC 1381 to 1385; or
- (b) A veteran with a service connected or nonservice connected disability rated by the Veteran's Administration or paid as total (100 percent) by the Veteran's Administration under Title 38 of the United States Code;
- (c) A veteran considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;
- (d) A surviving spouse of a veteran and considered by the Veteran's Administration to be in need of regular aid and attendance or permanently housebound;
- (e) A surviving child of a veteran and considered by the Veteran's Administration to be permanently incapable of self-support under Title 38;
- (f) A surviving spouse or surviving child of a veteran and considered by the Veteran's Administration to be entitled to:
1. Compensation for a service-connected death;
  2. Pension benefits for a nonservice-connected death under Title 38; and
  3. Has a disability considered permanent under 42 USC 421(i);
- (g) An individual in receipt of disability related medical assistance under 42 USC 1396;
- (h) An individual who is certified to receive, but not yet receiving SSI or Social Security disability payments; or
- (i) An individual who is currently having his entire SSI or Social Security disability benefit check recouped to recover a prior overpayment.
- (10) "Drug addiction or alcoholic treatment and rehabilitation program" means any:
- (a) Drug addiction; or
  - (b) Alcoholic treatment and rehabilitation program;
  - (c) Conducted by:
    1. A private nonprofit organization; or
    2. Institution that is certified as responsible for the administration of the state's program for:
      - a. Alcoholics; or
      - b. Drug addicts; by
  - (i) The cabinet; or
  - (ii) Agencies designated by the Governor.
- (11) "Electronic benefit transfer (EBT)" means a computer-based electronic benefit transfer system in which an eligible household's benefit authorization is received from a central computer through a point-of-sale terminal. In order to access the food benefits, an eligible household member, or authorized representative, shall:
- (a) Insert a magnetic strip plastic card into a terminal that reads the encoded information; and
  - (b) Enter a personal identification number (PIN) to verify identity.
- (12) "Elderly" means an individual who is:
- (a) Age sixty (60) or older; or
  - (b) Fifty-nine (59) years of age at the time of application but shall turn age sixty (60) before the end of month of application.
- (13) [(+2)] "Eligible foods" means any of the following:

- (a) Any food or food product intended for human consumption except:
1. Alcoholic beverages;
  2. Tobacco;
  3. Hot foods; and
  4. Hot food products prepared for immediate consumption;
- (b) Seeds and plants to grow foods for the personal consumption by eligible households;
- (c) Meals prepared and delivered by an authorized meal delivery service to households eligible to use coupons to purchase delivered meals;
- (d) Meals served by a communal dining facility for:
1. The elderly;
  2. SSI households; or
  3. To both; and
  4. To households eligible to use coupons for communal dining;
- (e) Meals prepared and served by an authorized drug addiction or alcoholic treatment and rehabilitation center to:
1. Narcotic addicts;
  2. Alcoholics; and
  3. Their children;
- (f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or have a disability as defined in subsection (9) of this section.
- (g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;
- (h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility be approved by the cabinet; and
- (i) Meals prepared by a private establishment that contracts with the cabinet to be sold to homeless individuals at concessional prices.
- (14) [(+3)] "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 921 KAR 3:035, Section 5(3) and (4).
- (a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 921 KAR 3:035, Section 5(3) and (4).
- (b) The following are excluded household members and shall not participate as a separate household:
1. An ineligible alien;
  2. An individual disqualified for failure to provide a social security number;
  3. An individual disqualified for intentional program violation; or
  4. An individual disqualified for failure to comply with work or workforce requirements.
- (15) [(+4)] "Employment and training (ET) program" means a program consisting of one (1) or more of the following components:
- (a) Work;
  - (b) Training;
  - (c) Education; or
  - (d) Job search.
- (16) [(+5)] "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.
- (17) "FNS" [(+6)] "FGS" means the Food and Nutrition [Consumer] Service of the United States Department of Agriculture.
- (18) [(+7)] "Group living arrangement":
- (a) Means a public or private nonprofit residential setting that:
    1. Serves no more than sixteen (16) residents; and
    2. Is appropriately certified.
  - (b) To be eligible, a resident shall be blind or have a disability as defined in subsection (9) of this section.
- (19) [(+8)] "Head of household" means the person in whose name the application for participation is made as:
- (a) Having primary financial responsibility for the household;
  - (b) Being an adult parent of a child of any age and living in the household; or
  - (c) An adult having parental control over a child under the age of eighteen (18) and living in the household.
- (20) [(+9)] "Household" means:
- (a) An individual who:

1. Lives alone; or  
2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

(c) The following individuals shall be treated as a group of individuals who customarily purchase food and prepare meals together for home consumption even if they do not do so:

1. Spouses who live together;  
2. A parent and his child twenty-one (21) years of age or younger who live together;

3. A child, excluding a foster child, under eighteen (18) years of age who lives with and is under parental control of a person other than his parent, together with the person exercising parental control.

(d) Notwithstanding the preceding sentences, the following individual shall be considered, together with any of the others who is his spouse, an individual household, without regard to the purchase of food and preparation of meals, if the income as determined under 7 USC 2014(d) of the others, excluding the spouse, does not exceed the poverty line, as described in 7 USC 2014(c)(1) by more than sixty-five (65) per centum:

1. An individual who lives with others;  
2. An individual who is sixty (60) years of age or older; and  
3. An individual who is unable to purchase and prepare meals because he suffers, as certified by a licensed physician, from a:

a. Disability which would be considered a permanent disability under 42 USC 421(i); or

b. A severe, permanent and disabling physical or mental infirmity which is not symptomatic of a disease;

(e) In no event shall any:

1. Individual; or  
2. Group of individuals;  
3. Constitute a household if they reside in an:

a. Institution;  
b. Boarding house; or  
c. Live with others and pay compensation to the others for meals.

(f) The following shall not be considered a resident of an institution and shall be considered an individual household:

1. A resident of federally subsidized housing for the:

a. Elderly;  
b. Persons with a disability or blind recipients of benefits as defined under subsection (9) of this section;

2. A resident in a public or private nonprofit group living arrangement that:

a. Serves no more than sixteen (16) residents; and  
b. Is certified by the appropriate state agency or agencies under regulations under 42 USC 1382e(e); or

c. Is certified under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under this section;

3. A temporary resident of a public or private nonprofit shelter for battered women and children;

4. A resident of a public or private nonprofit shelter for individuals who:

a. Do not reside in a permanent dwelling; or  
b. Have no fixed mailing address; and  
c. Are otherwise eligible for coupons; and  
5. A narcotics addict or alcoholic who together with his child live under:

a. The supervision of a private nonprofit institution; or  
b. A publicly operated community mental health center, for the purpose of regular participation in a drug or alcoholic treatment program.

(21) [(20)] "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(22) [(21)] "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(23) [(22)] "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

[(23)] "Job opportunities and basic skills (JOBS)" means a program which assists recipients of the Kentucky Transitional Assistance Program (K-TAP) in obtaining the necessary education and training that will lead to gainful employment and self-support;

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

(a) Death, continued voluntary or involuntary absence, [physical or mental incapacity] of a parent; [or]

(b) Physical or mental incapacity of one (1) parent when both parents are in the home;

(c) Unemployment of at least one (1) parent when both parents are in the home.

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

(26) "Meal delivery service" means an entity with which the cabinet has contracted for the preparation of meals at concessional prices to an individual who is unable to adequately prepare his meals.

(a) A "meal delivery service participant" shall include:

1. An elderly person and his spouse;  
2. The person who has a physical or mental disability; and  
3. A person who otherwise has a disability and his spouse.

(b) The cabinet shall contract with any of the following "meal delivery service" providers:

1. A political subdivision;  
2. A private nonprofit organization; or  
3. A private establishment.

(27) [(26)] "Medicaid" means medical assistance under 42 USC 1396.

(28) [(27)] "Nonassistance household" (NA) means a household containing at least one (1) member who is not included in a K-TAP household.

(29) [(28)] "Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

(30) [(29)] "Nonhousehold member" means an individual residing with a household but not considered a household member in determining the household's eligibility or allotment.

(a) The following shall be considered a nonhousehold member and if otherwise eligible, may participate in the program as a separate household:

1. Roomer. An individual to whom a household furnishes lodging, but not meals, for compensation.

2. Live-in-attendant. An individual who resides with a household to provide medical, housekeeping, child care or other similar personal services.

3. Other. Another individual who shares living quarters with the household but who does not customarily purchase food and prepare meals with the household.

(b) The following shall be considered as a nonhousehold member, ineligible to participate in the program as a separate household, and treated as described in 921 KAR 3:035:

1. An ineligible student;  
2. A person disqualified for noncompliance with the work requirements;

3. A border;

4. A resident of an institution, except as provided in subsection (18) [(17)] of this section;

5. A striker, unless:

a. The household was eligible the day prior to the strike; and  
b. The household is eligible at the time of application;  
6. A household disqualified due to voluntary quit provisions.

(31) [(30)] "Overissuance" means the amount by which benefits [coupons] issued to a household exceeds the amount the household was eligible to receive.

(32) [(31)] "Public assistance" (PA) means any of the programs authorized under 42 USC 601 to 679 [686] including:

a. Old age assistance;  
b. K-TAP;



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- c. Aid to the blind;
- d. Aid to the persons who have a permanent and total disability;
- and

- e. Aid to aged, blind or persons with a disability.

(33) [(32)] "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(34) [(33)] "Shelter for battered women and children" means a public or private nonprofit residential facility that serves battered women and children. If a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(35) [(34)] "Sponsor" means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(36) [(35)] "Sponsored alien" means an alien lawfully admitted for permanent residence as an immigrant as defined under 8 USC 1101.

(37) [(36)] "Spouse" means either of two (2) individuals who:

(a) Would be defined as married to each other under applicable state law; or

(b) Are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

(38) [(37)] "Striker" means anyone involved in a strike or other concerted stoppage of work by employees. This shall include:

(a) A stoppage by reason of expiration of a collective-bargaining agreement; and

(b) Any concerted slowdown or other concerted interruption of operations by employees, unless:

1. The individual is exempt from work registration for reasons other than employment; and

2. The exemption existed on the day prior to the strike.

(39) [(38)] "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.

(40) [(39)] "Thrifty food plan" means:

(a) The diet required to feed a family of four (4) persons, determined in accordance with the Secretary of the United States Department of Agriculture calculations, consisting of:

1. A man and a woman twenty (20) through fifty (50);

2. A child six (6) through eight (8); and

3. A child nine (9) through eleven (11) years of age; and

(b) The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary of the United States Department of Agriculture shall make household-size adjustment in the thrifty food plan taking into account economies of scale.

(41) [(40)] "Underissuance" means the amount that the benefits [allotment] to that the household was entitled exceeds the benefits [allotment] which the household received.

DIETRA PARIS, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: February 3, 1999

FILED WITH LRC: February 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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 attend 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 administra-

tive 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: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of October 1998, there were 157,659 participating families and 396,880 participating individuals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements. Definitions applicable to the Electronic Benefit Transfer (EBT) System are being added to this administrative regulation.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(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 cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to comply with the federal requirements.

(b) State whether a harmful effect on environment and public health would result if not implemented: No, not as a result of adding EBT definitions. Definitions in this administrative regulation are applicable to the entire Food Stamp Program and the administrative regulations pertaining to that program.

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

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

(a) Necessity of proposed regulation if in conflict: 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

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

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 274.12
2. State compliance standards. None
3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.
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)

#### 921 KAR 3:035. Certification process.

RELATES TO: 7 CFR 273.1, 273.2, 273.5, 273.10, 273.11, 273.12, 273.14, 274.6, 274.12  
STATUTORY AUTHORITY: KRS 194B.050 [194-050], 7 CFR 271.4, 274.12, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer a Food Stamp Program. KRS 194B.050 [194-050] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the certification process used by the cabinet in the administration of the Food Stamp Program.

Section 1. Eligibility and Benefit Levels. (1) Eligibility and benefit levels shall be determined by the cabinet by considering the household's circumstances for the entire period for which each household is certified.

(2) The criteria shall be applicable to all households.

(3) Certain households require special or additional certification procedures as specified in Section 4 of this administrative regulation.

Section 2. Certification Periods. (1) The cabinet shall establish a definite period of time within which a household shall be eligible to receive benefits.

(2) Except as provided below, households shall be certified for at least three (3) months.

(a) If the certification process is completed after the 15th day of the month of application, a household eligible for a certification period of three (3) months or less shall, at the time of certification, have their certification period increased by one (1) month;

(b) A household shall be certified for one (1) or two (2) months, as appropriate if:

1. The household cannot reasonably predict what its circumstances will be in the near future; or

2. There is substantial likelihood of frequent and significant changes in income or household status.

(3) A household composed entirely of recipients of the Kentucky Transitional Assistance Program (K-TAP), or a combination of K-TAP and Supplemental Security Income (SSI), shall be assigned a certification period to coincide with its K-TAP reinvestigation date.

(4) The following households shall be certified for up to twelve (12) months:

(a) If other household circumstances are expected to remain stable, a household composed entirely of unemployable or elderly persons with very stable income; or

(b) A household whose primary source of income is from:

1. Self-employment; or

2. Regular farm employment with the same employer if:
  - a. The income can be readily predicted; and
  - b. Household circumstances are not likely to change.

Section 3. Certification Notices to Households. The cabinet shall provide an applicant with one (1) of the following written notices as soon as a determination is made, but no later than thirty (30) days after the date of the initial application:

- (1) Notice of eligibility;
- (2) Notice of denial; or
- (3) Notice of pending status.

Section 4. Application for Recertification. The cabinet shall process an application for recertification as specified in 921 KAR 3:030, Section 1, as follows:

(1) If the household files the application by the 15th day of the last month of the certification, the cabinet shall provide uninterrupted benefits if the household is otherwise eligible; or

(2) If the household files the application after the 15th day but prior to the last day of the last month of the certification, the cabinet shall provide benefits within thirty (30) days of date of the application if the household is otherwise eligible.

Section 5. Certification Process for Specific Households. Certain households have circumstances that are substantially different from other households and therefore require special or additional certification procedures.

(1) A household with self-employed members shall have its case processed as follows:

(a) Income is annualized over a twelve (12) month period if:

1. Self-employment income represents a household's annual income; or

2. Self-employment income is received on a monthly basis which represents a household's annual support;

(b) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover;

(c) The income from a household's self-employment enterprise that has been in existence for less than one (1) year shall be averaged over the period of time the business has been in operation and a monthly amount projected over the coming year; or

(d) The cabinet shall calculate the self-employment income on anticipated earnings if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business.

(2) A household with boarders shall have its case processed as follows:

(a) Income from the boarder shall:

1. Be treated as self-employment income; and

2. Include all direct payments to the household for:

a. Room;

b. Meals; and

c. Shelter expenses;

(b) Deductible expenses include:

1. Cost of doing business;

2. Twenty (20) percent of the earned income; and

3. Shelter costs.

(3) A household with ineligible members shall be processed, as follows:

(a) Ineligible due to:

1. Intentional program violation;

2. Failure to comply with the work requirements; or

3. Failure to comply with workforce requirements:

a. Income and resources in their entirety shall be counted as income available to the remaining household members;

b. Remaining household members shall receive standard earned income, medical, dependent care, and excess shelter deductions; and

c. The ineligible member shall not be included when:

(i) Assigning benefit level;

(ii) Comparing monthly income with income eligibility standard;

and

(iii) Comparing household resources with resource eligibility stan-

dard;

(b) Ineligible due to:

1. Failure to provide a Social Security number; or

2. Ineligible alien status:

a. All resources of ineligible members shall be considered available to the remaining household members;

b. A pro rata share of the ineligible member's income shall be attributed to remaining household members;

c. Earned income deduction shall be applied to pro rata share of earnings; and

d. The ineligible member's share of dependent care and shelter expenses shall not be counted;

3. [4.] The ineligible member shall not be included when:

a. Assigning benefit level;

b. Comparing monthly income with income eligibility standard; and

c. Comparing household resources with resource eligibility standard.

(4) A household with nonhousehold members shall be processed as follows:

(a) The income and resources of a nonhousehold member (other than those described in subsection (3) of this section) shall not be considered available to the household with whom they reside;

(b) If earned income of household members and nonmembers are combined into one (1) wage, the agency shall:

1. Count that portion due to the household as earned income, if identifiable; or

2. Count a pro rata share of earned income if the nonmember's share cannot be identified;

(c) The nonmember shall not be included when:

1. Assigning a benefit level to the household;

2. Comparing monthly income with income eligibility standards; and

3. Comparing household resources with resource eligibility standard.

(5) A resident of a drug or alcoholic treatment and rehabilitation program in a private, nonprofit organization or a publicly operated community mental health center shall have his case processed as follows:

(a) An eligible household shall include:

1. A narcotic addict;

2. An alcoholic; and

3. His child;

(b) Certification shall be accomplished through an authorized representative;

(c) Food stamp processing standards and notice provisions shall apply to a resident recipient;

(d) Treatment center shall notify the agency of any changes in a resident's circumstances;

(e) Upon departure of the center, the resident shall be eligible to receive any remaining benefits, if otherwise eligible; and

(f) The organization or institution shall be responsible for knowingly misrepresenting household circumstances.

(6) A resident of a group living arrangement who is blind or disabled and receives retirees, survivors, and disabled individuals or SSI benefits shall have his case processed as follows:

(a) A resident shall apply on his own behalf or through use of the facility's authorized representative;

(b) Certification provisions applicable to all other households shall be applied;

(c) Responsibility for reporting changes depends upon who files the application:

1. If resident applies on his own behalf, the household shall report changes to the agency; or

2. If the center acts as authorized representative, the group living arrangement shall report changes;

(d) Eligibility of the resident shall continue after departure from the group living arrangement, if otherwise eligible; and

(e) The group living arrangement shall be responsible for knowingly misrepresenting household circumstances unless the household applied on its own behalf.

(7) A resident of a shelter for battered women and children shall have her case processed as follows:

(a) The shelter shall:

1. Have Food and Nutrition [Consumer] Service (FNS [FCSS]) authorization to redeem food benefits [Food Stamp coupons] at wholesalers; or

2. Meet the federal definition of a shelter;

(b) A shelter resident shall be certified for benefits, if otherwise eligible, if she is currently included in a former household which contains the person who abused her; and

(c) The cabinet shall promptly remove the resident from the former household's case, upon notification.

(8) An SSI recipient shall have his case processed as follows:

(a) Application may be filed at:

1. The Social Security Administration (SSA) Office; or

2. The local food stamp office;

(b) The cabinet shall not require an additional interview for applications filed at the SSA;

(c) The cabinet shall obtain all necessary verification prior to approving benefits;

(d) Certification periods shall conform to Section 2 of this administrative regulation; and

(e) Household changes in circumstances shall conform to Section 6 of this administrative regulation.

(9) A household with a member who is on strike shall have its eligibility determined by:

(a) Comparing the striking member's income the day prior to the strike to the striker's current income;

(b) Adding the higher of the prestrike income or current income to other current household income; and

(c) Allowing the appropriate earnings deduction.

(10) Student households.

(a) Any person who meets all of the following criteria shall be ineligible to participate in the Food Stamp Program:

1. Between age eighteen (18) and fifty (50);

2. Physically and mentally fit; and

3. Enrolled at least half-time in an institution of higher education.

(b) The criteria in (a) of this subsection shall not deem a household member ineligible if the member meets at least one (1) of the criteria specified in 921 KAR 3:025, Section 3(5).

(11) Sponsored aliens.

(a) Income of the sponsored alien shall:

1. Include that portion of the sponsor's and his spouse's income deemed to be that of the alien;

2. Be subject to appropriate income exclusions; and

3. Be reduced by:

a. Twenty (20) percent earned income disregard, if appropriate; and

b. An amount equal to the Food Stamp Program monthly gross income limit for a household size equal to the household size of the sponsor.

(b) Resources of the sponsored alien shall include the total resources of the sponsor and the sponsor's spouse, reduced by \$1500.

(c) The appropriate portions of income and resources of the sponsor and of the sponsor's spouse shall be deemed unearned income for a period of three (3) years following the alien's admission for permanent residence into the United States.

Section 6. Reporting Changes. (1) A certified household is required to report changes in household circumstances within ten (10) days of the date the change becomes known to the household.

(2) An applying household shall report all changes related to its food stamp eligibility and benefits:

(a) At the certification interview; or

(b) If changes occur after the interview but prior to receipt of the notice of eligibility, within ten (10) days of the date of the notice.

[Section 7. Replacement Issuance. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its authorization document was:

1. Not received in the mail;

2. Stolen from the mail;

3. Destroyed in a household misfortune;

4. Improperly manufactured;

5. Stolen after receipt; or

6. Mutilated;

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(b) Its coupons were:  
1. Not received in the mail;  
2. Destroyed in a household misfortune;  
3. Improperly manufactured; or  
4. Mutilated;  
(c) Food purchased with food stamps was destroyed in a household misfortune; or  
(d) It received a partial coupon allotment.  
(2) The cabinet shall not provide a replacement issuance to a household if after receipt:  
(a) Coupons are:  
1. Lost;  
2. Stolen; or  
3. Misplaced;  
(b) Authorization documents are:  
1. Lost; or  
2. Misplaced;  
(c) Coupons or authorization documents are totally destroyed in other than a disaster or misfortune; or  
(d) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.  
(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.  
(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FCS:  
(5) A replacement issuance shall be provided to a household if:  
(a) The household reports a loss timely:  
1. Orally; or  
2. In writing;  
(b) The household provides a statement of nonreceipt; and  
(c) The original authorization document or allotment has not been returned to the cabinet at the time of the request for replacement.  
(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that:  
(a) An authorization document is stolen from the household; or  
(b) The following items are destroyed in a household misfortune:  
1. Authorization document;  
2. Coupons; or  
3. Food purchased with food stamps.  
(7) In a mail issuance county, the report must be made:  
(a) Within the period of intended use; unless  
(b) The original issuance was made after the 20th of the month. The period of intended use shall be extended to the last day of the month following the month of application.  
(8) The number of replacement issuances which a household may receive shall be limited to:  
(a) A total of two (2) countable replacements in six (6) months for:  
1. Authorization documents; or  
2. Coupons:  
a. Not received in the mail;  
b. Stolen from the mail; or  
c. Destroyed in a household misfortune.  
3. Authorization documents stolen after receipt; and  
4. Partial coupon allotments; and  
(b) No limit shall be placed on the number of replacements for:  
1. Partial allotments if the partial allotments were due to an error by the cabinet;  
2. Authorization documents or coupons which were:  
a. Improperly manufactured; or  
b. Mutilated; or  
c. Food purchased with food stamp benefits which was destroyed in a household misfortune.  
(9) The replacement shall not be considered a countable replacement if:  
(a) The original or replacement issuance is returned or otherwise recouped by the cabinet;  
(b) The original authorization document is not transacted;  
(c) The replacement authorization document is not transacted; or  
(d) The replacement issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:  
(a) In the amount of the loss of the household; and  
(b) Up to a maximum of one (1) on the allotment; unless  
(c) The issuance includes restored benefits which shall be replaced up to their full value.  
(11) The cabinet shall provide a replacement issuance to an eligible household in accordance with 921 KAR 3:045, Section 4.]

DIETRA PARIS, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: February 3, 1999

FILED WITH LRC: February 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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 attend 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: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of October 1998, there were 157,659 participating families and 396,880 participating individuals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 50% federal funds and 50% state funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the

Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(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 cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to change references from Aid to Families with Dependent Children (AFDC) to Kentucky Transitional Assistance Program (K-TAP), changes references from Food and Consumer Service (FCS) to Food and Nutrition Service (FNS), and to remove Section 7, Replacement Issuance, from this administrative regulation to 921 KAR 3:045, Coupon Issuance Procedures.

(b) State whether a harmful effect on environment and public health would result if not implemented: No, not as a result of changing references from AFDC to K-TAP, FCS to FNS, or removing Section 7, Replacement Issuance, from this administrative regulation to 921 KAR 3:045.

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

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

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

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

(10) Any additional information or comments: None

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 274.12.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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)

#### 921 KAR 3:045. [Coupon] Issuance procedures.

RELATES TO: [KRS 194.050;] 7 CFR 274.2, 274.3, 274.4, 274.5, 274.6, 274.7, 274.12

STATUTORY AUTHORITY: KRS 194B.050 [194.050], 7 CFR 271.4, 274.12, EO 98-731

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer a Food Stamp Program. KRS 194B.050 [194.050] provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth [coupon] issuance procedures used by the cabinet in the administration of the Food Stamp Program. [This administrative regulation has been amended to comply with the: (1) amendments to KRS Chapter 13A, enacted during the 1990 Regular Session of the General Assembly; as directed by the Administrative Regulation Review Subcommittee; and (2) quadrennial review required by KRS

13A.347.]

Section 1. Basic Issuance Requirements. (1) The cabinet shall be responsible for the timely and accurate issuance of benefits [coupons] to eligible households.

(2) In issuing benefits [coupons] the cabinet shall insure that:

(a) Only certified households receive benefits;

(b) Coupons or electronic benefit transfer (EBT) cards and personal identification numbers (PINs) are accepted, stored, and protected after delivery to receiving points within the state;

(c) Program benefits are distributed in the correct amounts; and

(d) Benefits [Coupon] issuance and reconciliation activities are properly conducted and accurately reported to the Food and Nutrition Service.

Section 2. Issuance System. [The cabinet shall choose] One (1) of the following systems shall be used to issue benefits [coupons] to eligible households:

(1) For Campbell, [Fayette,] Kenton and Jefferson Counties:

(a) Direct delivery: eligible households pick up the authorized benefits [and redeem their ATP card] at a specified issuance center.

(b) Regular mail issuance shall be available to those households that are unable to get to their assigned issuance centers, as determined by the cabinet.

(2) For all other counties: direct mail: benefits [coupons] are mailed, using at least first class mail, directly to the eligible household.

(3) In any county, alternate issuance shall be used if circumstances exist that indicate a household may not receive its benefits through the normal issuance system. The following systems shall be used:

(a) Local office pickup: a household's benefits or EBT card and PINs are mailed to the local office for the household to pick up.

(b) Certified mail: benefits are sent via the postal system and shall be signed for before they are obtained.

(c) As determined by the cabinet, other issuance systems may be utilized to ensure receipt of benefits by the eligible household.

Section 3. Issuance Cycles. (1) For ongoing cases the monthly benefits shall be issued over the first ten (10) to twenty (20) days of the issuance month based on the last digit of the recipient's Social Security number and [coupon packet or ATP card] shall be [mailed to]:

(a) Mailed to the household; or

(b) Picked up at the issuance center; or

(c) Credited to the EBT account. [:

1. Over the first ten (10) to twenty (20) days of the issuance month; and

2. Based on the last digit of the recipient's Social Security number.];

(2) The following households shall have their benefits or EBT cards and PINs [coupon packet or ATP card] mailed to their homes [or issuance centers] within thirty (30) days after the date of application:

(a) New approvals;

(b) Reapprovals; and

(c) Current month recertifications.

(3) A household eligible for expedited service shall have its benefits or EBT cards and PINs [coupon packet or ATP card] made available for participation within five (5) calendar days after the date of application.

Section 4. Replacement Issuance [Issuances]. (1) The cabinet shall provide a replacement issuance to an eligible household if:

(a) Its coupons were:

1. Not received in the mail;

2. Destroyed in a household misfortune;

3. Improperly manufactured; or

4. Mutilated;

(b) Food purchased with food benefits was destroyed in a household misfortune; or

(c) It received a partial coupon allotment.

(d) Its EBT card was:

1. Lost;

2. Stolen;

3. Damaged.

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(2) The cabinet shall not provide a replacement issuance to a household if after receipt:

(a) Coupons are:

1. Lost;
2. Stolen; or
3. Misplaced;

(b) Benefits are totally destroyed in other than a disaster or misfortune; or

(c) Coupons sent by registered or certified mail are signed for by anyone residing with or visiting with the household.

(3) The cabinet shall not provide a replacement issuance if the household or authorized representative has not provided the written household statement of nonreceipt.

(4) The cabinet shall not provide a replacement allotment for a misfortune for the same month that the household is eligible for disaster food stamp benefits pursuant to a disaster declaration by the FNS.

(5) A replacement issuance shall be provided to a household if:

(a) The household reports timely a loss of coupons:

1. Orally; or
2. In writing;

(b) The household provides a statement of nonreceipt; and

(c) The original allotment has not been returned to the cabinet at the time of the request for replacement.

(6) The report specified in subsection (5)(a) of this section shall be considered timely if it is made to the cabinet within ten (10) days of the date that the following items are destroyed in a household misfortune:

(a) Coupons; or

(b) Food purchased with food stamps.

(7) In a mail issuance county, the report must be made:

(a) Within the period of intended use; unless

(b) The original issuance was made after the 20th of the month.

The period of intended use shall be extended to the last day of the month following the month of application.

(8) The number of replacement issuances which a household may receive shall be limited to:

(a) A total of two (2) countable replacements in six (6) months for:

1. Coupons;

a. Not received in the mail;

b. Stolen from the mail; or

c. Destroyed in a household misfortune; or

2. Partial coupon allotments; and

(b) No limit shall be placed on the number of replacements for:

1. Partial allotments if the partial allotments were due to an error by the cabinet;

2. Coupons which were:

a. Improperly manufactured; or

b. Mutilated; or

c. Food purchased with food stamp benefits which was destroyed in a household misfortune.

(9) The replacement shall not be considered a countable replacement if:

(a) The original or replacement issuance is returned or otherwise recouped by the cabinet; or

(b) The replacement is being issued due to an error by the cabinet.

(10) A replacement issuance shall be provided:

(a) In the amount of the loss of the household; and

(b) Up to the maximum entitled amount per household size; unless

(c) The issuance includes restored benefits which shall be replaced up to their full value.

(11) [In accordance with 921 KAR 3:035, Section 8:

{2} If a household reports nondelivery or loss of:

(a) Coupons, a replacement issuance shall be provided within:

1. [(a)] Ten (10) calendar [working] days for certified mail after report;

2. [(b)] Fifteen (15) days if the issuance was by certified or registered mail;

(c) Two (2) working days of receiving a signed household statement attesting to the household's loss; or

3. [(d)] Whichever date is later.

(b) EBT card, a replacement issuance shall be provided within five (5) working days.

(12) [(3)] Replacement of mutilated coupons shall be delayed until the value of the coupons is determined.

(13) [(4)] For a household that has already been issued the maximum allowable number of countable coupon replacements as specified in subsection (8) of this section [921 KAR 3:035, Section 8(8)], subsequent replacements shall be delayed until the cabinet has:

(a) Verified that the original issuance was returned; or

(b) [Determined that the original authorization document was not transacted; or

(c)] Determined that the limit on countable coupon replacements has not been reached in accordance with subsection (8) of this section [921 KAR 3:035].

(14) [(5)] If available documentation indicates that a household's request for coupon replacement appears fraudulent, the cabinet shall:

(a) Deny the replacement issuance;

(b) Delay the replacement issuance; or

(c) Inform the household:

1. Of its right to a fair hearing to contest the denial or delay of a replacement issuance; and

2. That a replacement shall not be made while the denial or delay is being appealed.

Section 5. [Authorization-to-participate Card. The ATP card shall be used in areas participating in a direct delivery system:

(1) The ATP card shall be valid for the entire month of issuance unless it is issued after the 20th day of the month:

(2) An ATP card issued after the 20th day is valid through the last day of the following month.

(3) The household shall be provided with a means of designating an emergency authorized representative who can transact the ATP card on its behalf.

Section 6-] Coupon Controls. [Regardless of which issuance system is used,] The cabinet shall:

(1) Establish a coupon inventory management system which insures that:

(a) Coupons are requisitioned; and

(b) Inventories are maintained;

(2) Establish control and security procedures to safeguard coupons similar to those used to protect currency;

(3) Arrange for the ordering of coupons and the prompt verification and written acceptance of each coupon shipment;

(4) Ensure that coupon issuers and bulk storage points:

(a) Promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them; and

(b) Shall be responsible for the custody, care, control and storage of coupons;

(5) Maintain issuance records for a period of three (3) years from the month of origin;

(6) Control all issuance documents which establish household eligibility while the documents are transferred and processed within the state agency; and

(7) Provide security and control for all issuance accountability documents.

Section 6. Incorporation by Reference. (1) "EBT-1, Coupon Conversion Request", edition 5/99, Cabinet for Families and Children, 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: February 3, 1999

FILED WITH LRC: February 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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 attend 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: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of October 1998, there were 157,659 participating families and 396,880 participating individuals. Eligible households will utilize magnetic-strip plastic cards to purchase food items at authorized food retailers and have accounts maintained at the central computer in lieu of food stamp coupons.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements. In fact, the system will replace multiple paper based delivery systems, reduce the cost of benefit delivery and reduce fraud.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It is projected that the design and implementation of EBT in Kentucky will cost \$1,627,800.

2. Continuing costs or savings: There will be a continuing cost of \$3,844,200. As EBT implementation is rolled over statewide, costs for the current issuance of paper coupons will decrease and eventually cease. It is projected that EBT will result in a savings of \$1,962,600, resulting in a net cost effect of \$1,881,600.

3. Additional factors increasing or decreasing costs: As a cost containment measure, Kentucky has joined with seven other states in the southeast to work in an alliance to implement EBT.

(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: 50% federal funds and 50% state funds.

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(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 cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to comply with the federal requirements.

(b) State whether a harmful effect on environment and public health would result if not implemented: The cabinet's failure to implement the federal requirements pursuant to 7 CFR 274.12, would cause a loss of federal funds, thereby jeopardizing the continuation of this nutrition program. Therefore, failure to implement the above-referenced provisions would have a detrimental effect on public health.

(c) If detrimental effect would result, explain detrimental effect: The loss of the Food Stamp Program would deprive over 400,000 citizens of the Commonwealth of a nutritional diet. Therefore, it is necessary to promulgate this administrative regulation to prevent the loss of federal funding (100% of food stamp benefits, 50% of federal match for administrative funds, and 100% of federal enhanced funding), due to the failure to implement the federal mandates pursuant to 7 CFR 274.12.

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

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

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

(10) Any additional information or comments: None

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 274.12

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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)

921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: 7 CFR 273.15, FNS/Sero Regulations Supplement, 273.15-a-1 (82-14) (7-28-82), 273.16, FNS/Sero Regulations Supplement, 273.16-a-1 (83-5) (12-15-82), 274.12, 59 FR 44343-47, 7 USC 2015

STATUTORY AUTHORITY: KRS Chapter 13B, 194B.050 [194.050(+)], 7 CFR 271.4, 274.12, EO 98-731 [EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children.] The Cabinet for Families and Children shall administer a Food Stamp Program pursuant to 7 USC 2011 to 2029. KRS 194B.050 [194.050(+)] provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citi-

zens of the Commonwealth. This administrative regulation sets forth the procedures used by the cabinet to determine when an act of intentional program violation has occurred and appropriate penalties which shall be applied.

Section 1. Administrative Disqualification Hearings. (1) An administrative disqualification hearing shall be initiated by the cabinet whenever it has documented evidence to prove that a household member has committed an act of intentional program violation, pursuant to 921 KAR 3:050, Section 5(3).

(2) An administrative disqualification hearing may be initiated regardless of the current eligibility of the individual.

Section 2. Disqualification Hearing Procedures. (1) The cabinet shall provide state level administrative disqualification hearings which shall be heard by a fair hearing official.

(2) A hearing shall be conducted by an impartial official who:

(a) Did not have any personal stake or involvement in the case;

(b) Was not directly involved in the initial determination that the household member had committed intentional program violation; and

(c) Was not the immediate supervisor of the case worker who took the action.

(3) The powers and duties of the hearing official shall be the same as those pursuant to 921 KAR 3:070, Section 13.

(4) The household's rights during the hearing shall be the same as those pursuant to 921 KAR 3:070, Section 14.

(5) Form FS-80, "Notice of Suspected Intentional Food Stamp Program Violation", is incorporated into this administrative regulation by reference and shall serve as the notification to a household of:

(a) The cabinet's suspicion that an intentional program violation has been committed;

(b) The amount and period of the overpayment; and

(c) The household's right to an administrative disqualification hearing.

(6) The hearing decision shall comply with provisions pursuant to 921 KAR 3:070, Section 15.

(7) At the hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(8) Within ninety (90) days of the date the household member is notified in writing that a hearing has been scheduled, the cabinet shall:

(a) Conduct the hearing;

(b) Arrive at a decision; and

(c) Notify the household member of the decision.

(9) If the request is made at least ten (10) days in advance of the date of the scheduled hearing, the household member or representative is entitled to one (1) postponement not to exceed thirty (30) days.

(10) If a hearing is postponed, the time limits pursuant to subsection (8) of this section shall be extended for as many days as the hearing is postponed.

Section 3. Advance Notice of Disqualification Hearing. (1) The cabinet shall provide written notice to the household member suspected of intentional program violation at least thirty (30) days in advance of the date a hearing initiated by the cabinet has been scheduled.

(2) The notice shall be sent certified mail - addressee only - return receipt requested and shall comply with the requirements of KRS 13B.050 and also contain the following:

(a) A summary of the evidence;

(b) A statement that the decision shall be based solely on information provided by the Food Stamp Office if the household member fails to appear at the hearing;

(c) A statement that the household member or representative shall have ten (10) days from the date of the scheduled hearing to present good cause for failure to appear;

(d) A statement that a determination of intentional program violation shall result in disqualification penalties as described in Section 10 of this administrative regulation, and a statement of which penalty is applicable to the case scheduled for a hearing;

(e) A listing of the household member's rights as contained in 921 KAR 3:070, Section 14;

(f) A statement that the hearing shall not preclude the state or

federal government from:

1. Prosecuting the household member for intentional program violation in a civil or criminal court action; or

2. Collecting the overissuance; and

(g) If there is an individual or organization available that provides free legal representation, a statement of the availability of this service.

Section 4. Scheduling the Disqualification Hearing. (1) The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(2) If the applicant, recipient and any party or witness required to testify under oath or affirmation consents, a telephonic hearing may be conducted.

(3) A party who wishes to introduce a document or written material into the record at the hearing shall mail a copy of the document to the hearing officer and to the opposing party prior to the date of the hearing.

(4) Failure to provide both the hearing officer and the opposing party with a copy of evidence may result in the exclusion of this evidence from the record.

(5) If the household member or his representative does not appear for a face-to-face or telephonic hearing, the state agency shall determine whether proper advance notice was received by the household member.

(a) If there is no proof that the household member received or refused a timely notice of the hearing, the hearing shall not be conducted.

(b) The hearing process is again initiated if the household member is located and another notice can be provided to that member.

(c) If the agency has sufficient evidence to verify that the household member either received or refused the notice, the hearing shall be conducted.

(6) Even if the household member is not represented, the hearing official is required to:

1. Carefully consider the evidence; and

2. Determine if intentional program violation was committed based on clear and convincing evidence.

(7) Any administrative disqualification hearing conducted shall comply with the requirements of KRS 13B.080 and 13B.090.

(8) If the household member is found to have committed an intentional program violation, but a hearing official later determined that the household member or representative had good cause, pursuant to 921 KAR 3:070, Section 10, for not appearing:

(a) The previous decision shall not remain valid;

(b) The cabinet shall conduct a new hearing; and

(c) The hearing official who originally ruled on the case may conduct the new hearing.

(9) The household member shall have ten (10) days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear.

(10) A hearing official shall enter the good cause decision into the record.

Section 5. Participation While Awaiting a Disqualification Hearing.

(1) A pending hearing shall not affect the individual's or the household's right to be certified and participate in the program.

(2) The cabinet shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household until:

(a) The hearing official or a court of appropriate jurisdiction finds that the individual has committed intentional program violation;

(b) The individual has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing", waiving his right to an administrative disqualification hearing; or

(c) The individual has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement"; and

(d) The cabinet disqualifies the household member for intentional program violation.

Section 6. Disqualification Hearing Decision. (1) The hearing offi-

cial shall base the determination of intentional program violation on clear and convincing evidence that demonstrates that the household member committed and intended to commit intentional program violation pursuant to Section 1 of this administrative regulation.

(2) The decision of the hearing official shall:

- (a) Specify the reasons for the decision;
- (b) Identify:
  1. The supporting evidence;
  2. Kentucky statutory citations, if applicable;
  3. The state administrative regulations; and
  4. Corresponding federal regulation; and

(c) Respond to reasoned arguments made by the household member or representative.

(3) The case record shall be retained by the cabinet until all appeals have been exhausted.

(a) The content of the case record shall comply with KRS 13B.130.

(b) This record shall be available to the household or its representative during work hours for copying and inspection.

Section 7. Notification of a Disqualification Hearing Decision. (1) The cabinet shall notify the household member in writing of:

- (a) The hearing decision; and
- (b) His rights to appeal that decision pursuant to KRS 13B.140.

(2) If the hearing finds that the household member committed intentional program violation, the notice shall:

- (a) Be provided prior to disqualification;
- (b) Inform the household member of the disqualification; and
- (c) Advise the household member when the disqualification will take effect.

(3) A notice shall be provided to the remaining household members, if any, informing them of:

(a) The allotment they will receive during the disqualification period; or

(b) That they may reapply because their certification period has expired.

(4) A written demand letter shall be sent to the remaining household members explaining the repayment requirements.

Section 8. Waiver Disqualification Hearings. (1) An individual accused of intentional program violation shall be allowed to waive his rights to an administrative disqualification hearing if he completes and files with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing".

(2) The cabinet shall ensure that:

(a) The appropriate field services supervisor or designated agency representative reviews the evidence against the household member suspected of the intentional program violation;

(b) A decision is obtained that the evidence warrants scheduling a disqualification hearing; and

(c) Written notification is provided to the household member suspected of intentional program violation, informing him of his right to waive an administrative disqualification hearing.

Section 9. Deferred Adjudication. (1) An individual accused of intentional program violation shall be allowed to complete and file with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement", in a case of deferred adjudication.

(2) The cabinet shall accept a completed form FS-111, "Deferred Adjudication Disqualification Consent Agreement", if a determination of guilt is not obtained from a court because the accused individual:

(a) Met the terms of a court order; or

(b) Is not prosecuted because he met the terms of an agreement with the prosecutor.

Section 10. Intentional Program Violation Disqualification Penalties. (1) An individual found to have committed an intentional program violation pursuant to 921 KAR 3:050, Section 5(3) shall be ineligible to participate in the Food Stamp Program:

(a) For a period of one (1) year upon the first occasion of intentional program violation;

(b) For a period of two (2) years upon the second occasion of intentional program violation; and

(c) Permanently upon the third occasion of intentional program violation.

(2) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food benefits [~~stamp coupons~~] in a transaction involving the sale of a controlled substance, pursuant to 21 USC 802, shall be ineligible to participate in the program:

(a) For a period of two (2) years upon the first occasion of the violation; and

(b) Permanently upon the second occasion of the violation.

(3) An individual found by a federal, state or local court to have committed an act of intentional program violation by using or receiving food benefits [~~stamp coupons~~] in a transaction involving the sale of firearms, ammunition or explosives shall be permanently ineligible to participate in the program upon the first occasion of the violation.

(4) An individual shall be permanently ineligible to participate in the program upon the first occasion of:

(a) The conviction of a trafficking offense pursuant to 7 USC 2024; and

(b) Having a value of \$500 or more.

(5) The penalties in subsections (2), (3), and (4) of this section shall also apply in cases of deferred adjudication, as described in Section 9 of this administrative regulation, where the court makes a finding that the individual engaged in the conduct pursuant to subsections (2), (3), and (4) of this section.

(6) If a court fails to impose a disqualification period for any intentional program violation, the cabinet shall impose the appropriate disqualification penalty pursuant to subsections (1), (2), (3), or (4) of this section, unless it is contrary to the court order.

(7) Regardless of when an action was taken by an individual which caused an intentional program violation to occur, the disqualification periods pursuant to subsections (2), (3), or (4) of this section shall apply to any case in which the court makes the requisite finding on or after September 1, 1994.

(8) The cabinet shall not disqualify everyone in the household from participating in the Food Stamp Program but shall disqualify only the individual who:

(a) Is found to have committed the intentional program violation; or

(b) Has completed and filed with the department form FS-80, Supplement A, "Voluntary Waiver of Administrative Disqualification Hearing"; or

(c) Has completed and filed with the department form FS-111, "Deferred Adjudication Disqualification Consent Agreement".

(9) The cabinet shall disqualify only the individual from participating in the Food Stamp Program but the remaining household members are responsible for making restitution for the amount of any overpayment, pursuant to 921 KAR 3:050.

(10) If the cabinet's determination of intentional program violation is reversed by a court, the cabinet shall:

(a) Reinstate the individual, if eligible; and

(b) Restore any benefits that were lost as a result of the disqualification.

(11) The cabinet shall inform the household in writing of the disqualification penalties for committing intentional program violation at each time it applies for benefits.

Section 11. Appeal Rights of the Household. (1) No further administrative appeal procedure shall exist after an administrative disqualification hearing finds that:

(a) An intentional program violation was committed; or

(b) An individual has waived his right to an administrative disqualification hearing.

(2) The determination of intentional program violation made by a disqualification hearing official shall not be reversed by a subsequent fair hearing decision.

(3) The household member who is subject to subsection (2) of this section is entitled to seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

(4) The period of disqualification may be subject to stay by:

(a) A court of appropriate jurisdiction; or

(b) Other injunctive remedy.

Section 12. Incorporation by Reference. (1) The following mate-

rial is incorporated by reference:

(a) "FS-80, Notice of Suspected Intentional Food Stamp Program Violation", Edition 4/99, Cabinet for Families and Children;

(b) "FS-80, Supplement A, Voluntary Waiver of Administrative Disqualification Hearing", Edition 1/93, Cabinet for Families and Children; and

(c) "FS-111, Deferred Adjudication Disqualification Consent Agreement", Edition 4/99, Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference: (1) Form FS-80, "Notice of Suspected Food Stamp Program Violation", revised (1/97 edition), is necessary:

(a) To provide an individual suspected of committing an intentional program violation with information regarding his claim;

(b) To inform an individual of his rights to an administrative disqualification hearing;

(2) Form FS-80, Supplement A "Voluntary Waiver of Administrative Disqualification Hearing", (1/93 edition), is necessary to permit an individual the opportunity to waive his right to an administrative disqualification hearing;

(3) Form FS-111, "Deferred Adjudication Disqualification Consent Agreement", (1/97 edition), is necessary to defer adjudication of an individual suspected of intentional program violation.

(4) These forms may be inspected and copied at the Department for Community-Based Services, 275 East Main Street, Frankfort, Kentucky 40621 and at each of the department's local offices. 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: February 3, 1999

FILED WITH LRC: February 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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 attend 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: The affected entities are individuals and households who are eligible to participate in the Food Stamp Program. As of October 1998, there were 157,659 participating families and 396,880 participating individuals.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

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

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements. In fact, the system will replace multiple paper based delivery systems, reduce the cost of benefit delivery and reduce fraud.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public hearing was requested as a result of the Notice of Intent being published and no written comments were received.

(b) Kentucky: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to 7 CFR 274.12.

(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 cabinet is required to administer the Food Stamp Program pursuant to 7 USC 2011 et seq. This administrative regulation is necessary in order to amend the intentional program violation section to provide for an electronic benefits transfer system.

(b) State whether a harmful effect on environment and public health would result if not implemented: The cabinet's failure to implement the federal requirements pursuant to 7 CFR 274.12, would cause a loss of federal funds, thereby jeopardizing the continuation of this nutrition program. Therefore, failure to implement the above-referenced provisions would have a detrimental effect on public health.

(c) If detrimental effect would result, explain detrimental effect: The loss of the Food Stamp Program would deprive over 400,000 citizens of the Commonwealth of a nutritional diet. Therefore, it is necessary to promulgate this administrative regulation to prevent the loss of federal funding (100% of food stamp benefits, 50% of federal match for administrative funds, and 100% of federal enhanced funding), due to the failure to implement the federal mandates pursuant to 7 CFR 274.12.

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

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

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

(10) Any additional information or comments: None

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

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 CFR 274.12

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated pursuant to 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, FEBRUARY 15, 1999

KENTUCKY REVENUE CABINET  
Department of Law  
Division of Tax Policy  
(New Administrative Regulation)

103 KAR 20:020. Items of capital for corporation license tax.

RELATES TO: KRS 136.070

STATUTORY AUTHORITY: KRS 131.130(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 136.070(2)(a) defines the term capital. This administrative regulation establishes a definition for each item of capital and provides guidance regarding the computation of capital.

Section 1. Definitions. (1) "Advance" means a loan of money.

(2) "Affiliated companies" means two (2) or more corporations in an affiliated group as defined in Section 1504(a) of the Internal Revenue Code except that in determining the voting power and value test prescribed by Section 1504(a)(2), "more than fifty (50) percent" shall be substituted for "eighty (80) percent".

(3) "Bank overdraft" means the liability account reflecting the amount of checks issued or drawn against the corporation's bank account in excess of credit and does not include a credit balance in the cash account.

(4) "Book value" means the value reflected on financial statements prepared for book purposes of an item of capital which may be composed of a single general ledger account or multiple accounts.

(5) "Borrowed money" means a loan of money including a loan from a stockholder and a bank overdraft.

(6) "Capital stock" means:

(a) The sum of:

1. The par value of all issued and outstanding shares of stock having a par value; and

2. The amount of consideration received by the corporations for shares of stock issued and outstanding without a par value;

(b) Less treasury stock.

(7) "Contingent liability" means a liability not yet fixed or certain but dependent on events to occur in the future. Contingent liability includes a deferred tax liability.

(8) "Debt" means an unconditional and legally enforceable obligation for the payment of money. Debt shall include trade payables and accrued operating expense accounts. Debt shall not include a contingent liability or an estimated liability.

(9) "Estimated liability" means a liability the existence of which is certain but for which the amount, due date, or payee is indeterminate.

(10) "Financial statement prepared for book purposes" means:

(a) The balance sheet prepared on a consistent basis from the corporation's books and records as of the last day of the taxable year; and

(b) If the balance sheet presentation of any account is questioned, the presentation required by generally accepted accounting principles shall control for purposes of determining capital.

(11) "Intercompany accounts" means the corporation's receivable and payable accounts, other than advances, reflecting the result of transactions between affiliated companies.

(12) "Loan" means delivery by one (1) party to and receipt by another party of a sum of money upon agreement, expressed or implied, to repay it with or without interest.

(13) "Loans from stockholders" means the liability account reflecting the amount of loans from stockholders without any reduction for the asset account reflecting the amount of loans to stockholders.

(14) "Net assets" means the amount by which total assets of a corporation exceed the total debt of the corporation.

(15) "Stockholder" means an individual or a corporation, which is not an affiliated company, owning stock in a corporation.

(16) "Surplus" means the excess of the net assets of a corporation over its capital stock.

(17) "Total assets" means the original cost of the entire property

of a corporation:

(a) Including real property, personal property, tangible property, and intangible property;

(b) Less applicable contra-asset accounts and deferred tax benefits.

Section 2. Computation of Capital. (1) A corporation shall determine the book value of each of the following items of capital:

(a) Capital stock;

(b) Surplus;

(c) Advances by affiliated companies;

(d) Intercompany accounts; and

(e) Borrowed moneys.

(2) The corporation shall combine the book value of each item of capital.

Section 3. Surplus. Equity in affiliated companies shall be included in surplus if the parent corporation records the equity on its financial statements prepared for book purposes.

Section 4. Advances by Affiliated Companies. (1) The amount of advances by affiliated companies included in capital shall be the excess, if any, of the total advances by or from affiliated companies over the total advances to affiliated companies.

(2) Advances by affiliated companies shall include a liability account representing a transfer of cash resulting from a cash management plan.

(3) Advances to affiliated companies shall include an asset account representing a transfer of cash resulting from a cash management plan.

Section 5. Intercompany Accounts. (1) The amount of intercompany accounts included in capital shall be the net of the receivable and payable accounts, other than advances, reflecting the result of transactions between affiliated companies.

(2) Intercompany accounts shall not include:

(a) A loan of money;

(b) An asset or liability account representing a transfer of cash resulting from a cash management plan; or

(c) An advance by or to an affiliated company.

Section 6. Borrowed Moneys. (1) Borrowed moneys shall include loans and bank overdrafts.

(2) Borrowed moneys shall not include trade accounts or notes payable arising through trade transactions such as salaries payable, taxes payable, and accounts representing various types of liabilities incurred for supplies, repairs, and other accounts where the seller allows the purchaser to pay within thirty (30) to ninety (90) days.

Section 7. Loans From Stockholders. (1) Loans from stockholders shall be included in capital as borrowed moneys.

(2) The amount of loans from stockholders included in capital shall be only the balance of the liability account titled loans from stockholders.

(3) The asset account titled loans to stockholders shall not be:

(a) Included in capital; or

(b) Netted against the liability account titled loans from stockholders.

Section 8. This administrative regulation shall apply to the computation of capital as reported on the return filed for taxable years beginning after December 31, 1999.

SARAH JANE SCHAAF, Secretary

ALEX W. ROSE, Commissioner

APPROVED BY AGENCY: January 26, 1999

FILED WITH LRC: January 27, 1999 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 31, 1999, at 10 a.m. at 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in



being heard at this hearing shall notify this agency in writing by March 24, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer C. Hays, Director, Division of Compliance & Taxpayer Assistance, Kentucky Revenue Cabinet, 200 Fair Oaks Lane, Station 50, Frankfort, Kentucky 40601, Telephone number: (502) 564-5495, Facsimile number: (502) 564-3392.

#### REGULATORY IMPACT ANALYSIS

Contact person: Jennifer C. Hays

(1) Type and number of entities affected: Approximately 70,000 corporations that are required to file and pay license tax 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 are no direct or indirect costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The costs of doing business for all corporations will be less because of the guidance provided by this administrative regulation for filing corporation license tax returns.

(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 effects upon competition during the first year.

2. Second and subsequent years: No effects upon competition during the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Direct and indirect savings will be realized during the first year by the administrative body in the form of reduced compliance efforts.

2. Continuing costs or savings: The savings realized from the reduced compliance efforts will continue after the first year.

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

(b) Reporting and paperwork requirements: This administrative regulation produces no additional reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation produces no impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current Revenue Cabinet appropriations will be used to implement and enforce this administrative regulation.

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

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

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative interpretations of KRS 136.070 are 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: There are no effects on public health or environmental welfare.

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

health would result if not implemented: There would be no detrimental effect on environment and public health if this administrative regulation were not implemented.

(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: There are no conflicts, overlapping, or duplication of any statute, administrative regulation, or government policy.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. All corporations are required to compute the items of capital in the same manner.

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (New Administrative Regulation)

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

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

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

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

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

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

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

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

Section 2. (1) A member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Re-

irement System, who is eligible for a retirement allowance not subject to the reductions specified in KRS 16.577 or 61.595(2)(a), as of the last day of paid employment, shall not be eligible to apply for disability retirement under KRS 16.582 or 61.600.

(2) The total service credit used in determining the disability benefit of a member who is eligible to apply under this section shall not exceed:

(a) 324 months for a Kentucky Employees Retirement System or County Employees Retirement System member in a nonhazardous position; or

(b) 240 months for a member of the State Police Retirement System or a hazardous member, as defined in KRS 61.592, of the Kentucky Employees Retirement System or County Employees Retirement System.

RANDY OVERSTREET, Chair

WILLIAM P. HANES, ESQ., Deputy Commissioner

APPROVED BY AGENCY: February 11, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1999, at 9 a.m. at the Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 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 this date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Pamala S. Johnson, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-4646, facsimile (502) 564-5656.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

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

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

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

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

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: The impact on the retirement system will depend on the number of retirees who apply for disability retirement under the regulation and the number of employees who will be ineligible to apply due to their status of being

eligible for a benefit without reduction. There may be no net increase or decrease in administrative expense.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

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

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

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

(b) Kentucky:

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

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

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

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

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

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

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

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

(10) Any additional information or comments:

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

#### FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

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

2. This administrative regulation requires that members who are eligible for a retirement benefit without reduction shall not be eligible to apply for disability retirement. This regulation provides a procedure for members retired between October 16, 1992 and November 30, 1998 who were denied disability retirement on the basis of age to apply for disability retirement with the Kentucky Retirement Systems.

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

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

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(New Administrative Regulation)**

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

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

STATUTORY AUTHORITY: KRS 311.660

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

Section 1. When it appears that a person whom a paramedic has been called to attend is dead the procedures set out in Sections 2 through 7 of this administrative regulation shall be followed prior to determining that the person is dead.

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

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

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

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

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

Section 5. Except where 201 KAR 9:335 requires that medical control contact be made, the paramedic may contact medical control or a licensed physician, authorized in writing by the medical director, for advice and assistance in making any determination required by this administrative regulation, except that the medical director of the service may direct, in the service's protocol, that prior to making a determination that a patient is dead that the medical director, or a

physician authorized in writing by the medical director, be contacted and that the determination be concurred in by the physician.

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

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

DANNY M. CLARK, President

C. LLOYD VEST, II, General Counsel

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment, 201 KAR 9:330, to current administrative statutes and regulations will be held on the 31st day of March, 1999, at 10 a.m. eastern time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, in writing by March 24, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the hearing or written comments to: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, Fax: (502) 429-9923.

REGULATORY IMPACT ANALYSIS

Contact Person: C. Lloyd Vest, II

(1) Type and number of entities affected: 268 ambulance services and approximately 800 licensed and certified paramedics in the Commonwealth of Kentucky.

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

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

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

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

1. First year following implementation: Cost of training.

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

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

(a) Direct and indirect costs or savings: None

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

2. Continuing costs or savings: None

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

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

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

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

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

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

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: Implemented comments received at hearing into 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: Benefits public health by assuring paramedics are properly trained. There is no effect on the environment.

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

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

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

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

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

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

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

### FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

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

### GENERAL GOVERNMENT CABINET Kentucky Board of Medical Licensure (New Administrative Regulation)

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

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

STATUTORY AUTHORITY: KRS 311.660

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

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

specified in the applicable resuscitation protocol of the ambulance service medical director have been performed and documented.

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

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

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

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

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

Section 7. If a paramedic discontinues resuscitation on a patient during transport to a medical facility, the paramedic shall make the notifications required by KRS 72.020 to the officials of the county in which the paramedic discontinued resuscitation. Upon making such notification, the paramedic shall determine from the appropriate official(s) whether to remain at that location, to return the deceased to a facility within the primary service area of the ambulance provider, or to continue on to the medical facility with the deceased.

Section 8. A paramedic who is off duty or, in a part of the state outside the service area of the paramedic's ambulance service or EMS provider, shall not discontinue resuscitation or declare a person dead. A paramedic who is on duty and in a different part of the state shall not discontinue resuscitation on a patient who the paramedic is not transporting.

DANNY M. CLARK, President

C. LLOYD VEST, II, General Counsel

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment, 201 KAR 9:335, to current administrative statutes and regulations will be held on the 31st day of March, 1999, at 10 a.m. eastern time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, in writing by March 24, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the hearing or written comments to: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, Fax: (502) 429-9923.

REGULATORY IMPACT ANALYSIS

Contact Person: C. Lloyd Vest, II

(1) Type and number of entities affected: 268 ambulance services and approximately 800 licensed and certified paramedics in the Commonwealth of Kentucky.

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

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

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

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

1. First year following implementation: Cost of training.

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

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

(a) Direct and indirect costs or savings: None

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

2. Continuing costs or savings: None

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

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

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

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

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

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

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: Implemented comments received at hearing into 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: Benefits public health by assuring paramedics are properly trained. There is no effect on the environment.

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

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

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

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

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

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation affects. 268 ambulance services and ap-

proximately 800 licensed and certified paramedics.

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

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

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

GENERAL GOVERNMENT CABINET  
Kentucky Board of Medical Licensure  
(New Administrative Regulation)

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

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

STATUTORY AUTHORITY: KRS 311.660

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

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

(1) Information on and a copy of KRS 311.660; and

(2) Information on and a copy of 201 KAR 9:330; and

(3) Information on and a copy of 201 KAR 9:335; and

(4) Information on and a copy of KRS 72.020; and

(5) Information on and a copy of KRS 311.621 to 311.643; and

(6) Information on the duties of and role of the coroner and state medical examiner; and

(7) Information on preservation of evidence; and at the scene of a death.

Section 2. The training may be provided as part of an approved paramedic training course or shall be conducted under the supervision of the medical director or supervising physician of an EMS provider or ambulance service for whom the paramedic works. The paramedic training course instructor or the medical director providing the training 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 or EMS provider providing the training shall invite the coroner of the county in which the training is conducted to attend the training and assist in the instruction.

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

Section 5. The medical director conducting training under this administrative regulation shall make a written report to the Board of Medical Licensure containing the names of all paramedics who successfully complete the training. The report shall be sent to the Board of Medical Licensure within twenty (20) working days after the conclusion of the training.

Section 6. This administrative regulation shall apply to each paramedic course taught in Kentucky after its effective date.

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Section 7. A paramedic desiring to be certified as a paramedic in Kentucky shall complete the training required herein within ninety (90) days of his certification by the board. Until a paramedic has completed this training he shall not declare a person dead or discontinue resuscitation.

DANNY M. CLARK, President

C. LLOYD VEST, II, General Counsel

APPROVED BY AGENCY: February 15, 1999

FILED WITH LRC: February 15, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment, 201 KAR 9:340, to current administrative statutes and regulations will be held on the 31st day of March, 1999, at 10 a.m. eastern time, at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Those interested in attending this hearing shall notify C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, in writing by March 24, 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 attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the hearing will not be made unless a written request for a transcript is made. If you do not wish to attend this hearing, you may submit written comments on the proposed administrative regulation. Send notification of intent to attend the hearing or written comments to: C. Lloyd Vest, II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, (502) 429-8046, Fax: (502) 429-9923.

### REGULATORY IMPACT ANALYSIS

Contact Person: C. Lloyd Vest, II

(1) Type and number of entities affected: 268 ambulance services and approximately 800 licensed and certified paramedics in the Commonwealth of Kentucky.

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

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

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

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

1. First year following implementation: Cost of training.

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

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

(a) Direct and indirect costs or savings: None

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

2. Continuing costs or savings: None

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

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

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

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

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

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

(b) Kentucky: Yes

(7) Assessment of alternative methods: reasons why alternatives were rejected: Implemented comments received at hearing into 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: Benefits public health by assuring paramedics are properly trained. There is no effect on the environment.

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

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

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

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

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

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

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

### FISCAL NOTE ON LOCAL GOVERNMENT

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

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

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

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

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

### GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (New Administrative Regulation)

**201 KAR 20:420. 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

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



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(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: February 8, 1999

FILED WITH LRC: February 9, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 22, 1999 at 9 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 March 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: 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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (New Administrative Regulation)

**201 KAR 20:430. 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

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

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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: February 8, 1999

FILED WITH LRC: February 9, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 22, 1999 at 9 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 March 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: 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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (New Administrative Regulation)

**201 KAR 20:440. 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

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 phy-

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sician 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: February 8, 1999

FILED WITH LRC: February 9, 1999 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on March 22, 1999 at 9 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 March 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: 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: 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: 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. No. The administrative regulation applies to all affected equally.

### TRANSPORTATION CABINET

#### Department of Fiscal Management (New Administrative Regulation)

**600 KAR 3:030. Relocation or reconstruction of utility and rail facilities; recordkeeping and audit requirements.**

RELATES TO: KRS 177.035, 177.170, 177.430(5), 179.265, 23 CFR 140, 645, 646

STATUTORY AUTHORITY: KRS 177.035, 177.170, 177.430(5), 179.265, 23 CFR 140, 645, 646

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.035 provides that the Transportation Cabinet shall pay for the cost of relocating any utility equipment which belongs to a publicly-owned utility if the relocation is occasioned by a highway construction project. KRS 179.265 requires the Transportation Cabinet to pay for the cost of relocation of utility facilities if they were constructed on other than public right-of-way and the relocation is occasioned by a state highway construction project. KRS 177.170 requires a railroad and the Transportation Cabinet to each pay one-half (1/2) of the cost of the highway construction work accomplished within the right-of-way of the railroad. KRS 177.430(5) gives the Transportation Cabinet the authority to promulgate administrative regulations relating to utilities on turnpike projects. The U.S. Department of Transportation requires all projects which it funds to be subject to the cost principles or accounting standards established in 48 CFR 31. This administrative regulation establishes the audit methodology to be used by a cabinet auditor for auditing reimbursable expenses incurred by a railroad or utility under an agreement with the Transportation Cabinet; establishes the requirements for keeping financial records; and requires all utilities and railroads contracting with the cabinet to comply with the federal regulations.

Section 1. Utility's Eligible Costs. (1) The eligible costs a utility incurs in participating in a highway construction project by providing relocation or reconstruction of its facility shall be governed by 23 CFR 645.

(2) If the utility owner is a county or other local public agency, 23 CFR 140, subpart G shall govern the eligibility of the costs of salaries, wages and other related costs incurred by its employees.

(3) A cost not in compliance with 23 CFR 140, Subpart G or 23 CFR 645 shall be disallowed.

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Section 2. Railroad's Eligible Costs. (1) The eligible costs a railroad incurs in participating in a highway construction project by providing relocation, construction, or reconstruction of its facility or the elimination of a hazardous highway-rail crossing, shall be governed by 23 CFR 646 and 23 CFR 140, Subpart I.

(2) A cost not in compliance with 23 CFR 140, Subpart I or 23 CFR 646 shall be disallowed.

Section 3. Financial Records of a Utility or Railroad. (1) A railroad or utility shall provide the cabinet timely access to all financial and cost information necessary to verify the railroad's or utility's actual costs for the relocation, construction or reconstruction of its facilities directly associated with a cabinet project.

(2) A railroad or utility shall maintain payroll and time records for all employees until final payment as stated in the project agreement.

(3) A utility or railroad which is required to relocate its facilities for a state-funded highway construction project shall maintain its records in accordance with the provisions of 48 CFR 31.

(4) If a railroad or utility is notified by the Transportation Cabinet of a pending audit, the railroad or utility shall provide the following:

- (a) Time sheets;
- (b) Labor agreements;
- (c) Vendor invoices;
- (d) Equipment usage;
- (e) Indirect cost analysis;
- (f) Direct cost summary;
- (g) Budgetary information;
- (h) Betterment determination;
- (i) Project-related employee expenses;
- (j) Payroll register; and
- (k) Cancelled payroll checks.

Section 4. Audit Standards. The Transportation Cabinet, if auditing a railroad or utility, shall abide by the accounting and auditing standards contained in the following:

(1) "Government Auditing Standards, 1998 Revision" by the Comptroller General of the United States;

(2) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)", copyright 1997 by the American Institute of Certified Public Accountants, Inc.; and

(3) "Original Pronouncements, Accounting Standards as of June 1, 1998, Volume I and Volume II" published by the Financial Accounting Standards Board.

Section 5. Audit Findings. (1) Prior to the issuance of a final report, the auditor from the Transportation Cabinet shall present the preliminary findings and relevant work papers to the railroad or utility.

(2)(a) A comment about or objection to the preliminary findings shall be submitted to the Transportation Cabinet in writing within fifteen (15) calendar days of the railroad's or utility's receipt of the preliminary findings.

(b) A comment or objection shall be taken into consideration by the Transportation Cabinet prior to finalizing the report.

(3)(a) If a railroad or utility disagrees with the results of a final report issued by the Transportation Cabinet, the railroad or utility may request a review by the Audit Review Committee within thirty (30) calendar days of the date the final report is received by the utility or railroad.

(b) The request shall be in writing and clearly state the concern with the final report and the reason for the concern.

(c) If the concern and the reason are not clearly stated, the request for review shall not be accepted.

Section 6. External Audit Review Committee. (1) The External Audit Review committee shall consist of the following:

(a) The Commissioner of the Department of Fiscal Management, Chairperson;

(b) Executive Director, Office of Project Development;

(c) Executive Director, Office of Policy and Budget; and

(d) General Counsel, Office of General Counsel.

(2) A committee member may appoint a proxy to serve on this

committee.

(3) The Audit Review Committee may request the utility, railroad or the auditor to answer questions. The request shall state if a representative is to appear in person, by electronic communication, or in writing.

(4)(a) If the railroad or utility is not satisfied with the decision of the Audit Review Committee, an appeal may be made to the Secretary of the Transportation Cabinet within thirty (30) calendar days of receipt of the committee's decision.

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 7. Material Adopted. (1) The following material is adopted:

(a) 23 CFR 140, Subparts G and I, effective April 1, 1998;

(b) 23 CFR 645, effective April 1, 1998;

(c) 23 CFR 646, effective April 1, 1998; and

(d) 48 CFR 31, effective October 1, 1998.

(2) This material may be viewed or copied at the Transportation Cabinet, External Audit Branch, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States;

(b) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)", copyright 1997 by the American Institute of Certified Public Accountants, Inc.;

(c) "Original Pronouncements, Accounting Standards as of June 1, 1997, Volume I and Volume II" published by the Financial Accounting Standards Board;

(d) 63 Federal Register 58595, October 30, 1998; and

(e) 63 Federal Register 70287, December 18, 1998.

(2) This material may be:

(a) Inspected at the External Audit Branch, 3rd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Obtained by contacting:

1. For a copy of "Government Auditing Standards, 1994 Revision" the U.S. Government Printing Office, Superintendent of documents, Mail Stop: SSOP, Washington, D.C. 20402-9328;

2. For a copy of "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)", the American Institute of Certified Public Accountants, Inc. Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311-3811; or

3. For a copy of "Original Pronouncements, Accounting Standards as of June 1, 1997, Volume I and Volume II" the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116.

GLENN MITCHELL, Acting Commissioner

JAMES C. CODELL, III, Secretary

PATRICIA K. FOLEY, Deputy General Counsel

APPROVED BY AGENCY: January 19, 1999

FILED WITH LRC: January 19, 1999 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on March 30, 1999 at 9 a.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 March 23, 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 March 23, 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 March 30, 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:

(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: The only cost to the firms is of the audit and the administrative requirements associated with the audit.

(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 firms are required to maintain their records in accordance with 48 CFR Part 31.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to perform many audits each year.

(a) Direct and indirect costs or savings:

1. First year: This regulation will not affect Transportation auditing 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: Performance of the audit and preparation of the audit documents.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: The alternative of not setting forth much of the audit criteria was rejected because the affected entities needs to know what restrictions will apply and what standards will be followed in the performance of the audit.

(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. All recordkeeping and audits must be done according to the same standards.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 48 CFR 31.

2. State compliance standards. The state has mandated that both the Transportation Cabinet and its consultants comply with the federal acquisition regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal mandates specify the accounting procedures the firms must use and the auditing procedures the Transportation Cabinet must follow.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The accounting procedures are extended to all firms regardless of the source of funding for a particular project since any firm will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to maintain its financial records in accordance with the federal mandate.

## TRANSPORTATION CABINET Department Of Highways Division Of Traffic (New Administrative Regulation)

603 KAR 4:045. Cultural and recreational supplemental guide signs.

RELATES TO: KRS 189.337, 23 CFR Subpart F

STATUTORY AUTHORITY: KRS 189.337

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.337 authorizes the Transportation Cabinet to promulgate standards and specifications for uniform system of traffic control devices. This administrative regulation sets forth standards to be used in the erection and maintenance of cultural and recreational supplemental guide signs.

Section 1. Definitions. (1) "Clear zone" means the area between the edge of the driving-lane of a public road and an imaginary line running parallel to the road a certain distance from the edge of the traveled way as specified by the AASHTO Roadside Design Guide (current edition).

(2) "Cover" means a protective shield over a cultural and recreational sign which prohibits viewing of the sign.

(3) "Department" means the Kentucky Department of Highways.

(4) "Eligibility distance" means the distance from the at-grade intersection of the state highway at the point where the directional sign is located to the entrance driveway to the activity.

(5) "Illegal sign" means an advertising device which has been determined by the cabinet to be illegal according to the provisions of 603 KAR 3:080.

(6) "Cultural and recreational sign panel" means an official sign placed within the highway right-of-way with space for one (1) or more individual signs to be attached to it.

(7) "Intersection" means a junction of two (2) or more highways which meet and cross at a common point requiring the intermingling of traffic streams between the highways.

(8) "Interstate or parkway" means a highway that has fully-controlled access and is part of the National Interstate and Defense System of Highways or is now, or once was, a toll road.

(9) "MUTCD" means the Federal Highway Administration's "Manual on Uniform Traffic Control Devices" incorporated by reference in 603 KAR 5:050.

(10) "Public road" means all state-maintained roads other than interstate or and parkways.

(11) "Ramp" means the on- or off-access road from an interstate highway or parkway to or from the first public road.

(12) "Cultural or recreational" means a public or private activity

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which provides a tourist attraction, cultural or recreational activity to the traveling public.

(13) "Cultural or recreational activity" means

(a) A cultural, historical, recreational, agricultural, educational or entertainment activity; or

(b) A commercial activity which is unique and local or indigenous in nature.

Section 2. General Provisions. The Department of Highways shall control the erection and maintenance of cultural and recreational signs in accordance with the MUTCD and this administrative regulation.

Section 3. Applications and Contracts for Cultural and Recreational Signs. An application for cultural and recreational signs shall be made to the Department of Highways by the city or community preparing the signage program.

Section 4. Information Panels for Cultural and Recreational Signs.

(1) General requirements for information panels.

(a) The information panels shall be located to:

1. Take advantage of natural terrain;
2. Have the least impact on the scenic environment; and
3. Avoid visual conflict with other signs within the highway right-of-way.

(b) Information panels for cultural and recreational signs shall not be erected:

1. On interstates or parkways;
2. On the on/off ramps of interstates or parkways;
3. Where there is insufficient space to locate both other traffic control devices and the information panels; or
4. So that the traffic is directed onto an interstate or parkway;

(c) Unprotected information panel supports located within the clear zone shall be of a breakaway design.

(d) An information panel may be located laterally outside the normal longitudinal alignment of other traffic control signs, but shall be erected within the highway right-of-way.

(e) The location of any other traffic control device shall at all times take precedence over the location of an information panel.

(2) Intersection approach information panels.

(a) Information panels may be erected on the approach to an intersection on a public road.

(b) Except as provided in paragraph (g) of this subsection, each intersection approach information panel shall be located at least 200 feet from the intersection.

(c) Except as provided in paragraph (g) of this subsection, an intersection approach information panel shall be spaced at least 200 feet from any other traffic control device including another intersection approach information panel.

(d) A separate information panel shall be installed for each of the directions of traffic on an approach to an intersection at which cultural and recreational signs will be placed for the identification of cultural and recreational activities. The directions of traffic are the following:

1. A right turn;
2. A left turn;

3. No turn, if the activity or business is located ahead and if allowed by the provisions set forth in Section 6 of this administrative regulation.

(e) In the direction of traffic, the order of placement for separate information panels shall be for facilities to the left, to the right and straight ahead.

(f) If the AHEAD sign is used pursuant to the provisions of Section 6 of this administrative regulation, an attempt shall be made to locate it to the far right corner of the intersection, but it shall not obstruct the driver's critical viewing of other traffic control devices.

(g) The spacing requirements set forth in paragraphs (b) and (c) of this subsection may be waived by the State Highway Engineer's Office if, based on sound engineering judgment, it is determined that the intersection can safely accommodate the reduced spacing.

Section 5. Cultural and Recreational Sign Design and Composition. (1) Each cultural and recreational sign shall:

- (a) Be rectangular in shape;
- (b) Have a white legend and border on a brown background;

(c) Have reflective legends, arrows, backgrounds and borders;

(d) Contain the name of the business in not more than two (2) lines of legend which shall not include promotional advertising.

(2) Each cultural and recreational sign on an intersection approach information panel shall have:

(a) A separate directional arrow as set forth in Section 2D-8 of the MUTCD;

(b) The distance to the activity or business shown beneath the arrow;

(c) Arrows pointing to the right at the extreme right of the cultural and recreational sign; and

(d) Arrows pointing to the left or up at the extreme left of the cultural and recreational sign.

(3)(a) The arrangement of the cultural and recreational signs on the advance information panel shall be the same as the arrangement on the intersection information panel except the directional arrows and distance shall be omitted.

(b) The appropriate legend NEXT RIGHT, NEXT LEFT, or AHEAD in letters of the same size as legends should be placed on the advance information panels above the cultural and recreational sign.

(c) The legend "RIGHT X MILE", "LEFT X KILOMETERS", or similarly worded legend may be used when there are intervening minor roads.

(4) No more than four (4) cultural and recreational signs shall be installed on a single information panel.

(5) Cultural and recreational signs shall be arranged vertically on the information panels. Information panels shall be located so that the right turn signs are closer to the intersection. When no more than four (4) cultural and recreational signs are to be installed on an approach to an intersection, the cultural and recreational signs may be combined on the same information panel with the cultural and recreational sign for left turns placed above the cultural and recreational signs for right turns.

(6) The standard lettering for cultural and recreational signs shall be in upper case letters of the type provided in the "Standard Alphabets for Highway Signs and Pavement Markings" book published in 1977 by the U.S. Department of Transportation. Capital letters shall be six (6) inches in height. Spacing between characters shall conform to the tables in the metric edition of "Standard Alphabets for Highway Signs and Pavement Markings" published in 1977 by the U.S. Department of Transportation.

(7)(a) A cultural and recreational sign shall not exceed seventy-two (72) inches wide and eighteen (18) inches tall.

(b) The cultural and recreational signs on the same information panel shall all be the same width.

(c) The directional arrow with the distance to the activity or business underneath shall not exceed sixteen (16) inches wide and sixteen (16) inches tall.

(d) There shall be a one (1) inch white border surrounding the sign and separating the directional arrow and legend.

(e) There shall be a one (1) inch spacing between the border and legend and two (2) inch spacing between lines of legend.

(f) The maximum length of the legend shall be five (5) feet and four (4) inches per line.

(g) In areas of reduced speeds or forty-five (45) mph or less the size of the cultural and recreational signs and lettering shall be set by the State Highway Engineer's Office, considering the location and terrain of the area.

(8) Clearance of panels should be governed by Sections 2A and 2D of the MUTCD.

Section 6. Ahead Signing. (1) The legend "AHEAD" may be used in lieu of the up directional arrow set forth in Section 5(2)(d) of this administrative regulation.

(2) Signing for cultural and recreational activities in the AHEAD direction shall be considered only under the following circumstances:

(a) There is signing for a similar facility in either the right or left direction;

(b) Through traffic is not the normal traffic pattern; or

(c) The visibility of the establishment is obscured until a motorist is within 800 feet of the entrance.

Section 7. Cultural and Recreational Activity Eligibility. A cultural



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and recreational activity shall meet the following requirements to qualify for cultural and recreational signing. A cultural and recreational sign shall not be erected until the activity or site has been approved in accordance with this administrative regulation.

(1) The activity shall be open to the general public during regular and reasonable hours, and not by appointment or reservation only.

(2) Approval shall not be granted if the cultural and recreational activity is using an illegal sign at any location in the Commonwealth of Kentucky.

(3) Each activity shall comply with all applicable local, state, and federal statutes and regulations including those prohibiting discrimination based on race, religion, color, sex, age, disability, or national origin. Each activity identified on a cultural and recreational sign shall provide assurance of its conformance with all applicable federal, state or local laws and regulations. If a cultural and recreational activity is in noncompliance of any of these laws or regulations, it may be considered ineligible for participation in this program and its signs may be removed.

(4) The activity shall be conducted in an appropriate building or area. The activity shall not be conducted in a building principally used as a residence unless there is a convenient, separate and well-marked entrance or the cultural and recreational activity is a bed and breakfast lodging. The building or area shall be maintained in a manner consistent with standards generally accepted for that type of business or activity.

(5) Any activity which operates on a seasonal basis shall make provisions to remove or cover the activity's sign during the off season. The Transportation Cabinet shall be notified at least thirty (30) days before the opening or closing occurs and proper arrangements made to remove or cover the sign or signs.

(6) A cultural and recreational sign shall not be displayed which would misinform the traveling public or is unsightly, badly faded, or in a state of dilapidation. In these instances the business shall make arrangements for a new cultural and recreational activity.

(7) The Transportation Cabinet shall not be responsible for business lost due to signs or information panels becoming temporarily out of service.

(8) The display of the activity sign on the cultural and recreational structure shall not be considered an endorsement or recommendation by the state of Kentucky on behalf of the cultural and recreational activity.

(9) To qualify for a cultural and recreational sign, a business or activity shall:

(a) Be open a minimum of eight (8) hours a day, five (5) days a week, one (1) of which is a weekend, any time the sign is displayed or receives a waiver from the Transportation-Tourism Interagency Committee;

(b) Have adequate parking on site or nearby for the facility;

(c) Be listed on the state or national register of historic sites if the cultural and recreational activity is an historic site; and

(d) Have an eligibility distance of fifteen (15) miles or less.

**Section 8. Changes.** Any changes to the original approved set of signs as it relates to the location and or approved activities shall be permitted by the cabinet according to criteria set forth in Section 7 of this administrative regulation.

**Section 9. Measurements.** Measurements for the qualification of activities for display of a cultural and recreational sign shall begin at the point of measurement described in this section to the nearest point of vehicle travel to the exit from the crossroad to the activity.

**Section 10. Permits.** The city or local community wishing to install signs shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each information panel proposed to be erected, changed or removed from the state-owned right-of-way.

**Section 11. Material Incorporated by Reference.** The following material is incorporated by reference as part of the administrative regulation: Transportation Cabinet Form TC99-300 "Cultural and Recreational Supplemental Guide Sign Application", January 1999 edition.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: January 19, 1999

FILED WITH LRC: January 19, 1999 at noon

**PUBLIC HEARING:** A public comment hearing on this administrative regulation will be held on March 23, 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 March 16, 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 March 16, 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 March 23, 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: All travelers using Kentucky's noninterstate highway system, as well as organizations which are eligible and choose to participate in the Cultural and Recreational Supplemental Guide Signs Program.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received, and the cabinet believes that the cost of living will not be affected as a result of this administrative regulation. Any employment impact would be a slight increase in employment in those areas where signs may increase tourist travel to hard to locate attractions.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The increased cost of doing business will be limited to those businesses that choose to participate in the program.

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

1. First year following implementation: An application process will be used to determine eligible participants.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: Processing of application will be handled by the Division of Traffic.

(4) Assessment of anticipated effect on state and local revenues: Minor impact.

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

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

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

(b) Kentucky: Some increased tourism may result from this

regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of no regulation was discarded in the interest of clarity to the tourism industry.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Yes. Tiering was applied by setting criteria for eligibility in the program. Priority was also given to certain activities.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the "Manual on Uniform Traffic Control Devices".

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

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

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

#### EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education  
Department of Education  
Office of District Support Services  
(New Administrative Regulation)

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

RELATES TO: KRS 158.6453, 158.650 to 158.710, 158.780, 158.785

STATUTORY AUTHORITY: KRS 156.070, 156.160, 158.6453

NECESSITY, FUNCTION, AND CONFORMITY: 703 KAR 4:020 is no longer required because 1998 amendments to KRS 158.6453 deleted the requirement for districts to publish an annual performance report. In addition, as of June 30, 1996, KRS 158.710(6) provides that KRS 158.650 to 158.710, relating to educationally deficient districts, is null and void. 703 KAR 4:050 is no longer required since the 1992 General Assembly Budget Memorandum, directing the adoption of operational standards defining ratios for classified employees, expired June 30, 1994.

Section 1. The following administrative regulations are hereby repealed:

(1) 703 KAR 4:020, Annual performance reports and standards of student, program, service, and operational performance; and

(2) 703 KAR 4:050, Operational standards defining ratios for the major classifications of classified employees.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kevin M. Noland

(1) Type and number of entities affected: 176 school districts.

(2) Direct and indirect costs or saving to those affected:

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is the only process that can be used to repeal regulations.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: This regulation does not relate to the environment or public health.

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

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

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

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

**EDUCATION, ARTS, AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Kentucky Department of Education**  
**Bureau for Learning Support Services**  
**(New Administrative Regulation)**

**703 KAR 5:040. Statewide Assessment and Accountability Program; relating accountability index to school classification (A1-A6).**

RELATES TO: KRS 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to create and implement a statewide assessment program to ensure school accountability for student achievement of the goals set forth in KRS 158.645 and 158.6451. The purpose of this administrative regulation is to clarify the characteristics of A1-A6 schools and to require schools displaying these characteristics to report the appropriate classification for school accountability purposes.

Section 1. Definitions. (1) An "A1" school means a school under administrative control of a principal or head teacher and eligible to establish a school-based decision making council. An A1 school is not a program operated by or as a part of another school.

(2) An "A2" school means a district-operated, totally vocational-technical school, where the membership is counted in other schools.

(3) An "A3" school means a district-operated, totally special education school.

(4) An "A4" school means a district-operated, totally preschool program (e.g., Headstart, Kentucky Education Reform Act (KERA) Preschool, or Parent And Child Education (PACE)).

(5) An "A5" school means an alternative school which is a district-operated and district-controlled facility with no definable attendance boundaries that is designed to provide services to at-risk populations with unique needs. Its population composition and characteristics change frequently and are controlled by the local school district student assignment practices and policies (i.e., the local district personnel have input with regard to the identification of students receiving services provided by the A5 school as opposed to unconditionally accepting court ordered placements). Students enrolled in A5 schools typically include:

- (a) Actual dropouts returning to an alternate educational environment;
  - (b) Potential or probable dropouts;
  - (c) Drug abusers;
  - (d) Physically abused students;
  - (e) Discipline problem students;
  - (f) Nontraditional students (e.g., students who have to work during the school day); or
  - (g) Students needing treatment (e.g., emotional/psychological).
- (6) An "A6" school means a district-operated instructional program in a nondistrict-operated institution or school.
- (7) "A2-A6" means a school which is classified as A2, A3, A4, A5, or A6.

Section 2. Accountability indices and related thresholds shall be calculated only for those schools classified as A1 schools.

Section 3. A2-A6 Schools may Issue Diplomas. However, if an A2-A6 school issues a high school diploma or a certificate such as may be issued to students with disabilities, the school shall monitor graduates to determine the status of the students for purposes of reporting transition to adult life data, and shall indicate the A1 sending school to which the graduate data should be attributed for accountability purposes.

Section 4. Nonacademic data collection procedures, including

collection and verification procedures, shall apply to all schools classified as A1 through A6.

Section 5. (1) For purposes of rewards and assistance resulting from the implementation of the accountability system, staff of the A2-A6 schools shall be attached to the central office and viewed as providing a service to the total district.

(2) If the Kentucky Board of Education implements a district accountability program, and if the district receives rewards under the accountability program, A2-A6 schools located within the district shall also receive rewards. If a district accountability program is not implemented, A2-A6 schools shall receive rewards if the district where they are located would have been rewarded had a district accountability been in place.

(3) If the Kentucky Board of Education implements a district accountability program, and if assistance is required for the central office, this assistance shall also apply to the A2-A6 schools operated by the district. If a district accountability program is not implemented, assistance shall be given to the A2-A6 schools if assistance would have been given to the district had a district accountability program been in place.

Section 6. (1) For purposes of rewards, an A2-A6 school serving multiple public school districts shall be eligible for rewards if more than ten (10) percent of its total aggregate membership is generated from a school which has qualified (or would have if a district accountability program had been in place) for rewards. The amount of the reward shall be proportionate to this percent. The A2-A6 school shall not formally participate in the decision on the disposition of the reward unless the school generates more than fifty (50) percent of its aggregate membership from the district qualifying for rewards, in which case the school principal or head teacher shall contribute to the decision-making process.

(2) An A2-A6 school shall be subject to assistance resulting from the performance of a district's students if more than fifty (50) percent of the aggregate membership of the school is generated from the district being required to receive assistance.

Section 7. If there is no statutory or regulatory district accountability program to implement Sections 5 and 6 of this administrative regulation, the Kentucky Department of Education shall calculate a district performance judgment on the aggregate district data for the purpose of applying the performance judgment to any A2-A6 school that is operated by the district.

WILMER S. CODY, Commissioner of Education  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS

Agency Contact: C. Scott Trimble

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None
- (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
- (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
- (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
  1. First year following implementation: None
  2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: None
    2. Continuing costs or savings: None
  3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
- (c) If detrimental effect would occur, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
- (a) Necessity of proposed regulation, if in conflict: 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: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

**EDUCATION, ARTS, AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**Bureau for Learning Support Services**  
**(New Administration Regulation)**

**703 KAR 5:050. Statewide Assessment and Accountability Program; school building appeal of performance judgments.**

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455

STATUTORY AUTHORITY: KRS 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate administrative regulations to establish a process whereby a school shall be allowed to appeal a performance judgment considered to be grossly unfair. This administrative regulation establishes the procedures for an appeal of a performance judgment consistent with KRS 158.6455.

Section 1. Definitions. (1) "Baseline accountability index" means the accountability index score that describes the school's performance during the 1998-99 and 1999-2000 school years, and is that number against which progress shall be measured.

(2) "Growth accountability index" means the accountability index

that describes a school's performance every two (2) years, and is that number compared to the school's predicted or baseline index as an indicator of change in school performance.

(3) "Performance judgment" means the classification of a school in a particular performance category for the purpose of holding the school accountable for the percentage of successful students.

Section 2. (1) A written appeal of a performance judgment shall be submitted to the Commissioner of Education within forty-five (45) days after the Department of Education officially releases the performance judgments to the public.

(2) A written request for a data review shall be submitted to the Commissioner of Education within fourteen (14) days after the Department of Education officially releases the performance judgments to the public. If, as a result of a data review, the performance judgment is subsequently revised, or if a school is not satisfied with the results of a data review, a written appeal of a performance judgment shall be submitted to the Commissioner of Education within thirty (30) days after the school has received the official notification of the revised performance judgment or data review results.

(3) The request shall be signed by the principal upon approval of the school council. If there is no school council, the request shall also be signed by the superintendent, upon approval of the school board.

(4) The appeal of a performance judgment shall clearly identify the basis for the wrongful effect on the baseline accountability index or the growth accountability index.

(5) The appeal shall detail the requested adjustment to be made to one (1) or more of these indices.

(6) The Kentucky Department of Education staff shall review the request against the standards set forth in KRS 158.6455. A committee shall be appointed by the Commissioner of Education to review the pending appeals and make recommendations to the Commissioner of Education as to whether to dispute an appeal. The committee may include a teacher, a parent, a principal, a district assessment coordinator, a superintendent, and a counselor. If the appeal is disputed by the department, it shall submit the request to the hearing officer for the Kentucky Board of Education.

(7) The hearing officer shall conduct a hearing in accordance with KRS Chapter 13B. The hearing officer shall submit a written recommended order to the Kentucky Board of Education for the board's consideration in rendering its final order, in accordance with KRS Chapter 13B.

WILMER S. CODY, Commissioner of Education  
HELEN MOUNTJOY, Chairperson  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: C. Scott Trimble

(1) Type and number of entities affected: 176 school districts.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would occur, explain detrimental effect: None

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

(a) Necessity of proposed regulation, if in conflict: 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: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

## EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau of Learning Support Services

(New Administrative Regulation)

### 703 KAR 5:060. Interim accountability model.

RELATES TO: KRS 158.645, 158.6451, 158.6453, 158.6455, 156.160(2)

STATUTORY AUTHORITY: KRS 156.070, 158.6455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 158.6455 requires the Kentucky Board of Education to promulgate an administrative regulation to establish a formula for school accountability and a school improvement goal for each school for the 1998-99 and 1999-2000 school years. This administrative regulation establishes procedures for determining successful schools, school rewards, and classifications of schools applied as school performance judgments.

Section 1. Definitions. (1) "Accountability index" means the statistic that combines a school's academic, nonacademic, and other appropriate data into a single index.

(2) "Regression model" means a procedure used for predicting future performance based on past performance.

(3) "School" means an A1 school as defined in 703 KAR 5:040,

Section 1(1).

(4) "Standard error of estimate" means the standard deviation of the predicted index scores from the prediction line resulting from the regression analysis.

Section 2. Interim Accountability Model (1996-1997 – 1999-2000). (1) After consultation with and review by the National Technical Advisory Panel on Assessment and Accountability, the Kentucky Board of Education shall use an appropriate regression model to establish predicted or expected accountability growth indices for the biennium ending in the 1999-2000 school year assessments. The basis of the predictions shall be data from the 1996-1997 and 1997-1998 schools years. Accepted statistical practices shall be applied.

(2) A school's actual accountability index for the biennium ending with the 1999-2000 school year shall be compared to its predicted level of performance. In the regression procedure, a school's 1999-2000 biennium index shall be compared to the 1999-2000 biennium indices of those schools that had comparable 1997-1998 biennium accountability indices. If a school's 1998-2000 biennium index equals or exceeds its predicted 1999-2000 biennium index in its comparison group of schools, the school shall be eligible to receive a reward.

(3) If a school falls below its predicted performance by at least one (1) standard error of estimate, a school shall be subject to the provisions of KRS 158.6455(5)(b)2, including review by a scholastic audit team, eligibility for school improvement funds, and developing a school improvement plan.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

### REGULATORY IMPACT ANALYSIS

Agency Contact: C. Scott Trimble

(1) Type and number of entities affected: 176 school districts.

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

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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None
- (b) Reporting and paperwork requirements: None
- (4) Assessment of anticipated effect on state and local revenues: None
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: None
- (6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: None
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: None
  - (c) If detrimental effect would occur, explain detrimental effect: None
- (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: None
  - (a) Necessity of proposed regulation, if in conflict: 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: Was tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts.

**EDUCATION, ARTS, AND HUMANITIES CABINET**  
**Kentucky Board of Education**  
**Department of Education**  
**Office of Learning Programs Development**  
**(New Administrative Regulation)**

**704 KAR 3:420. Preschool associate teachers.**

RELATES TO: 156.160, 157.3175

STATUTORY AUTHORITY: KRS 156.070, 156.160, 157.3175

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 authorizes the Kentucky Board of Education to adopt administrative regulations establishing standards which school districts shall meet in student, program, service and operational performance. KRS 157.3175 authorizes preschool education programs and authorizes that administrative regulations be promulgated to establish eligibility criteria, program guidelines, and standards for personnel. This administrative regulation sets forth the criteria for paraprofessional instructional personnel, including a differentiated job description from certified teachers, qualifications for the position, and responsibilities for certified personnel providing supervision of preschool associate teachers.

Section 1. Definitions. (1) "Curriculum oversight" means supervision of a preschool associate teacher by a qualified professional.

(2) "Preschool associate teacher" means a classified employee employed by a local school district in a paraprofessional role to organize, manage and provide direct instruction to children below primary school age under the supervision of a qualified professional.

(3) "Qualified professional" means a person who meets one (1) of the criteria listed in Section 3 of this administrative regulation and who is responsible for the curriculum in an early childhood classroom or program operated by a paraprofessional preschool associate teacher.

Section 2. Role of a Preschool Associate Teacher. (1) A local school district may employ a preschool associate teacher to do the following:

- (a) Manage the daily operation of preschool classrooms or other early childhood programs:
- (b) Provide direct instruction to children based on identified

skills:

- (c) Assist in assessing the skills of individual children;
  - (d) Assist in implementing individual education programs (IEP's) of children with disabilities; and
  - (e) Provide parent information on progress of individual children.
- (2) A preschool associate teacher shall receive at least weekly contact and consultation by a qualified professional regarding the classroom, the curriculum and other teacher performance standards in interdisciplinary early childhood education contained in 704 KAR 20:084. The qualified professional shall determine a regular schedule for onsite visits and observation no less than monthly and based on the skills and experience of the preschool associate teacher. Additional onsite contact and consultation for individual children with disabilities shall be provided as specified in the IEP. The activities of the preschool associate teacher shall reflect the guidance of the professional assigned to provide curriculum oversight.

Section 3. Qualifications. (1) A preschool associate teacher shall hold one (1) of the following or its equivalent as approved by the Department of Education:

- (a) An associate degree with a professional core of courses in early childhood education or child development;
  - (b) A child development associate certificate conferred by the Council for Early Childhood Professional Recognition; or
  - (c) A Kentucky vocational diploma for preschool teacher.
- (2) In unusual circumstances, a local board may request approval of a preschool associate teacher who has begun and is in the process of completing a degree, diploma or certificate listed in subsection (1)(a) through (c) of this section.
- (3) Curriculum oversight shall be provided by one (1) who meets one (1) of the following criteria:
- (a) Holds certification or a statement of eligibility for interdisciplinary early childhood education;
  - (b) Has been exempted by the Kentucky Education Professional Standards Board from additional certification in order to continue teaching in an early childhood position;
  - (c) Provided supervision to Preschool Level III Teachers under the interim requirements in 704 KAR 3:410 prior to the 1999-2000 school year; or
  - (d) Is qualified to serve on an internship team for interns in Interdisciplinary Early Childhood Education pursuant to 704 KAR 20:690.

WILMER S. CODY, Commissioner of Education

HELEN MOUNTJOY, Chairperson

KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: February 12, 1999

FILED WITH LRC: February 12, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation will be held on March 31, 1999, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 24, 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 Mr. Kevin M. Noland, Associate Commissioner, Office of Legal Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Debbie Schumacher

- (1) Type and number of entities affected: 176 school districts.
- (2) Direct and indirect costs or saving to those affected: None



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

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

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative is not allow paraprofessional associate teachers and hire only certified teachers. Alternative was rejected as unnecessarily expensive when credentialed paraprofessionals are available and supervised by a qualified professional.

(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 occur, explain detrimental effect:

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

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

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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. The administrative regulation applies equally to all public preschool associate teachers.

#### **PUBLIC PROTECTION AND REGULATION CABINET**

##### **Public Service Commission (New Administrative Regulation)**

**807 KAR 5:070. Filing requirements and standards for commission approval of water district commissioner training programs.**

RELATES TO: KRS 74.020(6), (7)

STATUTORY AUTHORITY: KRS 74.020(6), (7)(b), (c), (d)

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

filing requirements and standards for commission approval of water district commissioner training programs.

Section 1. Filing Requirements. To apply for approval of a proposed water district commissioner training program, an applicant shall file with the commission an original and five (5) copies of the following documents and information concerning the program for which approval is sought:

(1) The name and address of the applicant;

(2) The name and sponsor of the program and the subject matter covered by the program;

(3) A summary of the content of the program in detail sufficient to describe how the program will enhance the management, operation, and maintenance of water treatment and distribution systems;

(4) The number of credit hours requested for the program;

(5) The name and relevant qualifications and credentials of each instructor presenting the program;

(6) A copy of written materials given to water commissioners attending the program; and

(7) If the program has been certified by an organization that provides training to persons associated with the water industry, the name of the certifying organization and a statement that the certification remains valid.

Section 2. Subject Matter. Program hours consisting of one (1) or more of the following areas of instruction shall be approved as to subject matter:

(1) Federal and state law regarding safety standards for drinking water;

(2) Management techniques;

(3) Accounting standards and treatment of costs;

(4) Financing principles;

(5) Rate design;

(6) Water technology and system facilities;

(7) Ethics; and

(8) Other areas of instruction related to, and calculated to enhance the quality of, the management, operation, and maintenance of a water system.

Section 3. Expiration and Renewal. Approval of a program shall automatically expire twelve (12) months after commission approval has been issued, except that an applicant may request that approval be renewed for an additional twelve (12) month period by submitting the following:

(1) A copy of the initial application with a copy of the commission order approving;

(2) Updates, if any, to the application, with supporting documentation, if necessary.

B. J. HELTON, Chairman

LAURA DOUGLAS, Secretary

DEBORAH T. EVERSOLE, Assistant General Counsel

APPROVED BY AGENCY: February 1, 1999

FILED WITH LRC: February 11, 1999 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 29, 1999 at 10 a.m. at the Public Service Commission's office, Hearing Room No. 1, 730 Schenkel Lane, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 22, 1999, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Deborah T. Eversole, Assistant General Counsel, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, Telephone: (502) 564-3940, Facsimile: (502) 564-7279.

REGULATORY IMPACT ANALYSIS

Contact person: Deborah T. Eversole, Assistant General Counsel

(1) Type and number of entities affected: 136 water districts, 14 combined water, gas, or sewer districts, and 2 water commissions exist and will be affected by the proposed administrative regulation.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments on this subject 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: Minimal paperwork, compliance, and reporting are required. An applicant need only supply the commission with information and documents relevant to the program for which approval is sought pursuant to KRS 74.020.

2. Second and subsequent years: See answer to (2)(c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs or savings to the commission are expected. The commission will review requests for approval of water commissioner training programs in the ordinary course of business.

1. First year: See answer to (3)(a).

2. Continuing costs or savings: See answer to (3)(a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal paperwork will result. The commission will review applications for approval of water commissioner training programs in the ordinary course of business.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is necessary for implementation and enforcement of this administrative regulation. Review of applications for approval of water commissioner training programs will be handled by the commission in the ordinary course of business.

(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. However, no economic impact is expected.

(b) Kentucky: No public comments were received. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods of assessing water commissioner training programs have been proposed.

(8) Assessment of expected benefits: The information submitted by applicants will enable the commission to ensure, in accordance with its statutory mandate, that water commissioner training programs will assist commissioners in enhancing the management, operation, and maintenance of water treatment and distribution systems.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improvements in methods of managing water treatment and distribution systems will have a positive effect on the public health and environmental welfare.

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The size of a water district, combination water, gas, or sewer district, or water commission is not relevant to the issue of whether a particular program effectively enhances a water commissioner's knowledge of the management, operation, or maintenance of a water treatment and distribution system.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Community-Based Services**  
**Division of Policy Development**  
**(New Administrative Regulation)**

**905 KAR 1:370 Criteria for out-of-state placement.**

RELATES TO: KRS 194B.050, 199.011, 199.680, 205.634, 615.030

STATUTORY AUTHORITY: KRS 194B.050, 199.011, 199.645, 199.680, 199.8982, 205.634, 615.050, EO 98-731

NECESSITY, FUNCTION, and CONFORMITY: KRS 194B.050 requires the Secretary for the Cabinet for Families and Children to promulgate administrative regulation necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the criteria for out-of-state placement of children committed to the Department for Community-Based Services pursuant to KRS 199.680.

Section 1. Placement in Out-of-state Facilities. (1) Children in the custody of the cabinet may be placed in out-of-state facilities after a thorough in-state facility search, documented in the case record, is unsuccessful in finding placement that serves the needs of the child, pursuant to KRS 205.634. The out-of-state placement shall take into consideration the following circumstances:

(a) The facility's ability to meet the child's needs;

(b) The facility's location in relation to the parent's home;

(c) The parent's involvement with the child and their means of transportation;

(d) The permanency goal for the child; and

(e) The cost of services is comparable to similar in-state services, when available.

(2) Exceptions to in-state placement may be made pursuant to KRS 199.680(1)(a) and (b).

(3) No child shall be placed in an out-of-state facility until the protection and permanency staff verify that:

(a) The facility is licensed by, and in good standing with, licensing authorities in the state in which the facility is located;

(b) Contact is made with the social service personnel in the state where the facility is located to assess the facility's reputation and the quality of care.

(4) The commissioner or his designee shall approve the placement of children in out-of-state facilities.

(5) The placement of children in out-of-state facilities shall comply with the Interstate Compact on Placement of Children, pursuant to KRS 615.030.

(6) The Department for Community-Based Services shall provide verification of the search for an in-state placement to the Department for Medicaid Services' Peer Review Organization for each Medicaid eligible child, prior to the Peer Review Organization's determination of medical necessity.

(7) Through the Interstate Compact on Placement of Children, the Department for Community-Based Services shall request courtesy supervision for each child placed in an out-of-state facility. The department shall also request a report every six (6) months as a result of the courtesy supervision.

Section 2. Facility Staff Participation in Case Planning. Individuals designated by the facility where the child is placed shall be invited to participate in the case planning conferences, either in person or by telephone conferencing. The permanency hearing for the

child shall assess whether the out-of-state placement continues to meet the needs of the child according to the established case plan.

DIETRA PARIS, Commissioner  
VIOLA MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: January 28, 1999

FILED WITH LRC: February 10, 1999 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 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 March 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, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, Fax: (502) 564-7573.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Cathy G. Mobley, Director

(1) Type and number of entities affected: All children who are committed to the Cabinet for Families and Children and are placed in out-of-state placements, with the exception of juvenile offenders. Currently there are 59 children in such placements.

(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 public 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 public 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, as placements out-of-state are currently being made, this regulation only requires uniform conditions, requirements and exceptions.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: No cost or savings expected.

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: No factors which would increase or decrease costs.

(b) Reporting and paperwork requirements: None

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

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

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

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

(b) Kentucky: No public hearing was requested as a result of the Notice of Intent being published and no written comments received. To be determined after the public hearing takes place on this ad-

ministrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered as this regulation is required by the 1998 General Assembly.

(8) Assessment of expected benefits: The establishment of clear criteria for out-of-state placement of children committed to the Department for Community-Based Services, as required by the 1998 General Assembly.

(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: There is no detrimental effect, as children will be placed in out-of-state facilities only if no appropriate facility is available in Kentucky.

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

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

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
Minutes of February 9, 1999

The February meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, February 9, 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 January 12, 1999 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, Kim Burch, Biff Baker.

**Guests:** Representative Robert Damron; Representative Adrian Arnold; Harlan Stubbs, Department for Adult Education and Literacy; Suzanne Hopf, Kimberly Crone, Department of Public Advocacy; David Wicker, Office of the Petroleum Storage Tank Environmental Assurance Fund; Dennis Taulbe, Norma Northern, Roger Sugarman, Council on Postsecondary Education; Jennifer B. Hans, Rosemary F. Ceater, Kentucky Registry of Election Finance; Eddie Mattingly, Gary Morris, Patricia Glenn, Jennifer Hays, Revenue Cabinet; James J. Grawe, Board of Certification of Alcohol Counselors; Jane Gardner, Landscape Architect Board; Nancy L. Black, Division of Occupations and Professions; Nathan Goldman, Board of Nursing; Edwin F. Crowell, John Wilson, Tom Bennett, Roy Grimes, Department of Fish and Wildlife Resources; Mark Mangeot, Natural Resources and Environmental Protection Cabinet; Brenda Priestley, Tamela Biggs, Department of Corrections; Keith Horn, Department of Juvenile Justice; Charles Harmon, Jim Roberts, Transportation Cabinet; Renee Murray, Robert Sherman, Kevin Noland, Paul McElwain, Education, Arts, and Humanities Cabinet; Janet Banta, Eileen Whaley, Marilyn Kay Troupe, Education Professional Standards Board; Carl H. Montgomery, Workers' Claims; Sharron S. Burton, D.J. Wasson, Mark McGuire, Department of Insurance; Jurliith G. Walden, Department of Housing, Buildings and Construction; Betty Barker, Betsy Dunnigan, Jayne Arnold, D.W. Swain, Karen Doyle, Pat Russell, Mike Littlefield, Joyce R. Turley, Trish Howard, Todd Short, Cookie Whitehouse, John H. Walker, Ralph Von Derau, John Gray, Ann Gordon, Cabinets for Health Services and Families and Children; Marie Alagia Cull, Tracey Baroni, Steve Mitchell, Greg Bailey, Andrew Corsig, PhRMA; Robert L. Barnett, Kentucky Pharmacists Association; Michael W. Wooden, Schering & Eli Lilly & Company; Karen Thomas Lentz, Rhone-Poulenc Rorer Pharmaceuticals; Hershel Osborne, Karen Osborne, Beverly Allen, East Kentucky Transportation, Inc. (RTA); Sharon Daus, Don Daus, D&B Taxi Inc.; Terry L. Curry, Jim Bohn, Donnie F. Story, Rural Transportation Association; F.W. Bill White, Union Cab in Louisville KY, Inc.; Daniel Turner, KY Transportation Association (RTA) and Lifeline Transit; Janet Howard, Quicksilver Taxi; Rev. William L. Curry, Mainstream Transportation Authority, Inc.; Judy Allgood-Hodge, All County Wheelchair Transport; Michael C. Schier, Yellow Checker Cab Co. of KY, Inc.; Larry Franklin Minton, John R. Tackett, Georgetown Cab, Inc.; Barry and Jeanie Branham, Mt. Sterling City Cabin, Inc.; Edwin Croche, Star Community Taxi and Kentuckiana Transportation Association; Sue Osborne, DWM; Margie Montgomery, KY Right to Life; Diane Bryant, Alison Huff, Christina Gillgor, Commission on Women; Guy Hardin, Take Back KY; Mike Helton, Anthem; Carl Breeding, AIK, Westvaco, Air Products; Ronny Pryor, Kentucky Farm Bureau; Kim Fletcher, Proof Positive; Joe Gerth, The Courier-Journal; Michael Murray, Advanced Technologies International, Inc.; P. Stephen Armstrong, AmerCollege OB/Gyn; Terri Potter Schneck, American Lung Association; Bob Stevens, St. Elizabeth and Baptist Health Systems; Dot Darby, Baptist Healthcare System; Robin F. Dixon, Tim Perkins, Lisa Elder, Greg Donaldson, BMA Suburban; Marsha Frontz, Boyle County EMS; Scott Wegenast, Catholic Conference of KY; Bart Baldwin, Children's Alliance; Donovan Fornwalt, Council for Retarded Citizens; Elizabeth Strom, EMW Women's Clinic; Michael D. Vance KY CADC Board; Robert Booth, Kentucky Consumer Advocacy Network; Roy Gividen, Sharon Fields, Nancy Estes, Kentucky Disabilities Coalition; Gwen Harbuck, Barbara Henchey, Mattingly Center for

Continuing Education; David Crane, OIG-L&R; Glenn Sunderland, U.S. Taxpayers Party; Don Chasteen, Marshall White, John Cooper, Bill Doll, Kentucky Medical Association; Nancy Galvagni, Sarah S. Nicholson, Kentucky Hospital Association; Ruby Jo Cummins, Dandridge F. Walton, KAHCF; Dr. Taylor Collins, Jacque Van Houten, KCTFL; Kelly Knoop; Jim Carlross; Janice Smith; Marlena Smith; Janice Smith; Liza Bozwell; Boshel Byews; Sandy Kays; Melissa Barthle; Pat Lipton; Polly E. Lawson.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Council on Postsecondary Education: Public Educational Institutions**

13 KAR 2:020. Guidelines for admission to the state-supported postsecondary education institutions in Kentucky. Debbie McGuffey, Associate Vice President for Communications and External Relations, and Roger Sugarman, Associate Director for Research and Accountability, represented the Council.

In response to questions by Senator Roeding, Mr. Sugarman stated that: (1) this administrative regulation required higher education institutions to formulate their own institutional policies for admitting home-schooled students; (2) the Council had: (a) gathered information from the institutions; and (b) determined that most institutions require: 1. ACT scores; 2. a syllabus; and 3. in some cases, a list of textbooks that the home-schooled student used; (3) the amendment proposed by Subcommittee staff deleted the language regarding "other accepted measures"; and (4) this administrative regulation incorporated by reference the Program of Studies, which was: (a) published by the Kentucky Board of Education; and (b) established the content of courses for the pre-college curriculum.

This administrative regulation was amended as follows: (1) Section 1(2) was amended to delete language that repeated a statutory definition, as required by KRS 13A.222(4)(d); (2) Sections 1 through 9 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 9 was amended to: (a) incorporate by reference the General Education Transfer Policy and the Baccalaureate Program Transfer Frameworks; and (b) comply with the format requirements of KRS 13A.2251.

13 KAR 2:090. Kentucky Educational Excellence Scholarship (KEES) Program. Debbie McGuffey, Associate Vice President for Communications and External Relations, and Norma Northern, Director of Finance, represented the Council.

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 this administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to: (a) delete definitions for terms that were not used in this administrative regulation; and (b) delete language that repeated statutory definitions, as required by KRS 13A.222(4)(d); (4) Sections 5, 6, and 8 were amended to delete provisions that repeated or summarized relevant statutes, as required by KRS 13A.120(2)(e); (5) Section 9 was amended to specify the format for the required budget proposal submission, as required by KRS 13A.100 and 13A.130; and (6) Sections 1 through 3, and 5 through 9, were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

This administrative regulation was also amended as follows: (1) Section 2(4) was amended to provide that for the 1998-99 and 1999-2000 school years, the grade point average reported for each eligible student shall be based on the grade scale in place at that school during the 1997-98 academic year; and (2) Section 2(5) was amended to provide that during the 1999-2000 fiscal year, the Council shall request the assistance of the Kentucky Board of Edu-

cation to develop minimum threshold levels for letter grades to be used in 2000-2001 for purposes of the scholarship program.

**Department of State: Registry of Election Finance: Practice and Procedure**

32 KAR 2:210. Judicial hearing procedures. Rosemary Center, General Counsel, represented the Registry.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 1 were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 1 was amended to specify the time period in which counsel shall forward materials to an appointed judge.

**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. Eddie Mattingly represented the Cabinet.

In response to questions by Senator Roeding, Mr. Mattingly stated that: (1) this administrative regulation was required by House Bill 74, which was enacted during the 1998 Regular Session of the General Assembly; (2) prior to the enactment of House Bill 74, the valuation of vehicles for the motor vehicle usage tax: (a) was based on reference manuals, including the NADA Official Used Car Guide; and (b) generally used the average retail value; (3) because of concerns that the old method resulted in higher taxes, the sponsor of House Bill 74 originally wanted to change to a cash consideration method, in which the tax would be based on the amount a person paid for a car, rather than an arbitrary book value; (4) House Bill 74 established a fall-back provision: (a) if an affidavit signed by both the buyer and seller was not available; and (b) which would base the tax on the average retail value, as prescribed by the Revenue Cabinet; (5) because the trade-in value might be significantly lower than the amount paid for a vehicle, the cash consideration system was considered a fairer alternative; (6) the Cabinet believed that basing the tax amount on the average retail value would encourage the use of affidavits; (7) House Bill 74 required the use of an average trade-in value in certain situations, including vehicles: (a) transferred by gift; and (b) brought into Kentucky from out-of-state by new residents; (8) while the emergency administrative regulation included provisions that related to rebates: (a) those provisions were not included in this ordinary administrative regulation; and (b) rebates were not subject to tax; and (9) House Bill 74 required the affidavit to be notarized.

Representative Lee stated that: (1) he was a co-sponsor of House Bill 74; and (2) the NADA average retail value was considered fair for Kentucky because: (a) the average NADA trade-in would generally be much lower than what was actually paid for a vehicle; and (b) a person might: 1. want to use the average trade-in amount, rather than the average NADA retail value; and 2. not sign an affidavit.

In response to a question by Representative Allen, Mr. Mattingly stated that if the book price on a car was \$15,000, a person who bought the car for: (1) \$12,000 would pay taxes on the \$12,000 if the county clerk was provided with the affidavit signed by both the buyer and seller; and (2) \$18,000 would pay taxes based on \$18,000.

This administrative regulation was amended as follows: (1) Section 1 was amended to insert a required definition for MSRP; and (2) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)

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

201 KAR 10:080. Continuing education. Jane Gardner, Executive Director, represented the Board.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; and (2) Sections 1, 4, 5, 6, 7, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

**Board of Certification of Alcohol and Drug Counselors**

201 KAR 35:030. Code of ethics. Nancy Black, Director, Division of Occupation and Professions; Mike Vance, Chairman, Kentucky

Board of Certification of Alcohol and Drug Counselors Board; and James Groye, General Counsel, represented the Board.

Subcommittee staff stated that this was a new administrative regulation that established a code of ethics for alcohol and drug counselors, as required by KRS 309.0813(2).

In response to a question by Chairman Arnold, Mr. Vance stated that one of the requirements of being a counselor was that the person be alcohol and drug free.

In response to a question by Senator Roeding, Subcommittee staff stated that the issues raised in the initial staff review had been addressed.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Section 1(2)(a) was amended to delete a provision prohibiting discrimination based on "sexual orientation", because it exceeded statutory authority; (3) Section 4 was amended to delete provisions that repeated or summarized applicable statutes, as required by KRS 13A.120(2)(e); (4) Sections 3, 5, 6, and 9 were amended to comply with the formatting requirements of KRS 13A.220(4); and (5) Sections 1, 2, 4, 5, 6, 8, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

201 KAR 35:040. Continuing education requirements. Subcommittee staff stated this was a new administrative regulation that established the continuing education requirements for alcohol and drug counselors, as required by KRS 309.0813(2).

In response to questions by Chairman Arnold, Mr. Vance stated that: (1) continuing education courses would be taught by people who were: (a) certified; and (b) experienced in drug and alcohol counseling; (2) to become certified, a person had to have: (a) 6,000 hours of experience; (b) 300 hours of supervised training; (c) 270 clock hours; and (c) 20 hours of education and training every year; (3) as of 1998, a college degree was required to become a counselor; (4) many drug and alcohol counselors had a bachelors degree; and (5) in 2005, a master's degree would be one of the minimum requirements for a counselor.

This administrative regulation was amended as follows: (1) Section 4(2)(d) was amended to provide that a continuing education activity be taught by a certified drug or alcohol counselor; (2) a new Section 11 was created to incorporate by reference an application for approval of continuing education; (3) Section 3 was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1, 3, 4, 6, 7, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4).

**Tourism Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:049. Small game and furbearer hunting on public areas. Subcommittee staff stated that this existing administrative regulation was amended to add exceptions to small game and furbearer hunting on the Barren River Wildlife Management Area.

Mr. Bennett stated that this administrative regulation created an area on the Barren River Wildlife Management Area that was limited to hunting with primitive weapons.

Section 3(5)(b) of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:140. Requirements for wild turkey hunting. Subcommittee staff stated that this existing administrative regulation had been amended to establish the permit requirements for a person hunting with a senior-disabled license.

Mr. Bennett stated that: (1) House Bill 658, enacted during the 1998 Regular Session of the General Assembly, allowed the Department to recover all available federal money; (2) senior and disabled hunters: (a) were now required to buy a \$5.00 annual license; (b) did not have to buy a: 1. deer tag; 2. turkey tag; 3. trout stamp; or 4. waterfowl permit; and (c) saved quite a bit of money; and (3) this administrative regulation required them to: (a) put a tag on the animal when taken in the field; and (b) tell the Department their name and address.

In response to questions by Chairman Arnold, Mr. Bennett stated that: (1) for deer, there was a phone number for reporting a taking; (2) hunters were still required to tag the deer in the field to

identify it; and (2) turkeys had to be checked in at a check station.

In response to questions by Representative Bruce, Mr. Bennett stated that: (1) hunting was permitted at Fort Campbell for certain quota hunts; (2) the quota hunts were held for Spring turkey season in April and May; and (3) the season dates were selected based upon training.

This administrative regulation was amended as follows: (1) Section 3(4)(b) was amended to correct a statutory citation; and (2) Sections 2 and 3 were amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:142. Spring wild turkey hunting. Subcommittee staff stated that this existing administrative regulation had been amended to establish: (1) a youth quota hunt on the West Kentucky Wildlife Management Area; and (2) the procedure for participating in the hunt.

In response to a question by Chairman Arnold, Mr. Grimes stated that probably 20-30 youth were permitted on a youth quota hunt.

This administrative regulation was amended as follows: (1) a new Section 4(5) was created for hunting on the Barren River Wildlife Management Area; and (2) Section 4 was amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:144. Fall wild turkey hunting. Subcommittee staff stated that this existing administrative regulation had been amended to permit fall turkey hunting on the West Kentucky Wildlife Management Area.

In response to questions by Chairman Arnold, Mr. Grimes stated that: (1) the Department had acquired a new 1,000 acre area at the Barren River Wildlife Management Area; and (2) this administrative regulation limited hunting on the area to primitive weapons hunting.

This administrative regulation was amended as follows: (1) a new Section 4(4) was created for hunting on the Barren River Wildlife Management Area; and (2) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:221 & E. Waterfowl seasons and limits. Subcommittee staff stated that this existing administrative regulation had been amended to establish the waterfowl seasons and limits.

In response to a question by Chairman Arnold, Mr. Bennett stated that: (1) the federal hunting guidelines had been given to the Department last fall; and (2) the waterfowl hunting seasons had already expired.

This administrative regulation was amended as follows: (1) Section 3(2)(d) was amended to comply with the formatting requirements of KRS 13A.220(4); and (2) Section 4(6) was amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:222 & E. Waterfowl hunting requirements. Subcommittee staff stated that this existing administrative regulation had been amended to establish the waterfowl hunting requirements.

This administrative regulation was amended as follows: (1) a new Section 7 was created to incorporate by reference certain forms; and (2) Sections 4, 5, and 6 were amended to comply with the drafting requirements of KRS 13A.222(4).

**Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures. Tamela Biggs, Staff Attorney, represented the Department.

Subcommittee staff stated that: (1) this existing administrative regulation had been amended to restrict use of communication and recording devices by corrections employees; (2) the initial staff review stated that this administrative regulation violated Sections 1 and 2 of the Kentucky Constitution; (3) this administrative regulation did not violate the free speech provisions of the Kentucky Constitution.

CPP 3.20, V.D. of this administrative regulation was amended to comply with the drafting requirements of KRS 13A.222(4).

**Transportation Cabinet: Department of Vehicle Regulation: Office of General Counsel: Division of Motor Carriers**

601 KAR 1:200. Administration of taxes imposed in KRS 138.655 through 138.7291. Charlie Harman, Staff Assistant, and Rick Taylor, Director of the Division of Motor Carriers, represented the Cabinet.

Subcommittee staff stated that this existing administrative regulation had been amended to: (1) permit tax payments by credit card; and (2) decrease the number of people required to file a bond with the Cabinet.

In response to a question by Chairman Arnold, Mr. Harman stated that permitting payment of taxes by a credit card would be more convenient for the citizens.

In response to a question by Representative Allen, Mr. Taylor stated that the Cabinet had contacted some credit card companies regarding: (1) this administrative regulation; and (2) having the funds placed in the proper accounts.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) Section 4(3) was amended to comply with the formatting requirements of KRS 13A.220(4); (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, 5, 7, 9, 11, and 13 were amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Section 15 was amended to comply with the format for incorporation by reference of forms.

601 KAR 1:201. Recordkeeping and audit requirements of taxes imposed in KRS 138.655 through 138.7291. Subcommittee staff stated that this new administrative regulation established the record keeping and audit requirements of the International Fuel Tax Agreement.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 3, 4, and 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

**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. Kevin Noland, General Counsel, represented the Department.

In response to a question by Senator Roeding, Mr. Noland stated that: (1) this administrative regulation authorized a school or community nutrition program to appeal an adverse action; and (2) an example of an adverse action was a denial of program funding or an overpayment order after an audit found that a program was not able to document providing the food to the children.

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 this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4); and (4) Section 2(1)(e) was amended to clarify that a during the review process, a program sponsor shall represent itself or be represented by legal counsel.

**Office of Learning Programs Development: Office of Instruction**

704 KAR 3:480 & E. Early reading incentive grants. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 4 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 this administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 3(15) was amended to clarify the review procedures for grant applications.

**Education Professional Standards Board**

704 KAR 20:015. Rank I classification. Marilyn Troupe, Janet Banta, and Eileen Whaley, represented the Board.

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 2, 8, and 9 were amended to comply with the drafting requirements of KRS 13A.222(4); (3) Section 6(2)(d) was amended to clarify that a recommendation for certificate renewal shall be prior to the expiration date of the certificate; and (4) Section 9 was amended to specify the time periods for submitting the required information.

704 KAR 20:022. Continuing education alternative to planned fifth-year program. This administrative regulation was amended as follows: (1) Sections 2 and 6 were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 7 was amended to specify the time periods for submitting the required information.

**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. In response to a question by Senator Roeding, Mr. Noland stated that: (1) this administrative regulation was promulgated pursuant to House Bill 519, enacted during the 1998 Regular Session of the General Assembly; (2) the budget bill appropriated \$200,000 for this program, which would pay for three special education mentors; and (3) the special education mentors: (a) were identified from local school district personnel that are experts in serving students with disabilities; and (b) went into school districts that needed assistance because the district had systemic or broad-based problem with the delivery of services to students with disabilities.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Section 1 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 this administrative regulation, as required by KRS 13A.220(3)(f); (3) amend Sections 1 and 2 to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Labor Cabinet: Department of Workers Claims**

803 KAR 25:021. Individual self-insurers. Carla Montgomery, Staff Attorney, represented the Department.

In response to a question by Chairman Arnold, Ms. Montgomery stated that: (1) this administrative regulation was amended to: (a) conform to House Bill 1, enacted during the 1996 First Extraordinary Session of the General Assembly; (b) require: 1. the Department to notify the guaranty association when there was a default; and 2. a service organization to adjust claims for at least sixty days or until the final adjustment; and (c) establish requirements for self-insurers, including a financial requirement that the self-insurer have a posted security bond; and (2) self-insurers were generally big companies with enough financial stability to self-insure.

In response to a question by Representative Bruce, Ms. Montgomery stated that: (1) this administrative regulation regulated individual self-insurers; and (2) the Division of Security and Compliance within the Department: (a) was directed by Gary Davis; and (b) performed audits of both group and individual self-insurers.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to state the necessity for and function served by this administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1, 3, 4, 5, 6, and 8 through 14 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Department of Insurance: Health Insurance Contracts**

806 KAR 17:170 & E. Genetic testing. Sharron Burton, Staff Attorney, and D. J. Wasson, Principal Assistant, represented the Department.

Subcommittee staff stated that this new administrative regulation defined the terms, "genetic information", "genetic services", and "genetic test".

In response to a question by Senator Roeding, Ms. Wasson stated that Kentucky's definitions: (1) were the same as the Federal definitions; and (2) were very similar to the definitions established by other states.

This administrative regulation was amended as follows: (1) the

STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to comply with the drafting requirements of KRS 13A.222(4).

806 KAR 17:190 & E. Guaranteed Acceptance Program requirements. Subcommittee staff stated that this new administrative regulation established the requirements for participation in the Guaranteed Acceptance Program ("GAP").

In response to questions by Senator Roeding, Ms. Wasson stated that:

(1) there were two GAP insurers in Kentucky; (2) based on reports received in November, 1999, she believed that they covered 195 people; (3) the Department had not compiled the December, 1999, reports; (4) the 195 people were high-cost insureds; and (5) insurance carriers were trying to determine eligibility; (6) the eligibility requirements for the GAP program were: (a) acceptance of a list of 28 high-cost conditions; and (b) the Alternative Underwriting Mechanism, which was an underwriting guideline that a permitted a carrier to submit to the Department for approval for an insured that it might not have ordinarily written.

In response to questions by Representative Bruce, Ms. Wasson stated that she: (1) did not know what the GAP insurers charged; and (2) would obtain GAP rate information for the Subcommittee.

This administrative regulation was amended as follows: (1) the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to put the definitions in alphabetical order; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 3(6) were amended to comply with the drafting requirements of KRS 13A.222(4); and (4) a new Section 5(7) was created to designate eligibility requirements for the "lookback" period.

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

815 KAR 7:105. Kentucky Building Code/1997. Judith Walden, General Counsel, represented the Department.

In response to questions by Senator Long, Ms. Walden stated that: (1) Kentucky uses the BOCA national building code with a few Kentucky changes; and (2) because the BOCA building code did not require radon control measures, the Kentucky Building Code was amended to clarify that radon control measures were not required.

In response to a question by Senator Roeding, Ms. Walden stated that Kentucky is not more stringent than the federal requirements.

This administrative regulation was amended as follows: (1) Section 1 was amended to change the edition date of the material incorporated by reference; and (2) the material incorporated by reference was amended to: (a) specify that use of the 1999 edition of the National Electrical Code shall be mandatory after July 1, 1999; and (b) clarify that the installation of radon control measures shall be optional for the builder, unless the builder is constructing homes in a location which has enacted a lawful ordinance requiring the installation of radon control measures.

**Cabinet for Health Services: Department for Public Health: Health Services and Facilities**

902 KAR 20:041. Operation and services; family care homes. Ralph von Derau, Health Planner, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 were amended to comply with the drafting requirements of KRS 13A.222(4).

902 KAR 20:360. Abortion facilities. Ralph von Derau, Health Planner, and John Walker, General Counsel, represented the Cabinet.

This administrative regulation was amended as follows: Sections 4, 8 and 9 were amended to: (1) comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) delete language that repeated or summarized KRS Chapter 13B, as required by KRS 13A.120(2)(e); and (3) clarify the: (a) hearing procedures; and (b) requirements for the disposition

of pathological waste.

**Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development: Medicaid Services**

907 KAR 1:635 & E. Conditions of coverage for the Kentucky Hospital Care Program (KHCP). Trish Howard and Joyce Turley represented the Department.

In response to a question by Representative Bruce, Ms. Turley stated that the Kentucky Hospital Care program: (1) provided hospital services to indigent citizens of Kentucky, including inpatient and outpatient services; and (2) covered the hospital charges for a person qualified to participate in the program.

This administrative regulation was amended as follows: (1) amend the RELATES TO paragraph to correct a statutory citation; (2) amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 12 to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Department for Mental Health and Mental Retardation Services: Institutional Care**

908 KAR 3:050. Per diem rate pursuant to the "Patient Liability Act of 1978". Mike Littlefield, Administrative Regulation Coordinator, and Pat Russell, Principal Policy Analyst, represented the Department.

In response to a questions by Chairman Arnold and Representative Bruce, Ms. Russell stated that this administrative regulation established charges that: (1) were based upon the costs of services; and (2) a person would be charged upon admission to a state mental health-mental retardation facility.

This administrative regulation was amended as follows: (1) amend the TITLE to cite the appropriate statutes, rather than the popular name, as required by KRS 13A.222(4)(l)(1); (2) amend the STATUTORY AUTHORITY paragraph to correct statutory citations; and (3) amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to: (a) correct a statutory citation; and (b) comply with the drafting requirements of KRS 13A.222(4).

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Tourism Cabinet: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:058. Methods of taking turtles. Tom Bennett, Commissioner; Roy Grimes, Director, Division of Wildlife; and Ted Crowell, Division of Fisheries, represented the Department.

Subcommittee staff stated that this was a new administrative regulation that established the methods by which turtles could be taken and sold.

In response to questions by Senator Pendleton, Mr. Bennett stated that: (1) the Department had confirmed reports that Kentucky's box turtles were being sent to the Orient; (2) out-of-state dog owners trained their dogs to find Kentucky's box turtles; (3) the dogs were very efficient in: (a) hunting; and (b) taking the turtles; (4) the U. S. Fish and Wildlife Service confirmed that thousands of Kentucky box turtles were being sold as live pets; (5) people were: (a) getting a commercial fishing license; (b) taking thousands of turtles; and (c) selling them as live pets; (6) this administrative regulation limited the type of turtles that could be taken and sold to the: (a) soft shell turtle; and (b) snapping turtle; and (7) these two species of turtles were sold for food.

In response to a question by Senator Roeding, Mr. Bennett stated that the dogs that hunted the turtles were "turtle dogs".

In response to questions by Representative Allen, Mr. Bennett stated that: (1) the box turtle was also commonly known as the terrapin; (2) the turtles were: (a) crated; (b) shipped to the Orient; and (c) brought a fair price; (3) the Department was concerned that the turtles would eventually become endangered species; and (4) the Department wanted to: (a) protect Kentucky's native wildlife; and (b) prevent the problem from occurring.

Representative Allen stated that: (1) he was concerned with this issue because of the annual terrapin race that was held for children in Rosine; (2) it was not a big event, but was enjoyed by the local

citizens; (3) he did not want to see turtles: (a) become extinct; or (b) placed on the endangered species list; and (4) he supported this administrative regulation.

In response to a question by Representative Bruce, Mr. Bennett stated that the turtles were sold overseas for about \$50 to 60 each.

301 KAR 1:140. Special commercial fishing permit. Subcommittee staff stated that this existing administrative regulation had been amended to: (1) place restrictions on the use of gill and trammel nets by commercial fishermen; and (2) permit the assistance of one unlicensed helper.

Mr. Bennett stated that: (1) the Department promulgated a similar administrative regulation for other commercial fishermen last year; (2) the commercial gill net fishermen asked the Department for the same benefit; and (3) this administrative regulation would permit the fishermen to have an unlicensed helper in the boat for assistance.

**Game**

301 KAR 2:223 & E. Waterfowl reporting requirements. Subcommittee staff stated that this existing administrative regulation had been amended to establish the waterfowl reporting requirements.

301 KAR 2:226 & E. Youth waterfowl hunting season. Subcommittee staff stated that this was a new administrative regulation that established a Youth waterfowl hunting season.

**Cabinet for Health Services: Department for Public Health: Maternal and Child Health**

902 KAR 4:110. Abortion information. Rice Leech, Commissioner, Department of Public Health; John Walker, General Counsel; and Trish Mullins, Division of Adult and Child Health, represented the Department. Margie Montgomery, Executive Director, Kentucky Right to Life Association; Scott Wegenast, Program Director, Catholic Conference of Kentucky; and Dr. Steve Armstrong, Chair, Kentucky Section of the American College of Obstetricians and Gynecologists, appeared before the Subcommittee.

Ms. Montgomery stated that: (1) the Kentucky Right to Life Association: (a) lobbied to protect the lives and health of mothers and their pre-born children; and (b) participated in the work group for this administrative regulation to ensure the proper implementation of House Bill 85, which was: 1. enacted during the 1998 Regular Session of the General Assembly; and 2. referred to as: a. the informed consent law; or b. a woman's right to know; (2) she: (a) asked the Cabinet for Health Services twice to include the toll-free telephone number of the Right to Life of Central Kentucky in the booklet, "Available Resources for Pregnant Women"; (b) had been told the number was not state-wide; and (c) had confirmed the number was available state-wide; (3) women needed to receive accurate information regarding pregnancies; (4) Right to Life of Central Kentucky: (a) was a well-established chapter of the Kentucky Right to Life Association; and (b) had a toll-free telephone number of 1-800-972-3920; (5) the material should include information on: (a) abortion methods; (b) the medical risks of both abortion and childbirth; including the emotional reactions; and (c) the connection of abortion to breast cancer; (6) the Subcommittee should facilitate the printing and distribution of the materials to give women in Kentucky: (a) the facts of fetal development; and (b) a list of agencies ready to assist a pregnant woman; and (7) because House Bill 85 was scheduled to go into effect on January 1, 1999, each day that passed without the information reaching the hands of women who could reflect upon its content was: (a) one life lost; and (b) the mother's life and health endangered.

Mr. Wegenast stated that the Catholic Conference of Kentucky: (1) participated in the task group that developed the abortion information booklet; (2) was satisfied with the: (a) process; and (b) openness with which the Cabinet developed this administrative regulation; (3) supported this administrative regulation; (4) believed approval of this administrative regulation was in the best interest of: (a) Kentucky; and (b) women; (5) wanted additional information included in future editions of the material, including the: (a) location of crisis pregnancy centers; and (b) resources available in each county; and (6) was concerned that the Cabinet's placement of information on its Internet site: (a) would not be an adequate method of getting the information to women considering an abortion; and (b) did not comply with the requirement of House Bill 85 to give information to women in a timely

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fashion.

Subcommittee staff stated that Subcommittee staff: (1) had discussed the issues of this administrative regulation with the agency; (2) will meet with Mr. Walker for further discussion of the issues; (3) would research: (a) the requirements of KRS Chapter 13A and applicable statutes; (b) how much detail was required; (c) whether the placement of information on an Internet site complied with the statutory requirements; and (d) the requirement for statewide telephone numbers; and (4) would report back to the Subcommittee at its March 10, 1999, meeting.

In response to a question by Chairman Arnold, Mr. Leech stated that: (1) state and county departments of health did not: (a) take a position on the abortion issue; and (b) use abortion in its family program; (2) after approval of this administrative regulation, the Department would: (a) print the pamphlets; and (b) make the pamphlets available to physicians; (3) he had: (a) submitted several documents to the Board of Medical Licensure; and (b) recently received a Kentucky Medical Association publication that included information on abortion; and (4) a reasonable job had been done to inform medical practitioners.

Senator Roeding stated that he wanted to amend this administrative regulation to include the toll-free telephone numbers of the Right to Life and Nurturing Network included in the material.

Mr. Leech stated that he: (1) did not want to amend this administrative regulation until the agency had worked with Subcommittee staff; and (2) believed the men and women who worked with the work group deserved acknowledgement for their willingness to work together to develop this administrative regulation and its accompanying material.

In response to questions by Chairman Arnold, Subcommittee staff stated that: (1) Subcommittee staff would report back to the Subcommittee on whether the toll-free telephone numbers were appropriate for inclusion in the material; and (2) the Subcommittee would be able to consider this administrative regulation as an existing administrative regulation.

Senator Roeding stated that he agreed to wait until Subcommittee staff reported to the Subcommittee to present his amendment to include the telephone numbers.

Dr. Armstrong stated that: (1) he: (a) wanted to thank Dr. Leech for allowing him to be on the work group; and (b) thought the pamphlet on fetal development was excellent; (2) because informed consent resulted from a personal interaction between a physician and the patient, his organization did not think the legislature should determine what informed consent complications were required; (3) while there had been a constant harangue that abortion caused breast cancer, the following reliable medical authorities had concluded that there was not an association between breast cancer and first trimester abortion, including within the last four years: (a) the Centers for Disease Control; (b) the National Cancer Institute; (c) the American Cancer Society; and (d) the American College of Obstetricians and Gynecologists; (4) a physician required by administrative regulation to inform a patient of the link between abortion and breast cancer would be required to choose between: (a) complying with the legal requirements; or (b) giving proper medical information to the patient; (5) the Dawling study was: (a) prepared for the National Cancer Institute; (b) conducted by Ms. Dawling, who concluded that her numbers were not large enough to make a conclusion about the relationship between abortion and breast cancer; and (c) one of thirty-two studies taken together by the American Cancer Society, which as a group, concluded that no relationship could be established; (6) the conclusion that a relationship could not be established was made: (a) after additional studies by the Centers for Disease Control; and (b) in 1985 by the American College of Obstetricians and Gynecologists; and (7) he had forwarded the information sent by Senator Roeding to the Board of Medical Licensure for its consideration in determining how to handle allegations that a physician failed to inform a patient of the risks of abortion.

Senator Roeding stated that: (1) he: (a) disagreed with Dr. Armstrong because credible studies showed a direct relationship between abortion and breast cancer; and (b) had sent the Commissioner several clinical studies that showed a definite relationship; (2) some American Cancer studies concluded there was a relationship; and (3) Kentucky should include information on the connection because: (a) other states included information about the relationship between abor-

tion and breast cancer in the information given to pregnant women; and (b) Kentucky was trying to follow the lead established in other states.

### Health Services and Facilities

902 KAR 20:134. Repeal of 902 KAR 20:135. John Gray, Director, Office of Certificate of Need, represented the Department.

**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

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.

### Kentucky Employees Retirement System: General Rules

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

### 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.

### Natural Resources and Environmental Protection Cabinet: 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

415 KAR 1:050. Definitions.

415 KAR 1:060. Financial responsibility account.

415 KAR 1:070. Petroleum storage tank account.

415 KAR 1:080. Claims procedures.

415 KAR 1:090. Ranking system.

415 KAR 1:100. Third-party claims.

415 KAR 1:110. Contractor costs.

415 KAR 1:114. Contractor certification.

415 KAR 1:116. Certification of contracting companies.

415 KAR 1:120. Hearings.

415 KAR 1:130. Small owners tank removal account.

415 KAR 1:135. Financial audits.

### Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:190E. 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.

**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.

**Department of Highways: Division of Transportation Planning: Mass Transportation**

603 KAR 7:080 & E. Human service transportation delivery. Ron Bingham, Empower Kentucky; Margaret Platner, Transportation Cabinet; Judy Hodge, All County Wheelchair Transport Service; Barbara Henchey, Mattingly Center; Donovan Fortwalt, Council of Retard Citizens; Janice Smith; Kelly Knoop; Rochelle Meyers; and Terry Curry, Rural Transportation Association, appeared before the Subcommittee.

Subcommittee staff stated that this new administrative regulation implemented the necessary procedures to administer the human service transportation delivery services.

The Regulations Compiler stated that this administrative regulation would be considered with 904 KAR 2:018 and 907 3:065 had been reviewed by the Subcommittee and the Interim Joint Committee on Health and Welfare. The Interim Joint Committee on Health and Welfare found 907 3:065 deficient.

Mr. Bingham stated that: (1) this administrative regulation was promulgated pursuant to House Bill 468, enacted during the 1998 Regular Session of the General Assembly, that combined the transportation services of four cabinets to permit better management; (2) there would be transportation brokers in 16 different regions; (3) seven regions: (a) had been established; and (b) were operating; (4) the procedures included in the establishment of the transportation services included: (a) oversight controls; (b) vehicle inspection; (c) drug testing, and (d) complaint tracking; (5) an additional benefit of the program was that social workers would be relieved of the responsibility for these services; (6) two major concerns, primarily related to Jefferson County, were: (a) fair distribution of business and prevention of a monopoly by the largest company, Yellow Cab; and (b) having the broker maintain the level of service for the: 1. disabled; 2. non ambulatory disabled; or 3. ambulatory, but disoriented; (7) at a visit to the Mattingly home: (a) the transportation services had been observed and were good; (b) each client had been met with; (c) discussions were held with: 1. the directors; 2. legal counsel; and 3. one of the parents; (8) parents wanted to ensure consistency of service; (9) because the intent of the law was for willing providers to have the opportunity to provide services, the present distribution of services and the percentage received by each company had been examined, in order to be used as a monitor; and (10) negotiations were being conducted with Yellow Cab to add to the contract provisions to ensure that the intent of the law was carried out.

Ms. Hodge stated that: (1) she and others were opposed to this administrative regulation; (2) their opposition: (a) was not confined to the application of this administrative regulation in Jefferson County; and (b) application of this administrative regulation throughout the state; (3) she understood that the Cabinet was involved in negotiations with Yellow Cab Company; (4) the people and facilities who used Yellow Cab and Yellow Caravan had a bad history; (5) the company selected as the broker was the one with which the Cabinet had previously had problems; (6) those who appeared before the Subcommittee in opposition had major problems with this administrative regulation; (7) it appeared that turtles seemed to receive more consideration than the handicapped; (8) providers had been busy for ten years in Jefferson, Bullitt, and Spencer counties; (9) she had worked for All County Wheelchair Transport Service ("All County") which was licensed to operate 16 vehicles, of which: (a) fourteen were for the handicapped; and (b) two were for the ambulatory; (10) she: (a) had worked for another company that provided

bad service; (b) knew that there had to be a better way; (c) felt that All County provided good service and a safe operation; (11) in ten years of service, she had not had one person get hurt while boarding or unloading from one of her vehicles; (12) the Yellow Cab company could not say that it had had no injuries; (13) All County arrived as scheduled; (14) the Yellow Cab company had not and would not be on time for pickups; (15) if a person cared for someone in her home, she expected the transportation provider to be on time so the person could be on time for work; (16) an employer would not put up with tardiness; (17) many care providers had 2 to 4 other people in their home, besides the one for whom they provided transportation; (18) people should: (a) not have their schedules constantly disrupted; and (b) know that their provider will be on time; (19) while there were some people on Medicaid who made her wonder why they did not have a job, most people were not on Medicaid by choice, but may have been: (a) in an accident; or (b) a victim of abuse; and (20) although they could not walk, these people were treated like someone who could: (a) easily get into a taxicab; and (b) be dropped off in front of a doctor's office. [Tape inaudible]

Chairman Arnold stated that: (1) the Subcommittee was very sensitive to the issue of transportation for disabled persons; and (2) an adverse change in the lifestyles of the disabled would be very disturbing.

Mr. Fortwalt stated that: (1) he: (a) was the Director of Governmental Affairs for the Council for Retarded Citizens; and (b) had submitted a five page document for consideration by the Subcommittee; (2) as written, this administrative regulation established a serious potential risk to the health and safety of disabled people; (3) since Kentucky used the categorical title of special needs population, he would refer to these people by that term; (4) these constituents could suffer a reduction in the quality and reliability in their medical transportation service; (5) he respectfully requested that the Subcommittee adopt one of Council's proposed amendments to this administrative regulation; (6) the Council would like an exemption from the Human Service Transportation Program for the special needs population; (7) in Jefferson County, in December, 1998, there were 6,200 special needs rides out of a total of 21,000 rides; (8) this figure would be a partial, rather than a total, exemption for those who: (a) had complex needs; or (b) were most vulnerable; (9) if an exemption could not be obtained, the Council wanted the Subcommittee to consider mandating a one contract year moratorium for the enrollment of the special needs population; (10) the Cabinet should establish a proven track record for transportation providers; (11) if this program worked, the special needs population could be enrolled; (12) until, and unless it worked, it would be reckless to enroll the special needs population in this experiment; (13) the Subcommittee should consider amending Section 6(2) to specify that the program administration contract between Health Services and the Transportation Cabinet maintain current fees for servicing the special needs population; (14) this rate had not been raised since 1989; (15) the current rate was: (a) \$25.00 per ride; and (b) \$1.50 per mile; (16) in Region 6, the upper payment limit would be \$5.72, with a statewide average of \$5.03; (17) this was: (a) the maximum amount that the broker would pay for the transportation service; and (b) a drastic reduction in the payment methodology; (18) this administrative regulation would end the incentive to invest \$30,000 to \$40,000 in a lift-equipped vehicle; (19) according to the waiver submitted by the State, the objective was to: (a) reduce costs; and (b) prevent unnecessary utilization of transportation services; (20) to accomplish this, it was necessary for the state to secure a waiver of the freedom of choice requirement guaranteed by the Social Security Act; (21) the Cabinet managed to circumvent the spirit of the "any willing provider statute" because of the: (a) steep decline in reimbursement rates; and (b) de facto monopoly established when a broker was also a provider for the region; (22) there was a distinct difference between: (a) a willing provider; and (b) an able provider; (23) the Cabinet would have heard concerns about the ability to remain in business under the new capitated rate structure if it had talked to a transportation provider other than the broker; (24) his purpose was: (a) to seek a compromise that would ensure the health, safety, and rights of disabled people; and (b) not to insure the solvency of a private company; (25) he was convinced that the only way to ensure these rights was through a free market environment that: (a) allowed

fair compensation; and (b) demanded quality and accountability; (26) the program implemented by the Cabinet rejected the founding principles of a capitalist society by: (a) creating regional monopolies; (b) driving out the small customer-driven entrepreneurs; and (c) mandating a one size fits all solution; (27) the federal waiver submitted by Kentucky contained: (a) a two year projection of savings; (b) a total savings of \$2,038,113; and (c) an expectation over the long term of \$1.26 million in annual savings; (28) the waiver request was for a period of two years: (a) effective July 1, 1998; and (b) ending June 30, 2000; (29) the total two year cost of the program was stated to be \$62,580,000; (30) for the two fiscal years, a fiscal note attached to House Bill 468 estimated: (a) revenues of \$48,000,000; and (b) expenditures of \$50,000,000; (31) the Transportation Cabinet and the Cabinet for Health Services reported costs to the General Assembly in the amount of \$98,000,000; (32) these costs were reflected in the Executive Branch Budget; (33) Kentucky reported costs of \$62.5 million to the federal government; (34) he was not making any wild allegations, but wanted to know: (a) the reason for the \$35.5 million discrepancy; and (b) how there could be assurances of saving money with this discrepancy; (35) he was also concerned with the failure of this administrative regulation to include the conditions and requirements of a subcontract between the broker and regional provider; (36) the statute required that the minimum conditions and requirements of a subcontract be included in an administrative regulation; (37) although he had read the administrative regulation many times, the only reference he found to a subcontractor was in the Definitions section of this administrative regulation; (38) there were no references to the minimum conditions of a subcontract; (39) the assurances given a provider meant nothing if they were not in the contract; (40) the emergency administrative regulation had: (a) been filed in May, 1998; and (b) expired; (42) the Interim Joint Committee on Health and Welfare found 907 KAR 3:065 deficient; and (43) since the emergency administrative regulation had expired and the ordinary had yet to be approved, the Cabinet: (a) had lost its authority to: 1. negotiate; and 2. award contracts; and (b) should cease further implementation of the program.

Ms. Henchey stated that: (1) she was Executive Director of the Mattingly Center; and (2) many of her concerns had been addressed by others.

Ms. Smith stated that: (1) she: (a) knew that money was important; and (b) could not ride in a car; (2) it was important for her not to lose her van service; (3) several good transportation companies were competing in her area to provide services to disabled people; (4) she had: (a) cerebral palsy; and (b) a severe seizure disorder; (5) if 603 KAR 7:080 was approved, she would be denied the opportunity to choose her transportation provider; (6) based upon her personal needs, she was the only person that could competently choose her provider; and (7) if the Subcommittee approved this administrative regulation, it would be denying her freedom.

Ms. Knoop stated that: (1) she: (a) had appeared before the Subcommittee to ask the Subcommittee to find 603 KAR 7:080 deficient; and (b) shared the dream of the Transportation Cabinet to implement a safe, reliable, cost-effective transportation system throughout the state; (2) there were problems with this administrative regulation that had to be addressed before it could be implemented; and (3) if this administrative regulation was found deficient, it would permit establishment of a plan that was fair and feasible for all parties concerned.

Ms. Myers stated that: (1) she wanted this administrative regulation amended so that the disabled could choose their own: (a) transportation provider; and (b) home provider; (2) there should not be a monopoly; (3) she had been dropped and injured many times before; and (4) it would be a great mistake for the Subcommittee to approve this administrative regulation.

Chairman Arnold stated that: (1) he appreciated everyone attending the meeting; (2) he would like for both sides to: (a) go back to the bargaining table; and (b) work out an agreement; and (3) the agreement should be satisfactory to those most affected by this administrative regulation.

Representative Bruce stated that: (1) he did not think that the Transportation Cabinet had made a good faith effort to address the concerns of the disabled; (2) the Cabinet should defer this administrative regulation; (3) if the Cabinet refused to defer, the Subcommittee

would find this administrative regulation deficient; and (3) he thought that the Cabinet should make a better effort to address the concerns of the special needs individuals.

Representative Lee stated that: (1) while he was in favor of saving money in government, sometimes government had to put the needs of special needs individuals above the proposition of saving money; (2) the testimony given indicated that there were real problems with the services being provided to special needs individuals; (3) the Subcommittee needed to: (a) study this issue, before making changes that would lock people into using a certain provider in a given area; (b) determine whether citizens would be provided the type of transportation necessary for their special needs with a company that was trained to provide service in a safe manner; (5) until these assurances had been made, the idea of saving money should not be of concern to the Subcommittee; and (6) government needed to take care of citizens who could not take care of themselves, regardless of whether it would cost more money.

Chairman Arnold stated that: (1) he: (a) agreed with Representative Lee's comments; and (b) was taught that the purpose of government was to serve the people; (2) special needs individuals feared that they had not and would not be served by this administrative regulation; and (3) the Subcommittee would request that the Transportation Cabinet defer consideration of this administrative regulation.

Senator Roeding stated that: (1) the Transportation Cabinet should comply with the statute; (2) the term "any willing provider" was applicable and should be included in this administrative regulation; (3) the contract provisions could not exceed or differ from the requirements of this administrative regulation; and (4) requirements should be established in this administrative regulation, and not be established solely in the contract.

Ms. Platner stated that: (1) she appreciated the concerns of the disabled community; (2) the Transportation Cabinet: (a) needed to respond to these concerns; and (b) was working with the Jefferson County broker to ensure continuity of services to the disabled community; (3) she wanted the Subcommittee to understand that the Cabinet was working on the situation; (4) the Cabinet: (a) had met with groups in Louisville; (b) was working with the broker to maintain service; (c) believed that the program would raise the quality of transportation services; (d) would be raising the standards for: 1. vehicle inspection; 2. random drug testing; 3. client surveys; and 4. complaint tracking; (e) would be making its best effort to ensure that a coordinated transportation system would work: 1. effectively; and 2. better than in the past; (3) Medicaid cost for transportation services had risen about 15 to 20 percent per year in the 1990's; and (4) the Cabinet: (a) intended to: 1. control costs; and 2. provide quality service; and (b) would work with the Jefferson County disabled community to accomplish these goals.

In response to questions by Representative Lee, Ms. Platner stated that: (1) the Cabinet had to look for the most cost effective means to provide services; (2) she agreed that care for disabled persons was more important than money; (3) there were seven transportation regions in operation; (4) the Cabinet had not received complaints about the coordinated transportation services; (5) the first problem that had arisen was in Jefferson County; (6) the program had not yet started in Jefferson County; (7) she hoped that the Cabinet would be allowed to work with the broker to ensure that current services remained in place for the disabled community; (7) the Cabinet: (a) would try to develop a rate of compensation that would permit the transportation providers to stay in business; and (b) did not want the quality of service to be compromised for the disabled community.

Representative Lee stated that: (1) he agreed with Senator Roeding; (2) if there was going to be a contract, the terms and conditions of the contract had to be reflected in this administrative regulation; and (3) policy could not simply be made by contract.

Representative Adrian Arnold stated that: (1) one of his constituents had a taxi service; (2) the constituent was not sure: (a) what the terms of the contract would be; (b) how the contract would be administered; or (c) if he would be paid enough to maintain his service; (3) he was encouraged by what he had heard from the Cabinet and disabled community; and (4) he thought both sides should renegotiate to: (a) make sure providers were treated fairly;

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and (b) provide quality service to the special needs community.

Mr. Curry stated that: (1) the Rural Transportation Association: (a) agreed with the concerns expressed regarding Jefferson County; (b) represented smaller cab and transportation companies; (2) he did not want this to become a segmented issue over disabled transportation; (3) this program was created to provide more efficient transportation; (4) disabled people in rural areas: (a) did not have access to bus services; and (b) would ultimately be affected; and (5) without supplementation of Medicaid program dollars, there would be no transportation in rural areas.

Representative Bruce stated that: (1) the Cabinet should: (a) defer this administrative regulation because he did not think it had negotiated in good faith; and (b) work with the people in Jefferson County; and (2) if the Cabinet did not work with the people, this administrative regulation would: (a) be found deficient; and (b) expire in July, 2000.

Chairman Arnold stated that both sides should report to the Subcommittee in sufficient time before the next Subcommittee meeting for the Subcommittee and its staff to review the issues, progress made in negotiations, and changes.

### **School Facilities Construction Commission: Procedures**

750 KAR 1:010E. Commission procedures.

### **Kentucky Board of 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.

### **Cabinet for Health Services: Department for Public Health: Health Services and Facilities**

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

### **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).

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

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

### **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. Trish Howard represented the Department. Marie Alagia Cull appeared before the Subcommittee. This administrative regulation was deferred in conjunction with 907 KAR 1:019 and 907 KAR 1:021.

Subcommittee staff stated that: (1) once the Department and interested parties had met, all sides should report the details of the agreement to Subcommittee staff in sufficient time for Subcommittee staff to: (a) prepare materials; and (b) discuss the amendments with Subcommittee members; (2) if the information was not submitted early enough, this administrative regulation, 907 KAR 1:019 and 907 KAR 1:021 would be deferred to the April meeting of the Subcommittee; and (3) materials previously filed with the Regulations Compiler should be re-filed for the March meeting.

In response to a question by Representative Bruce, Ms. Howard stated that these administrative regulations were intended to: (1) save the state money; and (2) be good for the patients.

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

907 KAR 1:019. Pharmacy services.

907 KAR 1:021. Amounts payable for drugs.

### **Payment and Services**

907 KAR 3:005. 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)

## **OTHER BUSINESS:**

### **Justice Cabinet**

505 KAR 1:040. Policies and procedures manual. Keith Horn, General Counsel, and Dr. William Heffron, Director, Mental Health Services, represented the Department. Kim Crone, Attorney, Department of Public Advocacy, appeared before the Subcommittee in opposition to specified provisions of this administrative regulation.

Subcommittee staff stated that: (1) at its January 12, 1999, meeting, the Subcommittee: (a) approved this administrative regulation; and (b) requested the Department of Public Advocacy and the Department of Juvenile Justice to: 1. resolve issues relating to: a. therapy group sizes in juvenile homes; and b. access to hot-lines for reporting abuse; and 2. determine if this administrative regulation complied with the consent decree that was entered in a Western District of Kentucky court case that involved the Department of Juvenile Justice; and (2) at Subcommittee request, both sides had submitted documents that discussed those issues.

Mr. Horn stated that: (1) he: (a) had met with Gail Robinson, Department of Public Advocacy, to discuss the hotline and counseling group size issues; (b) believed there would be disagreement on the group counseling size issue; and (c) thought the hot-line access problem existed at one facility because of the facility's physical layout; and (2) the Department was in compliance with the consent decree on the hot-line issue.

Ms. Crone stated that: (1) Ms. Robinson was: (a) her supervisor; and (b) present at the Subcommittee's January, 1999, meeting; and (2) the Department of Public Advocacy opposed the: (a) group size, which exceeded the limit of eight established in the consent decree; and (b) hot-line access issue, because some hot-lines had been placed in locked rooms which residents were not able to access: 1. without staff assistance; or 2. after normal business hours.

In response to questions by Chairman Arnold, Subcommittee staff stated that: (1) it appeared that the Department was in compliance on the hot-line issue, because the physical lay-out of one facility: (a) consisted of cottages, rather than dormitories; and (b) located the hot-line in a separate building; (2) because the consent decree required that a group activity not exceed eight residents with two staff members present, the Department was not in compliance with the consent decree on that issue; and (3) the Department had filed material that indicated that juveniles were receiving qualified and adequate care.

In response to questions by Chairman Arnold, Mr. Horn stated that: (1) the consent decree: (a) was intended to establish an improved juvenile justice system that offered adequate and safe treatment of juveniles; (b) included many requirements, including the limitation on group size; and (c) would be dismissed if the Department had substantial, rather than total, compliance with its provisions; (2) the Department was discussing with the federal government a change in the group size number required by the consent decree; and (3) the court had the authority to: (a) determine that the Department had substantially complied with the consent decree; and (b) dismiss the consent decree.

Chairman Arnold stated that: (1) even if the Department was ninety percent in compliance with the consent decree, the Department was not in compliance with the consent decree; and (2) because the consent decree stated that the group size shall not exceed eight, the Department was prohibited from exceeding eight.

In response to questions by Senator Roeding, Mr. Horn stated that: (1) the consent decree was established as a guideline document to facilitate changes in the juvenile justice system; (2) the monitor: (a) said the Department was not in compliance because the consent decree established a specific number; and (b) did not issue



an opinion as to the appropriateness or sufficiency of the established number; (3) a mental health auditor: (a) examined the Department's practices and treatment procedures; and (b) determined that the Department's practice and treatment were sufficient; and (4) a final determination of the Department's compliance with the consent decree would be made when the Department and the federal government went back to court to dismiss the consent decree.

Subcommittee staff stated that until the consent decree was amended, the Department was required to comply with its provisions.

Mr. Horn stated that: (1) the consent decree did not dictate requirements to the Department for providing mental health treatment; (2) he wanted the Subcommittee to: (a) believe in the juvenile justice system; and (b) let the Department: 1. do its job; and 2. return to the Subcommittee if a change was necessary; and (3) the consent decree: (a) was an agreement between the federal government and the Commonwealth of Kentucky; and (b) established guidelines, not statutory directives, for the Department to follow.

Ms. Crone stated that: (1) the consent decree established a group size limitation of eight for the benefit of the juveniles; (2) the federal monitor had found noncompliance continually on the issue of group size; and (3) the Department: (a) agreed to enter into the consent decree; and (b) should be bound to its agreement.

Senator Roeding stated that there should be some flexibility in determining the group size depending on the: (1) severity of the needs; and (2) the violent nature of the juveniles.

In response to questions by Senator Long, Mr. Horn stated that: (1) a limit of eight persons per group would be problematic because of: (a) the physical lay-out of some facilities; and (b) economic considerations in hiring additional staff personnel; (2) the review of the Department's mental health practices led him to believe that the federal government would agree to a change in the group size limitations; and (3) he: (a) did not know when the federal government would approve a change in the group size; and (b) hoped to have the consent decree dismissed by the end of the year.

Senator Long stated that he did not believe the Department was in compliance with the consent decree.

Subcommittee staff stated that this administrative regulation was: (1) approved by the Subcommittee at its January, 1999, meeting; (2) under consideration by the Interim Joint Committee on Judiciary; (3) out of the Subcommittee's jurisdiction; and (4) could be called as an existing administrative regulation, after the Interim Joint Committee on Judiciary took action.

Chairman Arnold stated that this administrative regulation would be considered as an existing administrative regulation at the March, 1999, meeting of the Subcommittee.

#### Cabinet for Health Services

900 KAR 6:050. Certificate of need administrative regulations. Nancy Galvanti, Kentucky Hospital Association; Ruby Jo Cummins, Kentucky Association of Health Care Facilities; Dan Walton, General Counsel, Kentucky Association of Health Care Facilities; and John Gray, Director, Certificate of Need Office, Cabinet for Health Services, appeared before the Subcommittee.

Subcommittee staff stated that this administrative regulation was: (1) not before the Subcommittee for approval; and (2) scheduled for consideration by the Interim Joint Committee on Health and Welfare on February 17, 1999.

Chairman Arnold stated that Subcommittee members had been given a copy of an amendment that would be proposed at the Interim Joint Committee on Health and Welfare meeting.

Subcommittee staff stated that the amendment addressed the issue that had been raised regarding the limited certificate of need.

Ms. Galvanti stated that: (1) at the January, 1999, Subcommittee meeting, she stated that she was concerned that the Cabinet did not enforce the limited services for which certificates of need had been issued; and (2) pursuant to Subcommittee request, she had worked with the Cabinet to draft an amendment that provided for enforcement of the limited certificates of need.

Subcommittee staff stated that the Subcommittee was authorized to recall this administrative regulation as an existing administrative regulation: (1) after the Interim Joint Committee on Health and Welfare meeting; and (b) to determine whether the Subcommittee

agreed with the amendments.

Ms. Cummins stated that: (1) she was concerned that personal care homes: (a) had been removed from the State Health Plan; and (b) were no longer identified as long-term care facilities; and (2) although KRS 216.510 and 216.535 defined long-term care to include personal care, the Cabinet had re-written applicable statutes by the promulgation of this administrative regulation.

Mr. Gray stated that: (1) this administrative regulation defined long-term beds: (a) because the statute did not define a long-term care bed; and (b) to exclude personal care beds; (2) the Cabinet did not believe a legitimate state purpose would be served by establishing review criteria in the State Health Plan for personal care beds, because the review did not: (a) increase access; (b) improve quality; or (c) affect cost-effectiveness; (3) because the Certificate of Need was established to increase access, improve quality, and affect cost-effectiveness, the Cabinet would be acting arbitrarily and unconstitutionally if the Cabinet established review criteria within the State Health Plan that did not meet the purposes of the Certificate of Need process; and (4) Franklin Circuit Court had dismissed a court case on a similar issue.

Mr. Walton stated that: (1) the Cabinet did not exempt personal care homes until the last one or two years; (2) the health care industry had made a consistent policy decision that personal care: (a) was included in the statutory definition of long-term care beds; and (b) should be subject to the same restrictions on bed growth as other long-term care services; (3) the General Assembly: (a) did not amend the definition of long-term care during its 1998 Regular Session; and (b) should have approved the deregulation of a previously-regulated entity; and (4) the Subcommittee protected the public and the General Assembly from agency attempts at re-writing legislation.

Mr. Gray stated that: (1) there was not a statutory definition for long-term care beds; (2) KRS Chapter 216B: (a) established the Certificate of Need process; and (b) did not define long-term care bed; and (3) industry representatives had requested review criteria in the State Health Plan for personal care to limit competitor's ability to obtain a Certificate of Need for a long-term care facility.

In response to questions by Representative Lee, Mr. Gray stated that: (1) the Certificate of Need statute did not include personal care homes in the definition of long-term care; (2) he believed the General Assembly, not the Cabinet, was the proper entity to change the definition; (3) KRS Chapter 216: (a) did not relate to the Certificate of Need process; (b) defined a personal care facility as a long-term care facility; and (c) did not apply outside of KRS Chapter 216; and (4) KRS Chapter 216B: (a) established the Certificate of Need; (b) required a statistically-valid need analysis for long-term beds; (c) did not define a long-term bed; and (d) contained certain provisions that clarified that personal care beds were not long-term care beds, including provisions that: 1. gave preference for conversions; and 2. established provisions for transfers within licensure categories.

Mr. Walton stated that: (1) long-term care was defined in two places in KRS Chapters 216 and 216B; (2) a statute that defined a term was required to be read in conjunction with other statutes that used the term; (3) for years, the Cabinet wanted to control long-term care, including personal care; (4) KRS Chapter 216B ensured that the Medicaid budget was not impacted additionally from long-term care; and (5) when personal care was released from the Certificate of Need process, potential or current Medicaid recipients were added through other areas of personal care services, including transportation.

Representative Lee stated that he wanted Subcommittee staff to provide an opinion as to whether: (1) personal care was defined as long-term care; and (2) changes in the statute were needed.

Chairman Arnold stated that Subcommittee staff would advise the Subcommittee at its March, 1999, meeting.

Senator Pendleton stated that the Opinion of the Attorney General OAG 96-37: (1) addressed this issue; and (2) should be considered by the Subcommittee.

Senator Long stated that Subcommittee staff should look at the potential financial or fiscal aspects, including the costs to the Medicaid system, for including personal care as long-term care.

Chairman Arnold stated that because Subcommittee staff was not qualified to review this issue, the Subcommittee would request

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the staff of the Interim Joint Committee on Appropriations and Revenue to conduct that review.

Senator Roeding stated that: (1) there was a difference between long-term care beds and personal care beds; (2) the Certificate of Need process had created a shortage of long-term care beds in Kentucky; and (3) he did not want a similar shortage created for personal care beds by requiring completion of the Certificate of Need process.

Mr. Gray stated that personal care beds were: (1) regulated; (2) required to have a Certificate of Need; (3) subject to licensure; and (4) able to complete an expedited process because the State Health Plan showed there was not a need for additional nursing facility beds in Kentucky.

Ms. Cummins stated that: (1) she viewed personal care homes as: (a) long-term care; and (b) different from the nursing facility level of care; (2) there was an eighty-five percent occupancy in personal care homes, which was not a shortage; (3) 2,500 personal care beds had been added under the nonsubstantive review process; and (4) while there might be a shortage in Northern Kentucky of nursing facility beds, there was not a shortage in personal care beds.

Chairman Arnold stated that: (1) at the March, 1999, Subcommittee meeting: (a) Subcommittee staff would present its opinion; and (b) the Subcommittee would reconsider this administrative regulation; and (2) interested parties should present materials to Subcommittee staff in ample time for review prior to the March, 1999, meeting.

### Housing, Buildings and Construction

815 KAR 35:015. Judith Walden, General Counsel, Department of Housing, Buildings, and Construction, and Rice Leech, Commissioner, Department of Public Health, appeared before the Subcommittee.

Subcommittee staff stated that: (1) at the January 12, 1999, Subcommittee meeting: (a) the Subcommittee considered 815 KAR 35:015, Certification of Electrical Inspectors; and (b) Chairman Arnold had requested Bill Perkins, Chief Electrical Inspector, to provide additional information to the Subcommittee regarding the requirements from Senate Bill 18, enacted during the 1998 Regular Session of the General Assembly; (2) pursuant to that request, Judith Walden, General Counsel, for the Department of Housing, Buildings, and Construction, responded on January 29 by submitting a copy of a: (a) memorandum the Cabinet for Health Services had sent to all local health departments regarding implementation of Senate Bill 18; and (b) letter the Department had sent to an electrical inspector regarding the issuance of electrical inspection certificates without approval of the local health department on on-site sewage systems in violation of Senate Bill 18; and (3) each member should have a copy of the letter and its attachments in his information packet.

In response to questions by Representative Bruce, Ms. Walden stated that: (1) 815 KAR 35:015 required compliance with Senate Bill 18, which: (a) required electrical inspectors to not approve electrical wiring if the owner or builder had not provided proof of the on-site sewage system approval from the health department; and (b) had been enacted to ensure that on-site systems were installed prior to the building's occupation; (2) at legislative subcommittee meetings, the Department testified that Senate Bill 18 would accomplish these purposes because the electrical inspectors would be required to comply; and (3) if an electrical inspector did not comply with that requirement, he could lose his certification as an electrical inspector.

Chairman Arnold stated that after the Subcommittee members reviewed the submitted information, this administrative regulation might be reviewed as an existing administrative regulation.

In response to questions by Representative Allen, Ms. Walden stated that: (1) the health department gave a white slip of paper: (a) to a person who applied or registered property needing a subsurface permit; and (b) which allowed the inspector to approve the initial wiring; (2) while the final inspection required approval of the system, the system did not have to be installed; (3) an owner of a mobile home who wanted permanent service to the home was required to get a health department permit before the electrical inspection could be conducted; and (4) she did not know what the health department charged for an inspection or system installation.

Representative Lee stated that Senate Bill 18: (1) did not require an additional inspection; and (2) limited the ability to get a final permit until the inspections were completed.

Chairman Arnold stated that: (1) a constituent: (a) bought a double-wide trailer that had an existing septic system; and (b) was required to post a fee of \$125 to have his electricity turned on because the health inspector: 1. inspected his septic system; and 2. determined the system would not qualify for an additional house with an extra bedroom; and (2) the problem was: (a) resolved between the constituent and Department; and (b) caused by a lack of communication.

In response to a question by Representative Bruce, Mr. Leech stated that: (1) Senate Bill 18 was intended to give the Department notice before the installation to prevent problems that arose from building or placing a structure on the one area in which the septic system could be installed properly; (2) the health department would discuss its general budget at an upcoming meeting of the Interim Joint Committee on Appropriations and Revenue; and (3) the on-site fees that were charged covered the cost of the on-site activities.

### Cabinet for Families and Children.

904 KAR 2:018. Transportation Services for Kentucky Works.

### Cabinet for Health Services.

907 KAR 3:065. Nonemergency medical transportation waiver services and payments.

(Compiler's Note: See discussion under 603 KAR 7:080.)

### House Bill 1, "Safe Boating Act"

Tom Bennett, Commissioner of the Department for Fish and Wildlife Resources, stated that: (1) he wanted to brief the Subcommittee on the implementation of the "Safe Boating Act", House Bill 1, enacted during the 1998 Regular Session of the General Assembly; (2) immediately after the 1998 Regular Session, the Department had compiled a study booklet and test for children; (3) there were about 30,000 children in Kentucky between the ages of 12 to 17; (4) children had to pass the test before they could operate a boat greater than ten horsepower on Kentucky waters; (5) as of that date, the Department had certified less than 500 children; (6) for several months, the Department had offered monthly tests in every Kentucky county; (7) to publicize the requirements of the new law, the Department had: (a) printed 100,000 booklets; (b) distributed 70,000 booklets to: 1. county clerks; 2. marinas; 3. boat dealers; 4. sporting goods stores; 5. boat shows; and 6. sports shows; (c) an additional 80,000 booklets ready to distribute during the upcoming boating season; (d) during February, mailed the booklets to libraries and classrooms in: 1. middle schools; 2. junior high schools; and 3. high schools; (8) about 68 percent of the people who had taken the test passed; (9) a child could not pass the test unless he studied the booklet; (10) it was not intended that the test be easy to pass; (11) a child had to score an 80 to pass the test; and (12) the Department was making a great effort to inform boaters of the Kentucky rules.

In response to questions by Chairman Arnold, Mr. Bennett stated that: (1) this booklet was being sent to every middle, junior, and high school in the state; (2) Department officers were in the process of visiting every school to administer the test; (3) since the 1998 Regular Session, the Department had advertised the new law: (a) on local, regional, and national public service announcements; (b) in regional and national publications; (c) on the Department television show; and (d) on as many local news shows as possible; (4) the Department had: (a) contacted the media and state officials in border states to notify them that: 1. the law was in effect; and 2. their citizens would be affected if they came to Kentucky; (b) notified the Fish and Wildlife Departments of the bordering states to notify their citizens; (c) worked very closely with and provided literature to the Kentucky Marina Association; (d) coordinated with the Coast Guard, Coast Guard Auxiliary, and Power Squadrons to accept their certification; (5) Department hunter education classes reached 15,000-16,000 Kentuckians per year; (6) this test was being offered at the conclusion of hunter education classes; (7) as with the mandatory hunter safety courses, the first year would be difficult; and (8) all a person had to do to take the test was: (a) look in the newspaper; or (b) call the Department on its toll-free telephone number.

Senator Roeding stated that he wanted to congratulate Mr.

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Bennett on: (1) reintroducing elk to Kentucky; and (2) being mentioned in U. S. News and World Report.

In response to a question by Senator Roeding, Mr. Bennett stated that the Department released thirty-seven elk on the ground in Bell County the previous Sunday morning.

### **ANNOUNCEMENTS:**

At the request of Chairman Arnold, Subcommittee staff stated that: (1) because of the Subcommittee's workload and staff shortage, if an agency or member of the public had materials for distribution to committee members, that material must be submitted to the Regulations Compiler by 8:30 a.m. the day of the meeting; and (2) if the material was not received by 8:30, the Regulations Compiler would not accept it; (3) if an agency was negotiating with the Subcommittee staff on an amendment, the Subcommittee staff could agree to permit a late filing; and (4) if other material relating to an administrative regulation was not submitted in time for review by the Subcommittee members and staff, the administrative regulation to which the material pertained would be deferred.

**The Subcommittee adjourned at 1:15 p.m. until March 9, 1999, at 10 a.m. in Room 149 of the Capitol Annex.**

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**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 January 19, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of January 19, 1999, having been referred to the Committee on December 17, 1998, pursuant to KRS 13A.290(6): 201 KAR 6:011; 201 KAR 6:020; 201 KAR 6:030; 201 KAR 6:040; 201 KAR 6:050; 201 KAR 6:060; 201 KAR 6:070; 201 KAR 6:080; 201 KAR 6:090; 900 KAR 2:020; 902 KAR 2:090; 902 KAR 14:080; 902 KAR 20:036; 902 KAR 55:010; 902 KAR 55:030; 902 KAR 55:045; 904 KAR 2:018 & E; 904 KAR 2:020; 904 KAR 2:380 & E; 904 KAR 2:390; 904 KAR 2:400; 904 KAR 2:410; 904 KAR 2:490 & E; 905 KAR 1:320; 905 KAR 1:330; 905 KAR 2:100; 907 KAR 1:038; 907 KAR 1:039; 907 KAR 1:360; 907 KAR 1:383; 907 KAR 3:065 & E; 908 KAR 2:120; 908 KAR 2:130; 908 KAR 2:140; 908 KAR 2:160; 908 KAR 2:200.

The following administrative regulation was found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): 907 KAR 3:065 & E.

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: 904 KAR 2:020; 905 KAR 2:100.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the January 19, 1999 meeting, which are hereby incorporated by reference.

**INTERIM JOINT COMMITTEE ON EDUCATION  
Meeting of February 4, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of February 4, 1999, having been referred to the Committee on January 19, 1999, pursuant to KRS 13A.290(6): 750 KAR 2:010 & E.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February

4, 1999 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON  
LICENSING AND OCCUPATIONS  
Meeting of January 12, 1999**

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of February 12, 1999, having been referred to the Committee on January 12, 1999, pursuant to KRS 13A.290(6): 201 KAR 10:050  
201 KAR 14:180

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: 201 KAR 10:050  
201 KAR 14:180

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 February 12, 1999, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates ..... I - 2

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 ..... I - 15

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 ..... I - 26

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.



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## VOLUME 24

The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS:

|                 |      |          |
|-----------------|------|----------|
| 12 KAR 4:170E   | 2326 | 4-7-98   |
| Expired         |      | 10-18-98 |
| 31 KAR 4:120E   | 2575 | 4-22-98  |
| 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  |         |                 |
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| 810 KAR 1:015  |         |                 |
| Amended        | 2450    | (See Volume 25) |
| 810 KAR 1:016  |         |                 |
| Amended        | 2452    | (See Volume 25) |
| 811 KAR 1:090  |         |                 |
| Amended        | 2454    | (See Volume 25) |
| 811 KAR 1:215  |         |                 |
| Amended        | 2456    | 10-12-98        |
| 902 KAR 50:031 |         |                 |
| Amended        | 1573    |                 |
| Withdrawn      |         | 1-29-99         |
| 902 KAR 50:032 |         |                 |
| Amended        | 1575    |                 |
| Withdrawn      |         | 1-29-99         |
| 902 KAR 55:033 |         |                 |
| Amended        | 1578    |                 |
| Withdrawn      | 1-29-99 |                 |
| 907 KAR 1:595  | 2788    | (See Volume 25) |
| 907 KAR 3:030  | 2790    | (See Volume 25) |
| 908 KAR 1:311  | 2484    |                 |
| 908 KAR 1:370  | 2485    | (See Volume 25) |

\*Statement of Consideration Not Filed by Deadline

## VOLUME 25

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**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extension, or upon replacement or repeal, whichever occurs first)

|               |      |          |
|---------------|------|----------|
| 20 KAR 1:040E | 1015 | 10-15-98 |
| 20 KAR 1:070E | 1017 | 10-15-98 |
| 20 KAR 1:080E | 1018 | 10-15-98 |

|               |      |          |
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| 30 KAR 4:010E | 539  | 7-15-98  |
| Replaced      | 1869 | 2-18-99  |
| 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  |
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| 40 KAR 2:076E        | 543                 | 7-15-98           | 735 KAR 2:030E       | 239                  | 6-30-98           |
| Replaced             | 1584                | 1-19-99           | Replaced             | 1359                 | 12-3-98           |
| 40 KAR 6:010E        | 543                 | 7-15-98           | 735 KAR 2:040E       | 240                  | 6-30-98           |
| Replaced             | 1265                | 1-19-99           | Replaced             | 1360                 | 12-3-98           |
| 103 KAR 44:060E      | 546                 | 8-7-98            | 735 KAR 2:050E       | 241                  | 6-30-98           |
| 105 KAR 1:170E       | 222                 | 7-14-98           | Replaced             | 1361                 | 12-3-98           |
| Replaced             | 589                 | 11-20-98          | 735 KAR 2:060E       | 243                  | 6-30-98           |
| 105 KAR 1:205E       | 1561                | 12-1-98           | Expired              |                      | 1-18-99           |
| 105 KAR 1:230E       | 223                 | 7-14-98           | 750 KAR 1:010E       | 1022                 | 9-23-98           |
| Replaced             | 1351                | 11-24-98          | 750 KAR 2:010E       | 244                  | 7-1-98            |
| 200 KAR 5:021E       | 548                 | 7-17-98           | Expired              |                      | 1-18-99           |
| Replaced             | 903                 | 2-18-99           | 787 KAR 1:200E       | 245                  | 6-30-98           |
| 200 KAR 6:060E       | 225                 | 7-15-98           | Replaced             | 914                  | 12-17-98          |
| Replaced             | 946                 | 12-17-98          | 803 KAR 2:306E       | 246                  | 7-2-98            |
| 200 KAR 21:010E      | 2116                | 2-12-99           | 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            |
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| 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           |
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| Replaced             | 1352                | 12-17-98          | Resubmitted          | 1840                 | 1-15-99           |
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| Replaced             | 1355                | 12-17-98          | 806 KAR 17:160E      | 272                  | 6-19-98           |
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| Expired              |                     | 12-18-98          | 904 KAR 2:018E       | 42                   | 5-15-98           |
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| Replaced             | 1597                | 1-19-99           | 904 KAR 2:116E       | 782                  | 9-15-98           |
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